

DRAFT

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	AGREED ORDER
Grays Harbor Historical Seaport Authority	No. DE 15953
For: Weyerhaeuser Sawmill Aberdeen Site Cleanup Site No.: 4987	

TO: Brandi Bednarik, Executive Director
P. O. Box 2019
Aberdeen, WA 98520

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	8
VII.	WORK TO BE PERFORMED.....	9
VIII.	TERMS AND CONDITIONS.....	15
	A. Payment of Remedial Action Costs.....	15
	B. Designated Project Coordinators.....	16
	C. Performance.....	17
	D. Access.....	17
	E. Sampling, Data Submittal, and Availability.....	18
	F. Public Participation.....	18
	G. Retention of Records.....	20
	H. Resolution of Disputes.....	20
	I. Extension of Schedule.....	21
	J. Amendment of Order.....	23
	K. Endangerment.....	23
	L. Reservation of Rights.....	24
	M. Transfer of Interest in Property.....	25
	N. Compliance with Applicable Laws.....	25
	O. Indemnification.....	27
IX.	SATISFACTION OF ORDER.....	27
X.	ENFORCEMENT.....	27

EXHIBIT A Site Location Diagram

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Grays Harbor Historical Seaport Authority (GHHSA) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires GHHSA to conduct a remedial investigation and feasibility study, and develop a preliminary draft cleanup action plan for the Site. Ecology believes the actions required by this Order are in the public interest.

This Agreed Order No. DE 15953 fully supersedes and replaces Agreed Order No. DE 11225.

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. GHHSA agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter GHHSA's responsibility under this Order. GHHSA 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 RCW 70.105D, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Weyerhaeuser Sawmill Aberdeen. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed

of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at 500 North Custer Street, Aberdeen, Washington as shown in the Site Location Diagram (Exhibit A).

- B. Parties: Refers to Ecology and GHHSA.
- C. Potentially Liable Person (PLP): Refers to GHHSA.
- 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.

V. FINDINGS OF FACT

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

A. GHHSA owns several parcels of land generally located at 500 North Custer Street in Aberdeen, Washington that are the location of a former sawmill complex.

B. An aquatic lands lease tract managed by the Department of Natural Resources (DNR) borders the GHHSA-owned properties to the north, along the Chehalis River (Exhibit A). GHHSA entered into aquatic lands lease No. 22-092275 with DNR for this tract April 14, 2017. This lease tract is part of the Site.

C. The properties and lease area within the Site have been used for sawmills and other forest products industries since at least the early 1900's. At various times during its years of operation, the sawmill complex included a variety of facilities including two sawmills, steam drying kilns, wood chipping, barge loading, and wood refuse burners.

D. The longest term owner and operator of the sawmill complex is the Weyerhaeuser Company, which operated the sawmill facilities between 1955 and 2009, and owned the sawmill complex property between 1955 and 2013. Previous to Weyerhaeuser Company operations, the sawmill complex was owned and operated by Shafer Brothers Lumber and Shingle Company (1924-1954) and was briefly owned by Simpson Lumber in 1954. GHHSA acquired the properties from Weyerhaeuser in 2013.

E. A sawmill referred to as the “Big Mill” was built on pilings and decking over the tidelands in 1924. The Big Mill was closed in 2006, and it (along with the pilings and decking) was removed from the Site in 2009-10.

F. Historic photographs and maps show that other structures within the Site area included an over-water wharf, a lumber storage shed built on the wharf, paved lumber storage yard, 10,000-gallon wooden oil storage tank built on the wharf, boiler building, powerhouse, oil storage house, log chip conveyor, and compressor building.

G. Other structures and activities associated with the sawmill complex were located on the uplands of the Site, and included a small sawmill, lumber storage and sorting, wood refuse “teepee” type burner, planer building, oil/water separators, maintenance shop, fuel and chemical storage building, underground fuel storage tanks, paint spray room, an above-ground fuel storage tank, and a paint waste underground storage tank.

