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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Washington State  
Department of Ecology

In the Matter of Remedial Action by:

AGREED ORDER

Port of Olympia

No. DE 6083

TO: Ed Galligan, Executive Director  
**Port of Olympia**  
915 Washington Street Northeast  
Olympia, WA 98501

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Olympia under this Agreed Order (Order) is to provide for Interim Remedial Action pilot study activities at a facility where there has been a release or threatened release of hazardous substances. This Order requires Port of Olympia to remove elevated concentrations of dioxin in sediment from its berth area located adjacent to its docking facility in West Bay of Budd Inlet, and perform a pilot study assessment of the characteristics of the in-place sediments and measure the benefits of proposed dredging technologies for future use in cleanup of Budd Inlet. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Port of Olympia agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Port of Olympia's responsibility under this Order. Port of Olympia shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Budd Inlet Sediments Site. Budd Inlet is a small embayment located in southern Puget Sound near the city of Olympia, WA (Exhibit A). The

southern portion of Budd Inlet has historically supported wood product industries, recreational marinas and boat industries; and is home to the Port of Olympia. A small peninsula extends from the southern point in Budd Inlet, which divides the inlet into the East and West Bays. The Olympia Harbor federal navigation channel and turning basin are maintained in inner West Bay. This Interim Remedial Action pilot study will be conducted in the Port of Olympia's shipping berths adjacent to the federal navigation channel, along the north end of Port of Olympia's docking facility in West Bay of Budd Inlet, Thurston County, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Budd Inlet Sediments Site. Based upon factors currently known to Ecology, the portions of the Site relevant to this Interim Remedial Action pilot study is more particularly described in the Site Diagram attached as Exhibit B. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and the Port of Olympia.

C. Potentially Liable Person (PLP): Refers to Port of Olympia.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Port of Olympia:

A. The Interim Remedial Action area is located along the north end of Port of Olympia's docking facility and adjacent to the federal navigation channel and turning basin in West Bay of Budd Inlet (Exhibit A). Port of Olympia operates the West Bay Berth Area along the eastern shore of West Bay to facilitate vessel access to its Marine Terminal operations. The Port manages the Harbor Area under a Port Management Agreement with the Washington State Department of Natural Resources (DNR). Along the Marine Terminal, the Harbor Area is

mostly defined as a 54-foot-wide swath that extends from the south end of the Marine Terminal to the north end and beyond (Exhibit B). This narrow swath extends from the face of the Marine Terminal pier landward, thus including a 54-foot wide portion of the under-pier area of the Marine Terminal. Waterward of the Marine Terminal, the berthing areas all fall under State Ownership and are within the Budd Inlet Federal Turning Basin.

B. In 2007, Port of Olympia and the U.S. Army Corps of Engineers (USACE) had planned to conduct maintenance dredging within the berthing areas and adjacent federal navigation channel and associated turning basin within West Bay. Navigation channel dredging was completed, but the West Bay Berth Area was not dredged due to concerns regarding open water disposal of berth sediments containing dioxin/furan mixture.

C. Previous testing for the Olympia Harbor project included two rounds of testing in 1998: a partial characterization for considering a down-ranking (ranked high at that time), and a full characterization for the original 535,185 cubic yard federal navigation channel/turning basin project. In 1999, the project was expanded to 624,000 cubic yards with the inclusion of the Port's berthing area, and underwent another round of testing. This testing was conducted in accordance with the DMMP guidance to determine the suitability of the dredged material for disposal at the DMMP Anderson-Ketron open-water disposal site. Seventeen Dredged Material Management Units (DMMUs) were tested, and results indicated that all chemicals of concern were detected below the screening levels except for tributyltin (TBT) in surface DMMUs collected in the Port's southernmost berthing area (Berth 1) and in the Turning Basin widening area, which exceed the bioaccumulation trigger. These results triggered follow up laboratory bioaccumulation testing of these sediments. The testing results showed that tissue levels of TBT following exposure to West Bay sediments were well below the target tissue levels used by the DMMP to determine suitability for open-water disposal.

D. In 2005, the results of the 1999 characterization were reviewed by the DMMP agencies due to concerns over lack of dioxin/furan testing at the Port and in the navigation channel. Dioxin testing results from the post-cleanup monitoring of Cascade Pole led the DMMP agencies to require additional testing for dioxin throughout the proposed project area. Further details about the previous investigations and a regulatory timeline are provided in the Suitability Determination (DMMP 2006).

