

**RESOLUTION 2021-DD**

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,  
AUTHORIZING THE MAYOR TO EXECUTE AN AGREED ORDER  
WITH THE DEPARTMENT OF ECOLOGY**

**WHEREAS**, between 1950 and 1980 the Town of Eatonville (“Town”) leased property from Weyerhaeuser Company (“Weyerhaeuser”) for the purposes of operating a municipal landfill; and

**WHEREAS**, upon closure of the landfill, proper mitigation measures were not taken to clean up the municipal waste; and

**WHEREAS**, the Town acknowledges that they are a liable party and is working with Weyerhaeuser to obtain a remedial investigation, feasibility study and a draft action cleanup plan; and

**WHEREAS**, it is the mutual objective of the State of Washington, Department of Ecology (“Ecology”), Weyerhaeuser and the Town under the Agreed Order, attached hereto as exhibit A, to provide remedial action at the site; now, therefore

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Town Council approves and the Mayor is authorized to execute the Agreed Order, hereto attached as Exhibit A.

**PASSED** by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 9<sup>th</sup> day of August 2021.

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Mike Schaub, Mayor

ATTEST:

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Miranda Doll, Town Clerk

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Weyerhaeuser Company and  
Town of Eatonville

AGREED ORDER

No. DE 20072

TO: Kristen Sawin  
VP Corporate and Government Affairs  
Weyerhaeuser Company  
220 Occidental Avenue South  
Seattle, WA 98104

The Honorable Mayor Mike Schaub  
Town of Eatonville  
P.O. Box 309  
Eatonville, WA 98328

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS .....	3
V.	FINDINGS OF FACT .....	4
VI.	ECOLOGY DETERMINATIONS.....	6
VII.	WORK TO BE PERFORMED .....	7
VIII.	TERMS AND CONDITIONS.....	10
	A. Payment of Remedial Action Costs .....	10
	B. Designated Project Coordinators .....	11
	C. Performance .....	12
	D. Access .....	12
	E. Sampling, Data Submittal, and Availability .....	13
	F. Public Participation.....	14
	G. Access to Information .....	15
	H. Retention of Records.....	16
	I. Resolution of Disputes.....	16
	J. Extension of Schedule.....	18
	K. Amendment of Order .....	19
	L. Endangerment .....	20
	M. Reservation of Rights.....	21
	N. Transfer of Interest in Property.....	21
	O. Compliance with Applicable Laws.....	22
	P. Indemnification .....	24

IX. SATISFACTION OF ORDER.....24  
X. ENFORCEMENT .....24

EXHIBIT A            Site Location Figure  
EXHIBIT B            Scope of Work and Schedule of Deliverables

## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), Weyerhaeuser Company (Weyerhaeuser), and the Town of Eatonville (Eatonville) 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 Weyerhaeuser and Eatonville to conduct a Remedial Investigation/Feasibility Study (RI/FS) and prepare a preliminary Draft Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(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. Weyerhaeuser and Eatonville agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Weyerhaeuser's and Eatonville's responsibility under this Order. Weyerhaeuser and Eatonville 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 70A.305 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as "Former Eatonville Landfill" or "the landfill. The Site constitutes a facility under RCW 70A.305.020(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 42928 State Route 7 E, Eatonville, Washington, 98328, as shown in the Site Location Figure (Exhibit A). The location of the landfill is generally found at Latitude 46.86006 and Longitude -122.32236 north, and the parcel generally ranging in elevation from 618 to 724 feet above Mean Sea Level.

- B. Parties: Refers to the State of Washington, Department of Ecology, Weyerhaeuser, and Eatonville.
- C. Potentially Liable Persons (PLP(s)): Refers to Weyerhaeuser and Eatonville.
- 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 Weyerhaeuser or Eatonville:

The Former Eatonville Landfill, located in Township 16N, Range 4E, Section 20, is approximately 3.5 miles west of the Eatonville and within Nisqually State Park (Exhibit A). This site is accessed by an unpaved road extending approximately 0.6 miles off State Highway 7. The landfill footprint covers an area of approximately 2.25 acres including a steep, 1.5H:1V or greater, slope. The parcel on which the landfill is located is owned by Weyerhaeuser and was leased by Eatonville.