H. A voluntary cleanup was performed by Weyerhaeuser to remediate soils and groundwater contaminated with pentachlorophenol (PCP) in the early 1990’s. Approximately 522 tons of soil contaminated with PCP was removed in the vicinity of the grader and planer buildings. Groundwater monitoring showed that groundwater contamination was localized and not moving toward the river. Soil contamination was left in place where excavation would compromise building foundations or where soil could not be accessed because it was under buildings. A restrictive covenant was recorded, requiring the property to be used only for industrial uses, prohibiting groundwater to be taken for any purpose, and prohibiting any activities to take place at the property which could interfere with the remedial action or that may result in a release or exposure of contaminants. A No Further Action Letter for the cleanup was issued by Ecology in 1999.

I. A Level I Environmental Site Assessment by PES Environmental (August 27, 2010) includes information about an underground storage tank that was removed from the site in 1993, located near the southeast corner of the former machine shop. Approximately 45 cubic yards of soil were removed. The soil in the excavation pit was reported to contain 1,300 milligrams per

kilogram (mg/kg) of diesel, 3,300 mg/kg of heavy oil, and 520 mg/kg of gasoline. No benzene, toluene, ethylbenzene or toluene was detected. Water from the excavation pit contained 5,400 milligrams per liter (mg/l) of petroleum hydrocarbons. The tank pit was filled in without further excavation to allow construction of a new machine shop to proceed. Historic records indicate up to five other underground storage tanks were present on the property, but their locations or condition have not been confirmed.

J. The Level I Environmental Site Assessment also describes that Weyerhaeuser removed an underground tank that had been used for collecting paint wastes and associated wastewater, near the southeast corner of the planer building in 1989. At the time of the excavation, groundwater seeping into the excavation pit contained up to 300 micrograms per liter ($\mu\text{g/l}$) 1,1,1 trichloroethane and visible hydraulic or lube oil. Additional excavation of petroleum contaminated soils was conducted toward the planer building but was halted due to concerns about stability of the building. Excavated soils contained up to 6,100 mg/kg total petroleum hydrocarbons. Nine groundwater monitoring wells were subsequently installed and monitored from May 1990 until October of 1992. Chemicals that exceeded the MTCA Method B groundwater cleanup levels at least once during the monitoring included 1,1-dichloroethane, 1,2-dichloroethane, bromoform, chloroform, methylene chloride, and vinyl chloride.

K. Samples were taken from sediments in the tidelands beneath the former Big Mill in 2011 by DNR. Sediments contained elevated levels of mercury, zinc, polychlorinated biphenyls (PCBs), benzoic acid, bis(2ethyl-hexyl)phthalate, 1,4-dichlorobenzene, 1,2,4-trichlorobenzene, pentachlorophenol, acenaphthene, fluoranthene, and phenanthrene, which exceed the current Sediment Management Standards (SMS) Marine Sediment Cleanup Objective for toxicity to the benthic community. See WAC 173-204-562, Table III. Additional sediment samples were taken from the former mill area by GHSA in 2013, utilizing Integrated Planning Grant funds from Ecology. Those samples confirmed exceedances of the SMS for the chemicals identified in 2011, along with additional polycyclic aromatic hydrocarbons. The sediment sampling report (Maul Foster Alongi, February 5, 2014) reported that all samples in this tideland area contained more

than 25 percent wood waste by volume. A heavy sheen, petroleum product, and petroleum-like odor were observed in the three sediment borings, and the sediments contained up to 20,000 parts per million diesel and 60,000 parts per million heavy oil. Dioxin/furans were also present in the tideland samples as high as 370 parts per trillion on a total toxicity equivalency basis.

L. In 2014, based on discovery of previously unknown contamination at the site, Ecology rescinded the NFA status and reopened the site for further cleanup.

M. On August 17, 2015, GHHSA entered into Agreed Order DE 11225 with Ecology. The order required GHHSA to investigate the DNR aquatic lease area, evaluate cleanup alternatives for the lease area, and produce a Study Area Investigation and Alternatives Analysis Report. Utilizing Ecology Remedial Action Grant funds, GHHSA completed the field investigations and laboratory analysis and submitted a draft Study Area Investigation Report to Ecology in April 2017. The draft investigation report confirms the presence of thick deposits of wood waste in much of the lease area, and identified the approximate lateral extent of the wood deposits, which appear to decline dramatically at the northern edge of the lease area. GHHSA has not yet evaluated alternatives or finalized the Study Area Investigation and Alternatives Analysis Report required under the Agreed Order DE 11225.