E. In 2006, samples were collected at 21 locations within the joint federal/Port project area (Exhibit B). Surface (0- to 4-foot [0-4ft]), subsurface (4- to 8-foot or greater [4-8+ft]), and Z-samples (samples collected at the bottom of the target dredge depth, intended to represent the new exposed sediment surface following dredging) were collected at each location, for a total of 29 DMMUs. Samples were collected from March 6-10, 2006, and were analyzed for conventionals and dioxin/furan mixture. A subset of the samples was also analyzed for polycyclic aromatic hydrocarbons (PAH). The emphasis of the Phase 1 analysis was to evaluate the surface DMMUs for dioxin/furans and, in some cases, PAH concentrations. Based on the Phase 1 results, additional analyses were performed in Phase 2 to determine the extent of the dioxin/furan concentrations in surface composited samples, subsurface samples, and Z-samples. Detailed results from both of these phases are provided in the Suitability Determination (DMMP 2006) and summarized in the Interim Action Plan presented as Exhibit C.

Of the 29 total DMMUs sampled in 2006, cores were collected from three locations in the two DMMUs that make up the Port's West Bay Berth 2 and 3 interim action area (Exhibit B). A total of six segments from these cores—three surface (0-4ft segments) and three subsurface (greater than 4-foot [ $>4ft$ ] segments)—were analyzed for dioxins/furans. Results from the three coring stations in Berths 2 and 3 (S2, S3, and S4) are provided in Table 1 and Figures 4, 6, and 7 of the Interim Action Plan (Exhibit C). All 0-4ft samples exceeded the 7.3-picogram per gram

(pg/g) DMMP screening level guideline for dioxin<sup>1</sup>. Within Berths 2 and 3, dioxin Toxic Equivalents Quotient (TEQ) concentrations were 52.3 pg/g TEQ at station S2; 37.4 pg/g TEQ at station S3; and 52.6 pg/g TEQ at station S4. Concentrations outside of the Port's berthing area in 0-4ft samples ranged from 0.14 pg/g TEQ to 36.2 pg/g TEQ in the turning basin. All subsurface samples from Berths 2 and 3, as well as samples to the immediate south in Berth 1, showed concentrations well below the 7.3-pg/g level.

The subsurface cores for all stations in the Port's berthing areas (S2, S3, and S4) and in the turning basin, except station S10, were below the screening level, indicating that dioxin concentrations decrease sharply with depth throughout this area. A shallow subsurface core at station S10 slightly exceeded the screening level. A total of 13 DMMUs (S2, S3, S4, S5, S6, S10, S18, S19, S20, S21, S22, S23, and S29), including the surface DMMUs at Berths 2 and 3 (S2, S3, and S4), exceeded the 7.3-pg/g guideline and were determined to be unsuitable for disposal at the Anderson-Ketron Island open-water disposal site. The remaining DMMUs, including those in Berth 1, immediately south of the Interim Remedial Action area, were determined to be suitable for open-water disposal. Finally, limited PAH analyses were conducted at station S4 in the Port's project area (Station S4), and surface and subsurface results were well below DMMP screening-level guidelines.

F. In 2007, Ecology initiated a sediment sampling program as part of its bay-wide investigation of Budd Inlet. As part of this investigation, six sediment cores and two surface samples were collected in the vicinity of the Port of Olympia's berthing areas. Core BI-C4, located along the under-pier slope north of the interim action area, contained a surface dioxin concentration of 29.1 pg/g TEQ and subsurface dioxin concentrations of 41.3 pg/g TEQ and 62.5

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<sup>1</sup> The DMMP screening guideline for dioxin/furans is based on background concentrations currently existing in the vicinity of the Anderson-Ketron Island open-water disposal site. The 7.3-pg/g value is the site-specific ceiling value not to be exceeded. Additional detail on the approach for determining this screening value is provided in DMMP (2006).

pg/g TEQ at 3 to 4 feet and 6 to 7 feet below the mudline, respectively. Core BI-C14, northeast of the project area, had an elevated surface dioxin concentration of 13.8 pg/g TEQ, with decreasing concentrations at depth. Core BI-C16, along the west edge of the Interim Remedial Action area, had a surface concentration of 19.20 pg/g TEQ, increasing with depth; and core BI-C15, south of the Interim Remedial Action area, had a surface concentration of 19.02 pg/g TEQ, increasing to 36.42 pg/g TEQ from 4 to 5 feet below the mudline, and decreasing thereafter. Core BI-C3, located along the under-pier slope south of the project area contained a concentration of 17.1 pg/g TEQ at the surface, with decreasing concentrations below. Core BI-C5, located outside the project area to the north along the under-pier slope, had a surface concentration of 21.60 pg/g TEQ, increasing to 231 pg/g TEQ at 3 to 4 feet below mudline, and 4,212.52 pg/g TEQ at 6 to 7 feet below the mudline. (Exhibit B)

PAH concentrations detected above SMS criteria in samples in the vicinity of the project area were only found in core BI-C5 in the 6-7ft interval below the mudline (Table 2). Mercury was detected at 0.91 milligrams per kilogram (mg/kg), which is above the Cleanup Screening Level (CSL), and acenaphthene was detected at 26.46 mg/kg total organic carbon (TOC), which was above the Sediment Quality Standards (SQS). No other compounds were detected above SMS criteria in samples from the 2007 Ecology study.

