



DEPARTMENT OF
ECOLOGY
State of Washington

Response to Comments

Agreed Order for the Port of Seattle Terminal 91 Site

Public comments and Ecology responses for
comment period Oct 10 – Nov 25, 2019

Facility Site ID: 24768
Cleanup Site ID: 2674

January 2020
Publication 20-04-008

Publication and Contact Information

This document is available on the Department of Ecology's website at:
<https://fortress.wa.gov/ecy/publications/summarypages/2004008.html>

Contacts:

Department of Ecology
Hazardous Waste and Toxics Reduction Program
Central Regional Office
1250 West Alder Street
Union Gap, WA 98901-0009

Thomas Mackie, Site Manager
509-575-2803, thomas.mackie@ecy.wa.gov

Washington State Department of Ecology — www.ecology.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Accommodation Requests

To request Americans with Disabilities Act accommodation, or printed materials in a format for the visually impaired, contact the Ecology ADA Coordinator at 360-407-6831 or ecyadacoordinator@ecy.wa.gov, or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Response to Comments

United States Army Corps of Engineers

On or around November 25, 2019, the Department of Ecology (Ecology) received comments from Molly Boughan, Project Manager for the United States Army Corps of Engineers (Corps). The following are Ms. Boughan's comments and Ecology's responses.

Draft Agreed Order No. DE 24768

1. The Draft Agreed Order's "Findings of Fact" includes background information that contains opinions, inferences, and conclusions that are not supported by historic records and in some cases are inconsistent with historic records. In light of these misstatements of fact, the background discussion should not be presented as "Findings of Fact".

Ecology Response:

Ecology is unaware of any opinions, inferences, or conclusions in Agreed Order No. DE 24768's Findings of Fact that are not supported by historical or technical records. Ecology based its Findings of Facts on documents (hard copy and electronic) that make up Ecology files for the Port of Seattle Terminal 91 Site (Site).

2. The "Findings of Fact" section includes several allegations about historical activity of the United States Navy at the Terminal 91 Complex. In addition to the comment above that the allegations are not all accurate, discussion of the Navy is not appropriate because the Navy is not a party to this Agreed Order, nor is the Department of Defense or the United States. The level of information about Navy activity is unnecessary and irrelevant to demonstrate authority for an Order to the Port of Seattle as the current owner and operator of the Terminal 91 Complex.

Ecology Response:

Comment noted. The fact that the Department of Defense, Department of Navy, or the United States are not parties to Agreed Order No. DE 24768 does not negate the relevance of Navy's historical activities at the Site concerning past Site operations, hazardous waste disposal, possible releases at the Site, and remedial action considerations for the Site.

3. Section V, "Findings of Fact," Paragraph L states that several COPCs exceed cleanup screening values. The text should include what screening values are being used and/or refer to the document that establishes cleanup goals.

Ecology Response:

Screening levels are included in previous investigations that are available on Ecology's webpage for the site. *Find screening levels at:*
<https://apps.ecology.wa.gov/gsp/Sitepage.aspx?csid=2674>.

4. Section VII, "Work to be Performed," Paragraph C states that Progress Reports shall be submitted "by the tenth (15th) day of the month."

Ecology Response:

Thank you for the comment. Ecology will correct this discrepancy in the submission due date.

5. Exhibit B – Scope of Work (SOW) and Schedule, TASK 1. The SOW states the "RI Work Plan will not address discarded military munitions (DMMs) at the Site." To adequately characterize the submerged lands area the Port of Seattle's Remedial Investigation (RI) should investigate all subsurface contaminants that may require a response. Additionally, to the extent that DMM maybe present, the Port should have a safety plan in place to address any potential encounter with DMM while conducting the RI.

Ecology Response:

Ecology appreciates the Corps' concern for the potential of encounters with DMMs in the Submerged Lands Area. In response to this comment and a similar comment from the Suquamish Tribe, the SOW has been changed to include the following requirement under Task #1:

"As part of the project background, existing environmental data on site sediments including but not limited to, metals, polycyclic aromatic hydrocarbons (PAHs), semivolatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), discarded military munitions (DMMs), munitions debris (MD), and munitions constituents (MCs) will be compiled and evaluated for data gaps."

As was true with the previous preliminary investigations of the Submerged Lands Area, a Safety Plan that includes addressing potential encounters with DMMs will be required.

Draft - Public Participation Plan (PPP)

6. At the bottom of Page 6, in discussing the "Submerged lands," the document states that Ecology's initial investigation found DMMs at levels of concern, but the Scope of Work attached to the Draft Agreed Order specifically excludes any effort to characterize DMM in the submerged lands.

Ecology Response:

See response to Corps' comment #5.

7. On Page 7, under the paragraph "Submerged lands (sediments)" the PPP states that the "Army Corps of Engineers (Corps) began cleaning up the sediment (mud) under Elliot [sic] Bay at this site in 2010... ." To the extent this information is relevant to the PPP for this Draft Agreed Order, the language should be corrected to state that the Corps' 2010 Time Critical Removal Action was an effort targeted specifically at removal of DMMs it was not intended as a cleanup of "sediment (mud)" at this site.

Ecology Response:

Comment noted.

8. We request that Washington Department of Ecology publicly post copies of work plans, sampling results, work documents, reports, etc. to allow for continued public engagement and comment.

Ecology Response:

The Corps' request is noted. The Washington State Model Toxics Control Act governs public participation and comment. MTCA does not require Ecology to post a copy of every work plan, sampling result, work document, and report. Please note that additional opportunities for public engagement and comment will occur during the investigation and cleanup process. See WAC 173-340-600. In addition, the Corps may file a public information request for any work plans, sampling results, work documents or reports in Ecology's files at any time.