N. Additional (focused) upland assessment was performed from 2015-2016 by GHHSA, utilizing Ecology Integrated Planning Grant funds. A work plan was developed and implemented to assess the highest priority areas of environmental concern. This included a geophysical investigation to identify locations of (potential) USTs and soil and groundwater sampling. This sampling effort found elevated concentrations of TPH adjacent to the Maintenance Building. The results of the geophysical investigation was inconclusive about the presence of USTs.

O. A stormwater system evaluation was conducted voluntarily by GHHSA in May 2015. The location and condition of the components of the stormwater system were recorded and mapped. In the fall of 2015 GHHSA cleaned the Site's stormwater catch basins, oil/water

separators, and storm drain lines to remove sediments, solids and associated contaminants built up over the course of sawmill operations at the site.

P. A vapor intrusion study was conducted voluntarily by GHSA in July and September 2017. Six sub-slab monitoring points were installed near the maintenance building. Samples were analyzed for VOCs, volatile petroleum hydrocarbon fractions, diesel-range organics, and helium (as a quality assurance measure). July sampling results: one sub-slab vapor sample marginally exceeded the Ecology VI sub-slab soil gas SLV Method B preliminary cleanup level (CUL) for 1,2,4-Trimethylbenzene. This analyte was detected at 140 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and the SLV is $107 \mu\text{g}/\text{m}^3$. None of the other locations exceeded preliminary CULs. Diesel-range organics were not detected in any of the samples. The location with an exceedance also tested positive for helium suggesting a proper seal was not established during sampling. This location was resampled in September and the concentration from this sampling event was below the SLV.

Q. A Targeted Brownfields Assessment (TBA) was conducted by Ecology & Environment, Inc. (E&E) in 2017. The TBA was requested by GHSA in November 2016 and approved by the Environmental Protection Agency (EPA) in early 2017. E&E developed the TBA work plan in coordination with Ecology, MFA, and the Quinault Tribe. The assessment involved sampling surface soil, sub-surface soil, and groundwater related to specific areas of concern within the Site. Sampling during this TBA has identified and/or confirmed the presence of multiple areas of subsurface soil and groundwater contamination at the site. These include:

Areas of petroleum impacted soil and/or groundwater in Remedial Action Unit (RAU)1 north of the Maintenance Shop and surrounding the Fuel and Chemical Storage Building; as well as in RAU2 on the west side of the Planer/Grader Building, and in surface soil in the conveyor trench on the north side of this building;

PCP impacted groundwater in RAU1, generally between the Maintenance Shop and Fuel and Chemical Storage Building. PCP impacted soil in RAU1 was only identified on the north side of the Fuel and Chemical Storage Building;

A localized area of PCP-impacted soil and groundwater in RAU2 on the west-central side of the Planer/Grader Building. This area of contaminated soil appears to be the remnants of PCP impacted soil identified and remediated in the 1990s;

Manganese in groundwater at concentrations in excess of various groundwater and surface water related cleanup levels.

Localized areas of other metals, such as lead and copper, in soil and groundwater at concentrations in excess of applicable cleanup levels.

Areas with SVOC-impacted soil and groundwater, often as represented by the cPAH TEQ value. These areas include shallow subsurface soils in RAU3 near the former Oil Tank and Chemical Storage Shed, and in RAU2 at the Paint Waste UST removal area.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by GHHSA.

A. GHHSA is an “owner or operator” as defined in RCW 70.105D.020 (22) of a “facility” as defined in RCW 70.105D.020(8). Specifically, GHHSA is the current owner of property within the Site where there has been a release of hazardous substances to the environment.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to GHHSA dated February 13, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter dated March 20, 2015, GHHSA voluntarily waived its rights to notice and comment and accepted Ecology’s determination that GHHSA is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require a PLP 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 plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.G. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