G. In 2007, the Port conducted additional sampling to further delineate sediment dioxin concentrations at five surface locations and from 13 core locations within and surrounding the dredge area. The results of this investigation are described in Integral's 2007 draft data summary report (Integral 2007). Of the 13 core samples collected by the Port, subsamples were submitted for dioxin/furan testing from selected intervals for eight of the cores: POC- C6, C7, C8, C9, C10, C11, C12, and C13. (Exhibit B)

Surface sample (0-2ft) concentrations range from 2.5 to 30 pg/g TEQ from the cores, and typically decrease with depth. From within the project area, surface samples from C-11 and C-12 contained dioxin concentrations of 2.5 pg/g TEQ and 30 pg/g TEQ, respectively. Along the slope under the pier and adjacent to the Interim Remedial Action area, dioxin concentrations in cores POC-C5 and POC-C7 were 20 pg/g TEQ and 28 pg/g TEQ in surface samples, respectively, with lower concentrations at depth.

Outside of the project area, dioxin testing was conducted at POC-C8, C9, C10, and C13. Core POC-C8 contained a surface dioxin concentration of 16 pg/g TEQ, but contained dioxin at 700 pg/g TEQ from the 4-6ft depth interval. Core POC-C9 is located near POC-C8 and contained surface concentration of 21 pg/g TEQ, and less than 1 pg/g TEQ at depth. At location POC-C13, a buried concentration of 63 pg/g TEQ was measured from the 4-5.2ft depth interval. South of the project area, POC-C10 contained a surface concentration of 18 pg/g TEQ.

Each of the five surface samples were collected adjacent to Port outfalls. These samples contained dioxin concentrations of 5.7 pg/g TEQ at Outfall A, 0.71 pg/g at Outfall B, 4.5 pg/g and 45 pg/g at Outfall C (duplicate samples), and 1.6 pg/g at Outfall D.

## VI. ECOLOGY DETERMINATIONS

A. Port of Olympia is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. By letter dated May 8, 2007, Port of Olympia voluntarily waived its rights to notice and comment and accepted a determination that Port of Olympia is a PLP under RCW 70.105D.040.



D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. The Interim Remedial Action to be undertaken at the Port of Olympia's berthing area will substantially reduce the volume of sediments containing elevated levels of dioxin/furan mixture within the West Bay berth area through dredging and upland disposal of the sediments. This interim action is needed to design a final cleanup action. This interim action will provide a partial cleanup of hazardous substances and not achieve cleanup standards, but will provide information on how to achieve cleanup standards for a final cleanup by evaluating dredging technologies and the characteristics of the submerged sediments. This will allow a more successful design of future cleanup actions in Budd Inlet. These circumstances warrant an interim action consistent with WAC 173-340-430(2)(c).

## VII WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Port of Olympia take the following Interim Remedial Actions at the Site and that these actions be conducted in accordance with Chapters 173-340 and 173-204 WAC unless otherwise specifically provided for herein:

A. Historic chemical detection indicates a release of hazardous substances at the Site and further work is warranted. The Interim Remedial Action will accomplish a reduction of dioxins in sediment within Budd Inlet by removal and upland disposal of approximately 22,300 cubic yards of West Bay Berth sediments.

B. The Interim Remedial Action required by this Order is outlined in Exhibit C and builds upon previous environmental work conducted by the Port of Olympia and described in Section V of this Agreed Order. Exhibit C outlines a number of deliverables for Ecology's review and approval. Once approved by Ecology, the deliverables become an integral and enforceable part of this Order.

C. Additional sediment sampling will be conducted in the berth and under pier areas prior to implementation of the Interim Remedial Action. The samples will be collected to supplement existing information. The Port will coordinate with Ecology to develop a sampling and analysis plan for additional data evaluation prior to dredging activities. See Exhibit E for schedule of submittals.

D. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

## VIII TERMS AND CONDITIONS OF ORDER

### A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

### B. Remedial Action Costs

Port of Olympia shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by

Ecology or its contractors for, or on, the Interim Remedial Action area under Chapter 70.105D RCW, including Interim Remedial Actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Port of Olympia shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

### **C. Implementation of Remedial Action**

If Ecology determines that Port of Olympia has failed without good cause to implement the Interim Remedial Action, in whole or in part, Ecology may, after notice to Port of Olympia, perform any or all portions of the Interim Remedial Action that remain incomplete. If Ecology performs all or portions of the Interim Remedial Action because of Port of Olympia's failure to comply with its obligations under this Order, Port of Olympia shall reimburse Ecology for the costs of doing such work in accordance with Section VIII (Remedial Action Costs), provided that Port of Olympia is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, Port of Olympia shall not perform any remedial actions at the Site outside those Interim Remedial Actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Lisa Pearson, P.E.  
Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775  
(360) 407-6261