Corrective Action Permit & Application

9. On Page 4, the Draft Dangerous Waste Management Permit for Corrective Action misstates the effective date of Agreed Order 8938 as 29 Jun 2010. Agreed Order 8938 was originally entered in 2012, and amended in 2016.

Ecology Response:

Thank you for the comment. Ecology will change the date in the final permit.

The Suquamish Tribe

On November 25, 2019, Ecology received comments from Alison O’Sullivan, Senior Biologist and Denice Taylor, Environmental Scientist for The Suquamish Tribe. The following are Ms. O’Sullivan’s and Ms. Taylor’s comments and Ecology’s responses.

Draft Agreed Order No. DE 24768

1. Exhibit B, the Scope of Work and Schedule for the remedial investigation (RI) of the submerged lands area, states that the RI work plan will not address discarded military munitions (DMMs) at the site, but does not provide any justification or rationale for this omission. Previous DMM recovery and sediment sampling performed by the USACE led to a recommendation to establish a 116.1 acre Munitions Response Area (MRA) surrounding the Piers 90 and 91 due to the potential presence of DMM and munitions compounds (MC) in sediment. Subsequent sediment sampling performed by the Port of Seattle did not include analysis for MC. It does not appear that there is currently sufficient data to evaluate the extent of MC contamination in sediments or the potential risks posed to human health and the environment.

Ecology Response:

In response to this comment and a similar comment from the Corps, the SOW has been changed to include the following requirement und Task #1:

“As part of the project background, existing environmental data on site sediments including but not limited to, metals, polycyclic aromatic hydrocarbons (PAHs), semivolatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), discarded military munitions (DMMs), munitions debris (MD), and munitions constituents (MCs) will be compiled and evaluated for data gaps.”

2. The Suquamish Tribe, EPA and Ecology have previously expressed a preference for a comprehensive site remediation that addresses both munitions-related and non-munitions- related sediment contamination. The Tribe continues to believe such an approach will result in the most effective cleanup of the site. At a minimum, sediment samples collected as part of the RI should be analyzed for MCs. It is assumed that the Port of Seattle will take adequate precautions regarding any potential explosive safety hazards associated with DMMs.

Ecology Response:

In response to this comment and a similar comment from the Corps, see response to Suquamish Tribe comment #5. In addition, as was true with the previous preliminary investigations of the Submerged Lands Area, a Safety Plan that includes addressing potential encounters with DMMs will be required.

3. The Agreed Order has no discussion of Tribal coordination.

Ecology Response:

Coordination with the Suquamish and Muckleshoot Tribes is discussed in the Public Participation Plan for the site. As stated in the Public Participation Plan, Ecology appreciates that the federally recognized Muckleshoot and Suquamish Tribes rely on resources that could be affected by the contamination. Ecology will engage with the Tribes on a government-to-government basis about interim actions or cleanup action plans for the Site. In addition, a plan will be developed for the Site that will address inadvertent discovery of cultural artifacts.

4. The Tribe is again requesting to be included in project meetings and have an opportunity to review work plans, sampling plans, reports, memos, etc. associated with activities at this site including but not limited to the RI and any Interim Actions.

Ecology Response:

The Tribe's request is noted. The Washington State Model Toxics Control Act's regulations, which govern public participation and comment, do not require Ecology to provide for public meetings and public review of Site work plans, sampling plans, and reports. See WAC 173-340-600. However, Ecology is planning to meet with the Suquamish Tribe quarterly to discuss cleanup progress at the site.

Diane Watkins

On October 16, 2019, Ecology received comments from Diane Watkins. The following is Ms. Watkin's comment and Ecology's response.

1. Clean up needs to be an ongoing process. I am also concerned about waste/pollution from cruise ships, this needs to be addressed if it is not part of the plan.

Ecology Response:

The cleanup of the Terminal 91 Site is an ongoing process under the State's Model Toxics Control Act. With respect to the waste/pollution generated from cruise ships, those wastes are regulated by the Port of Seattle. According to Port of Seattle Terminal Tariff No. 5 Effective 01/01/2020 - ITEM 4001:

CRUISE SHIPS – PROTECTING WATER QUALITY

1. Provisions under this Item apply to all passenger cruise ships that use Port Terminals.
2. Passenger cruise ships will not discharge graywater, blackwater, or exhaust gas cleaning system wash water, whether treated or not while at berth in Port Terminals.
3. The Port may, at its option, obtain from the vessel captain, owners or its representatives, operational records and vessel log documentation to verify compliance with this provision.
4. Passenger cruise ships will notify the Port within 24 hours of any accidental discharge of treated or untreated graywater, blackwater, or exhaust gas cleaning system wash water.

The full Terminal Tariff No. 5 can be accessed at:
<https://www.portseattle.org/sites/default/files/2019-12/Terminals%20Tariff%205%20%2001%2001%202020.pdf>

CH

On October 11, 2019, Ecology received comments from CH. The following is CH's comment and Ecology's response.

1. I am mostly curious if this project will impact the bike path. It seems like the T91 complex and Port owned property runs right along the bike path (according to the T91 site map) and I would appreciate mindfulness about how this impacts bike commuters like myself. If it does impact the bike path I would appreciate consideration of an interim alternative option. Thanks!

Ecology Response:

There are no indications that the remedial investigation will have any impacts to the bike path near the project area. However, Ecology will be mindful of potential impacts to the bike path for any future work.

Scott Kisser

On October 11, 2019, Ecology received comments from Scott Kisser. The following is Mr. Kisser's comment and Ecology's response.

1. Why not make this a park?

Ecology Response:

Requests or suggestions about areas of the Port of Seattle's Terminal 91 property should be made to the Port of Seattle. Smith Cove Park is located just west of Terminal 91.