F. This Agreed Order No. DE 15953 incorporates the remaining tasks from Agreed Order No. DE 11225, and fully supersedes and replaces Agreed Order No. DE 11225.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that GHHSA take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. **Remedial Investigation and Feasibility Study:** GHHSA shall fully define the nature and extent of contamination in the Site, in a manner that meets with Ecology's approval and that meets the applicable requirements of MTCA and Chapters 173-340 and 173-204 WAC, identify and analyze cleanup action alternatives to address contaminants above applicable levels, and produce a Remedial Investigation report (RI) and a Feasibility Study (FS). In fully defining the nature and extent of contamination at the Site, and in evaluating cleanup action alternatives, GHHSA shall follow the requirements of WAC 173-340-350 through 370 and WAC 173-204-560 through 580. Work under this Order must include the entire Site, which includes but is not limited to the DNR aquatic lands lease area, property upland of the aquatic lands lease, and any other area where a hazardous substance from a release has come to be located. To most efficiently complete the work, separate RI /FS work plans and reports may be prepared for the uplands and aquatic

lease area in accordance with the schedule and terms of this Scope of Work and Schedule and all other requirements of this Order.

1. Study Area Investigation – Aquatic Lands Lease: GHHSA shall incorporate Ecology's comments on the April 11, 2017 Agency Review Draft Study Area Investigation for the Aquatic Lands Lease within sixty (60) days of receiving Ecology's comments and make revisions acceptable to Ecology. The revised report shall be included in the Remedial Investigation Report(s) to be produced under this Agreed Order.
2. RI Work Plans: Draft RI work plan(s) shall be prepared within ninety (90) days of the effective date of this Agreed Order. The draft work plan(s) shall reference past investigations, and shall include a summary of data gaps remaining to understand the nature and extent of contamination at the site. Sampling and analysis plans to address the data gaps at the Site shall be prepared in conjunction with the RI work plan(s). GHHSA shall incorporate Ecology's comments on the draft RI work plan(s) and submit final work plan(s) within sixty (60) days of receiving Ecology's comments. A site-specific health and safety plan shall also be prepared with the RI work plan(s). Field work to implement the RI Work Plan(s) shall be completed within ninety (90) days of approval of the final work plan(s).
3. Site Data Memorandum and Data Spreadsheets. Within thirty (30) days from completing data validation for samples to be collected under the RI Work Plan(s) and SAP(s), a Site Data Memorandum shall be prepared which shall include brief text descriptions, tables, and maps summarizing the findings from the Remedial Investigation work plan(s) investigative actions and sampling. It shall compare Site concentrations to appropriate upland and sediment screening levels. Microsoft Excel spreadsheets of the data shall be submitted along with the Site Data Memorandum. GHHSA representatives shall consult with Ecology prior to developing the data memorandum to discuss contents and formats for maps and

tables. Ecology will review the Data Memorandum and Data Spreadsheets for accuracy and clarity.

4. Data Gaps. If, after reviewing the Site Data Memorandum and Data Spreadsheets, Ecology determines further work is necessary to understand the extent and nature of contamination at the Site, then Ecology will issue a written request to GHHSA to develop a Data Gap Work Plan and Schedule. GHHSA will draft and submit for Ecology's review and comment a Data Gap Work Plan and Schedule within forty-five (45) days of the written request. GHHSA shall incorporate Ecology's comments on the Data Gap Work Plan and implement the Plan according to the Schedule.
5. Electronic Data Submittal to Environmental Information Management (EIM) database: In accordance with Section VIII.F (Sampling, Data Submittal, and Availability) of this Order, GHHSA shall submit all data generated for the Remedial Investigation Report to Ecology's EIM database. GHHSA representatives shall coordinate with the Ecology project manager before uploading data to the EIM database. Data shall be submitted for EIM within forty-five (45) days of completion of data validation for samples collected under the RI Work Plan(s) and SAP(s).
6. Outline - RI and FS Reports: Within thirty (30) days of submitting the Site Data Memorandum to Ecology, GHHSA shall submit outlines for the Agency Review Draft RI and FS reports. The outlines shall be annotated with proposed cleanup levels for each media and pathway where a release has occurred, a preliminary list of applicable local, state and federal laws, and a preliminary list of cleanup alternatives to be considered for the Site. Ecology and GHHSA shall discuss the contents of the outlines prior to GHHSA developing the Draft RI and FS Reports.
7. Agency Review Draft RI and FS Reports: Within ninety (90) days of receiving Ecology approval of the RI and FS outlines, GHHSA shall prepare and submit to

Ecology for review Agency Review Draft RI and FS Reports that meet the requirements of WAC 173-340-350. These Draft Reports shall incorporate relevant data from previous reports and studies. Data from relevant historical investigations shall be incorporated into the maps and tables of the Draft Reports alongside data from the field work of the investigations to be conducted under this Agreed Order.