The project coordinator for Port of Olympia is:

Joanne Snarski  
Port of Olympia  
915 Washington St. NE  
Olympia, WA 98501

(360) 528-8000

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Interim Remedial Action area. To the maximum extent possible, communications between Ecology and Port of Olympia, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

Port of Olympia shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Interim Remedial Action area.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Port of Olympia either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Port of Olympia's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Port of Olympia. Port of Olympia shall make all reasonable efforts to secure access rights for those properties within the Interim Remedial Action area not owned or controlled by Port of Olympia where Interim Remedial Activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Interim Remedial Action area property owned or controlled by Port of Olympia unless an emergency prevents such notice. All persons who access the Interim Remedial Action area pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Interim Remedial Action area property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, Port of Olympia shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII. (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Port of Olympia shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Port of Olympia pursuant to implementation of this Order. Port of Olympia shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Interim Remedial Action area. Ecology shall, upon request, allow Port of Olympia and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII F (Access), Ecology shall notify Port of Olympia prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

**H. Public Participation**

A Public Participation Plan is required for this Interim Remedial Action area. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with Port of Olympia.

Ecology shall maintain the responsibility for public participation at the Interim Remedial Action area. However, Port of Olympia shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the Interim Remedial Action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Port of Olympia prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Port of Olympia that do not receive prior Ecology approval, Port of Olympia shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Interim Remedial Action area. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Olympia Timberland Regional Library  
313 8<sup>th</sup> Avenue SE  
Olympia, WA 98501  
(360) 352-0595
- b. Ecology's Southwest Regional Office  
300 Desmond Dr.  
Lacey, WA 98503  
(360) 407-6365

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

**I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Port of Olympia shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Port of Olympia shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, Port of Olympia has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. Port of Olympia may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port of Olympia's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.



2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

**K. Extension of Schedule**

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Port of Olympia to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Port of Olympia including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Port of Olympia;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. M. (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Port of Olympia.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Port of Olympia written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII. L. (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII. M.(Endangerment).

**L. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII. N. (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Port of Olympia. Port of Olympia shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a

proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII. J. (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Interim Remedial Action area is creating or has the potential to create a danger to human health or the environment on or surrounding the Interim Remedial Action area, Ecology may direct Port of Olympia to cease such activities for such period of time as it deems necessary to abate the danger. Port of Olympia shall immediately comply with such direction.

In the event Port of Olympia determines that any activity being performed at the Interim Remedial Action area is creating or has the potential to create a danger to human health or the environment, Port of Olympia may cease such activities. Port of Olympia shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Port of Olympia shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Port of Olympia's cessation of activities, it may direct Port of Olympia to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. M. (Endangerment), Port of Olympia's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII. K. (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**N. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or

authority. Ecology will not, however, bring an action against Port of Olympia to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Port of Olympia regarding remedial actions required by this Order, provided Port of Olympia complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Interim Remedial Action area should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Interim Remedial Action area.

**O. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Interim Remedial Action area shall be consummated by Port of Olympia without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Port of Olympia's transfer of any interest in all or any portion of the Interim Remedial Action area, and during the effective period of this Order, Port of Olympia shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Port of Olympia shall notify Ecology of said transfer. Upon transfer of any interest, Port of Olympia shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by Port of Olympia pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific

federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), Port of Olympia is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Port of Olympia shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit D.

Port of Olympia has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Port of Olympia determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Port of Olympia shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Port of Olympia shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Port of Olympia and on how Port of Olympia must meet those requirements. Ecology shall inform Port of Olympia in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Port of Olympia shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is

necessary for the State to administer any federal law, the exemption shall not apply and Port of Olympia shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Indemnification**

Port of Olympia agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Port of Olympia, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Port of Olympia shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon Port of Olympia's receipt of written notification from Ecology that Port of Olympia has completed the remedial activity required by this Order, as amended by any modifications, and that Port of Olympia has complied with all other provisions of this Agreed Order.

**X ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Interim Remedial Action area.

C. In the event Port of Olympia refuses, without sufficient cause, to comply with any term of this Order, Port of Olympia will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

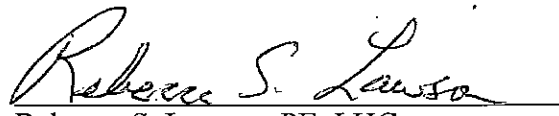
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: December 5, 2008

**PORT OF OLYMPIA**

  
\_\_\_\_\_  
Ed Galligan  
Executive Director  
Port of Olympia  
(360) 528-8000

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

  
\_\_\_\_\_  
Rebecca S. Lawson, PE, LHG  
Regional Section Manager  
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