

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Seattle

FIRST AMENDMENT TO AGREED ORDER

No. DE 8938

TO: Port of Seattle
Attention: Ted J. Fick
P.O. Box 1209
Seattle, Washington 98111

EXHIBITS

EXHIBIT G Regrading Area Diagrams

EXHIBIT H Discarded Military Munitions Management Plan (AECOM,
Aug. 2015)

I. INTRODUCTION

The State of Washington, Department of Ecology (Ecology) and Port of Seattle (the Port) entered into Agreed Order No. DE 8938 on April 10, 2012, as modified by the Minor Change to Agreed Order No. DE 8938 (March 28, 2013) (Order). The Order requires the Port to implement the Cleanup Action Plan (CAP), including the installation of certain remedial actions and the completion of compliance monitoring within either the Upland or the Tank Farm Affected Area. The Order also requires the Port to address contamination in the Upland Area of the Terminal 91 Facility, including any units newly identified during implementation of the CAP.

The Order applies to the “Terminal 91 Facility,” defined in relevant part by the Order as “the real property owned by the Port of Seattle encompassing approximately 216 acres and located at 2001 West Garfield Street, Seattle, Washington, as depicted in Exhibit B.” Order No. DE 8938 at 5, § IV.14. All capitalized terms used but not otherwise defined herein shall have the meaning provided to them by the Order.

Pursuant to Section VIII.L of the Order, Ecology and the Port hereby stipulate to amend the Order. Ecology deems the remedial actions included within this amendment as “substantial” (*see* Order Section VIII.L), and as such those actions must be authorized through an amendment to the Order.

This amendment to the Order shall be referred to as the First Amendment to Agreed Order No. DE 8938 (First Amendment). The First Amendment authorizes the Port to conduct remedial actions as part of a seafloor regrading project in parts of the Submerged Lands Area, and requires the Port to undertake specified interim actions to support evaluation of the need for further remedial actions in the Submerged Lands Area more generally. By this First Amendment to the Order, the Port will perform activities that constitute an interim remedial action at a facility where there has been a release or threatened release of hazardous substances.

Regrading and Preliminary Site Investigation Project (the Project). The Project consists of two separate actions: 1) Regrade accumulated shoal material along the southeast portion of Pier 91 in the Submerged Lands Area to increase water depths (the Regrade Project), and 2) Investigate potentially contaminated sediments in the area.

The Project would occur within the Terminal 91 Facility, an area subject to the Order. The Order specified remedial actions to be carried out in the Uplands, most of which have been implemented by the time of this First Amendment, but deferred any remedial actions for the Submerged Lands Area until such time, no later than April 10, 2022, by when the necessity and practicability of such actions for the Submerged Lands Area could be evaluated.

- 1. The Regrade Project.** The proposed regrading will correct a potential problem in the Pier 91 marine sediments, and therefore it constitutes an interim remedial action. This action is necessary to provide sufficient depths for the safe berthing of cruise ships that dock at Pier 91. The remedial action must be carried out if the Port implements the Regrade Project, and the timing requirements for its completion are

imposed in relation to the schedule by which that portion of the Project is actually implemented.

- 2. Submerged Lands Preliminary Investigation.** During sediment sampling for a maintenance dredging project, the Port detected elevated levels of PCBs within the proposed dredging area on the east side of Pier 90 as well as some exceedances of mercury and PAHs. Because the Submerged Lands Area is subject to corrective action requirements under the Permit and the Order, the Port must evaluate whether releases of hazardous substances have occurred within the Submerged Lands Area that present an unacceptable risk to human health or the environment. The Order deferred remedial action with respect to the Submerged Lands Area, but Ecology and the Port have agreed that the Port shall pursue additional remedial investigation to document environmental information related to the Submerged Lands Area, to develop a sampling and analysis plan to address potential releases, and to implement that plan and document its results. The resulting report will furnish a basis to identify whether further remedial actions shall be required, as well as preliminary indications of historic and current sources of contamination and identification of potentially responsible parties.

This amendment does not attempt to recite all of the provisions of the Order. Provisions of the Order not specifically changed in this amendment remain in full force and effect.

VI. ECOLOGY DETERMINATIONS

The following shall be added as a new subsection to section VI. of the Order:

8. 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 at a facility, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is technically necessary to provide for

completion of a site hazard assessment, RI/FS study or design of a cleanup action. Based on the circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this First Amendment. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.H. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.

VII. WORK TO BE PERFORMED

The following shall be substituted for subsection VII.B of the Order:

B. Preliminary Site Investigation in the Submerged Lands Area

The Port shall perform the Preliminary Site Investigation for the Submerged Lands, which shall include: (1) preparation of a Historical Review Report; (2) preparation of a Sampling and Analysis Plan (SAP), based upon the findings of the Historical Review Report; and (3) implementation of the SAP, in accordance with the following schedule.