8. Public Review Draft RI and FS Reports: Within sixty (60) days of receiving Ecology comments on the Agency Review Draft RI and FS reports, GHHSA shall revise the Draft RI and FS Reports to incorporate Ecology comments, and shall produce Public Review Draft RI and FS reports.

B. Draft Cleanup Action Plan (DCAP):

1. Within sixty (60) days of Ecology approval of the Public Review Drafts of the RI and FS reports, GHHSA shall prepare and submit to Ecology for review an Agency Review preliminary DCAP that meets the requirements of WAC 173-340-380 and WAC 173-204-570. GHHSA shall consult with Ecology prior to writing the DCAP, to discuss the report outline and proposed contents.
2. Within forty-five (45) days of receiving Ecology comments on the Agency Review preliminary DCAP, GHHSA shall make revisions based on Ecology's comments on the Agency Review preliminary DCAP, and submit a Public Review DCAP. Ecology will issue a Public Review DCAP for public notice and opportunity to comment in accordance with WAC 173-340-600(14)(a) and (b).

C. Progress Reports: GHHSA shall provide monthly written progress reports via email to Ecology. The Progress Reports shall provide a synopsis of the previous month's activities, description of completed field work and findings and observations from site investigations, deviations from project plans, deviations from the Scope of Work and Schedule, status of reports and other deliverables, and expected activities for the upcoming month. The progress reports shall

additionally include any field screening documentation or laboratory results received in the prior month.

D. Schedule:

Task	Description	Due Date
VII. A.1	Revised Study Area Investigation – Aquatic Lands Lease	Submit revisions within 60 days of receiving Ecology’s comments on the Agency Review Draft Report.
VII. A.2	RI Work Plan(s)	Submit Draft Work Plans within 90 days of effective date of the Agreed Order. Submit Final Work Plans within 60 days of receipt of comments from Ecology. Complete field work within 90 days of approval of Final Work Plans.
VII. A.3	Data Memorandum and Data Spreadsheets	Within 30 days from completion of data validation for samples collected under the RI Work Plans(s) and SAP(s).
VII. A.4	Data Gap Work Plan and Schedule	Within 45 days of receiving written request from Ecology.
VII. A.5	EIM Data Submittal	Within 45 days from completion of data validation for samples collected under the RI Work Plans(s) and SAP(s).
VII. A.6	Remedial Investigation and Feasibility Study Report Outlines	Within 30 days of submitting Data Memorandum and Spreadsheets to Ecology
VII. A.7	Agency Review Draft Remedial Investigation and Feasibility Study Reports	Within 90 days of receiving Ecology approval of the Remedial Investigation and Feasibility Study Report Outlines.
VII. A.8	Public Review Draft Remedial Investigation and Feasibility Study Reports	Within 60 days of receiving Ecology comments on the Agency Review Draft Remedial Investigation and Feasibility Study Reports.
VII. B.1	Agency Review Preliminary Draft Cleanup Action Plan	Within 60 days of Ecology approval of the Public Review Drafts of the RI and FS reports.
VII. B.2	Revised Agency Review Preliminary Draft Cleanup Action Plan	Within 45 days of receiving Ecology’s comments on the Agency Review preliminary DCAP.
VII. C.	Progress Reports	Within 15 days of the end of the prior month.

VII. G.	Interim Remedial Action Work Plan	Within 90 days of Ecology request if parties agree on an interim action under section VI.E.
---------	-----------------------------------	---

E. If GHHSA learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, GHHSA, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

F. All plans or other deliverables submitted by GHHSA for Ecology’s review and approval under this Agreed Order shall, upon Ecology’s approval, become integral and enforceable parts of this Order.

G. If the Parties agree on an interim action under Section VI.E, GHHSA shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The GHHSA shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and GHHSA is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

H. If Ecology determines that GHHSA has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to GHHSA, perform any or all portions of the remedial action or at Ecology’s discretion allow the GHHSA opportunity to correct. In an emergency, Ecology is not required to provide notice to GHHSA, or an opportunity for dispute resolution. GHHSA shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the GHHSA shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, GHHSA must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

J. Ecology hereby incorporates into this Order the previous remedial actions described in Section V, Findings of Fact. Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with the substantive requirements of WAC 173-340, and the work is consistent with the remedial actions required under this Order. The costs associated with Ecology's determination on the past independent remedial actions described in Section V, Findings of Fact, are recoverable under this Order.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

GHHSA 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 Site under RCW 70.105D, including 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). For all Ecology costs incurred, GHHSA shall pay the required amount within thirty (30) 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Thomas Middleton, Cleanup Project Manager
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-7263
Tmid461@ecy.wa.gov

The project coordinator for GHHSA is:

Brandi Bednarik, Executive Director
P.O. Box 2019
Aberdeen, WA 98520
(360) 535-8611
bbednarik@historicalseaport.org

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 Site. To the maximum extent possible, communications between Ecology and GHHSA, 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 Order.

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.

C. Performance

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

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

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

GHHSA 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 Site.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that GHHSA 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 GHHSA'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 GHHSA. GHHSA shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by GHHSA where remedial activities or investigations will be

performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by GHHSa unless an emergency prevents such notice. All persons who access the Site 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 Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, GHHSa 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, GHHSa shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by GHHSa pursuant to implementation of this Order. GHHSa shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow GHHSa 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.E (Access), Ecology shall notify GHHSa 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, GHHSa shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the 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 meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify GHHSA prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by GHHSA that do not receive prior Ecology approval, GHHSA 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 Site. 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. Aberdeen Timberland Library
121 East Market Street
Aberdeen, WA 98520
- b. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
(360) 407-6045

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

G. 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, GHHSA 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, GHHSA shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right GHHSA may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If GHHSA withholds any requested records based on an assertion of privilege, GHHSA shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that GHHSA elects to invoke dispute resolution GHHSA must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), GHHSA has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the

dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the GHHSA's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. GHHSA may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. GHHSA's request for 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.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on GHHSA 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 GHHSA 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 GHHSA.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- c. Endangerment as described in Section VIII.K (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 GHHSA.

3. Ecology shall act upon any GHHSA written request for extension in a timely fashion. Ecology shall give GHHSA 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.J (Amendment of Order) when a schedule extension is granted.

4. At GHHSA's request, 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 one of the following:

- 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.
- c. Endangerment as described in Section VIII.K (Endangerment).

J. 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.L (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 GHHSa. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, GHHSa shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

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

In the event GHHSa determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment,

GHHSA may cease such activities. GHHSA 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, GHHSA shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with GHHSA's cessation of activities, it may direct GHHSA to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, GHHSA'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.I (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.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. 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 GHHSA to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against GHHSA regarding remedial actions required by this Order, provided GHHSA complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or 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 Site.

By entering into this Order, GHHSA does not admit to any liability for the Site. Although GHHSA is committing to conducting the work required by this Order under the terms of this Order,

GHHSA expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by GHHSA 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 GHHSA's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, GHHSA 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, GHHSA shall notify Ecology of said transfer. Upon transfer of any interest, GHHSA shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by GHHSA pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order; GHHSA has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or GHHSA, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and GHHSA must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by GHHSA pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified

as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or GHHSA, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and GHHSA must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), GHHSA may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, GHHSA shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. GHHSA 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 GHHSA 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 GHHSA shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, GHHSA 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 GHHSA and on how GHHSA must meet those requirements. Ecology shall inform GHHSA in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. GHHSA shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 GHHSA 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 or approvals.

O. Indemnification

GHHSA 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of GHHSA, its officers, employees, agents, or contractors in entering into and implementing this Order. However, GHHSA 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 GHHSA's receipt of written notification from Ecology that GHHSA has completed the remedial activity required by this Order, as amended by any modifications, and that GHHSA 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 Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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

2. 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: _____

GRAYS HARBOR HISTORICAL
SEAPORT AUTHORITY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Brandi Bednarik
Executive Director
GHSA

(360) 535-8611

Rebecca Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 535-8611



Grays Harbor Historical Seaport Authority, Weyerhaeuser Sawmill Site Location

**AGREED ORDER NO. DE 15953
EXHIBIT A**