Schedule for task deliverables

Task	Deliverable	Schedule in Calendar Days
Task 1	Draft Historical Review Report	Ninety (90) days after approval of Port/Contractor Service Directive
	Final Historical Review Report	Thirty (30) days after receipt of Ecology comments
Task 2	Draft SAP	Ninety (90) days after Task 1 finalized
	Final SAP	Thirty (30) days after receipt of Ecology comments
Task 3	Implement SAP	Following approved schedule in work plan to be initiated thirty (30) days after signing of Contractor Service

		Directive
	Draft Sampling Report	Forty-five (45) days after receipt of validated data
	Final Sampling Report	Thirty (30) days after receipt of Ecology comments

The following shall be added as a new subsection H to Section VII of the Order:

H. Regrade Project in the Submerged Lands Area

The Regrade Project will be conducted using a clamshell digging bucket. The open bucket will be lowered to the bottom, closed onto the shoal material, lifted to clear the bottom, and moved into position over designated relocation area, opened to release the material, closed and moved across the bottom over area where material has been relocated to knock down any material above -37 feet mean lower low water (MLLW). The regrading bucket will not be lifted into the water column any further than required to clear the bottom while swinging the bucket (< three feet). The regrading volume is calculated to be 280 cubic yards (CY), which includes -35.00 feet MLLW required depth (project depth), anticipated infill from slopes, allowable two feet potential overdepth and 15 percent allowance for infill since last survey in 2014. Regraded material will be placed below -37 feet MLLW. The proposed regrading will take place in the area shown on Exhibit G. The regrading will avoid all areas which have been determined to be susceptible to prop wash and scour.

As part of the implementation of the Regrade Project, the Port shall submit to Ecology the specified deliverables in accordance with the following schedule.

Deliverable	Due Date
Completed JARPA	Thirty (30) days prior to the start of construction
Completed SEPA checklist	Thirty (30) days prior to the start of construction

Water Quality Plan	Thirty (30) days prior to the start of construction
Contractor Work Plan	Thirty (30) days prior to the start of construction
Post-regrading Sampling and Analysis Plan (draft)	Thirty (30) days prior to the start of construction
Post-regrading Sampling and Analysis Plan (final)	Ten (10) days after delivery of approved draft
Regrading Construction Report	Thirty (30) days after data verification is completed for sediment sampling analysis

The PLP shall not conduct the Regrade Project until Ecology approves the Contractor Work Plan. Upon approval by Ecology, the Contractor Work Plan and the other deliverables found in the foregoing schedule become integral and enforceable parts of this First Amendment, and the Port is required to conduct the action in accordance with that schedule.

The Port shall implement the Regrade Project consistent with the Discarded Military Munitions Management Plan (AECOM, Aug. 2015) (Exhibit H), which is hereby approved as an enforceable part of this First Amendment. Accordingly, in the event that Discarded Military Munitions (DMM) are encountered in the performance of the Regrade Project, the Port shall not collect or remove any such DMM as part of the Regrade Project construction. Any movement of DMMs present within the regrade material shall not be considered “generation, storage, treatment or disposal” of solid waste in accordance with U.S. EPA guidance, including Sylvia Lawrence (Director, U.S. EPA Office of Solid Waste) letter to Douglas Green, June 11, 1992. Instead, the Port shall leave in place any DMMs within the Regrade Project area for later removal by the U.S. Army Corps of Engineers or the Seattle Port Police Department’s regular inspection dives.

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VIII. TERMS AND CONDITIONS OF ORDER

The following shall be substituted for subsection VIII.D of the Order:

D. Designated Project Coordinators

The project coordinator for Ecology is:

Name: Greg Caron
Address: Department of Ecology-CRO
1250 West Alder Street
Union Gap, WA 98903-0009
Phone: (509) 454-7893
Email: grca461@ecy.wa.gov

The project coordinator for the Port is:

Name: Susan Roth
Address: Roth Consulting
3937 SW 109th Street
Seattle, WA 98146-1653
Phone: (206) 617-2176
Email: susanjroth@comcast.net

Each project coordinator shall be responsible for overseeing the implementation of this First Amendment. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this First Amendment 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 First Amendment.

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.

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Effective date of this First Amendment: _____

PORT OF SEATTLE

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

Ted E. Fick
Chief Executive Officer
Port of Seattle
Telephone: (206) 787-3000

Raman Iyer
Section Manager
Hazardous Waste Toxics Reduction Program
Northwest Regional Office
Telephone: (425) 649-7053