The Former Eatonville Landfill began operation on November 1, 1950, through a property lease agreement between Eatonville and Weyerhaeuser. To comply with the Pierce County Solid Waste Plan, the site was originally designated for closure in 1976. The landfill was allowed to remain open for four additional years under "sanitary landfill" operating conditions and was closed on March 1, 1980.

Only limited information is available on the nature and contents of refuse materials deposited at the site. In *Site Investigation and Preliminary Economic Analysis for Corrective Action Alternatives* (Parametrix, Inc. 1996), the volume of refuse within the landfill was estimated to range from 23,000 to over 40,000 cubic yards. The area surrounding the landfill is

owned by Washington State Parks and is slated to be developed as part of the Nisqually Mashel State Park beginning in 2022.

Seeps and a wetland are present at the toe of the landfill and drain to the Mashel River. Spring have been observed along the northwestern corner of the landfill. In 1996, Parametrix collected samples of surface water, including seeps, springs, and wetlands. Results indicated concentrations of iron, zinc and pH exceeding Washington State surface water quality standards (WAC 173-201A).

Tacoma-Pierce County Health Department (TPCHD) conducted a site visit and methane monitoring in the upper portion of the landfill in 2010. TPCHD's Inspection Report indicates methane below the lower explosive limit range, which is consistent with previous TPCHD monitoring results conducted during annual inspections from 1992 through 1998. Based upon its 2010 site visit, the TPCHD concluded that the landfill should be regraded and a soil cover should be applied over the landfill (TPCHD, 2010).

Weyerhaeuser has conducted several investigations over the years, with the following contractors: Parametrix, 1996; EMCON, 1999, 2002; PES Environmental, 2013; and GSI Water Solutions, 2021. The *Preliminary Alternative Landfill Cover Rehabilitation Evaluation, Eatonville Landfill* investigation (PES, 2013) consisted of excavating 27 test pits to provide additional data for development of landfill closure options.

Analytical laboratory reports from the January 2021 sampling (GSI 2021) include data from a collection of surface water samples and a shallow groundwater sample from the landfill area, including spring water entering the site from upslope, seeps and wetland at the toe of the landfill, and the creek flowing from the landfill to the Mashel River. No volatile organic compounds (VOCs) including polybrominated diphenyl ether (PBDE), semi-volatile organic compounds (SVOCs) were detected above method reporting levels in any samples. Metals analysis showed concentrations of lead and zinc.

Based upon the age of waste, other contaminants such as polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and metals may be present.

Ecology has assessed conditions at the Site and as a result of its investigation, the property is listed on the database of confirmed or suspected contaminated sites. Ecology's investigation found surface water contaminated with metals and halogenated and non-halogenated organic chemicals. Soil, groundwater and sediment impacts are also suspected. Additional remedial investigation activities are necessary to characterize the nature and extent of contamination and to support selection of feasible remedial and closure alternatives.

## **VI. ECOLOGY DETERMINATIONS**

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

A. Weyerhaeuser is an "owner" as defined in RCW 70A.305.020(22) of a "facility" as defined in RCW 70A.305.020(8).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Weyerhaeuser dated June 23, 2021, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated June 25, 2021, Weyerhaeuser voluntarily waived its rights to notice and comment and accepted Ecology's determination dated July 12, 2021, that Weyerhaeuser is a PLP under RCW 70A.305.040.

D. Based on RCW 70A.305.020(22), Eatonville "exercised control over" the Former Eatonville Landfill during its operation. The landfill is a "facility" as defined in RCW 70A.305.020(8).

E. Based upon credible evidence, Ecology issued a PLP status letter to Eatonville dated June 23, 2021, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated June 25, 2021, Eatonville voluntarily waived its rights to notice and comment and accepted Ecology's determination dated July 12, 2021, that Eatonville is a PLP under RCW 70A.305.040.

F. Pursuant to RCW 70A.305.030(1), .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.

## VII. WORK TO BE PERFORMED

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

A. RI Work Plan. Weyerhaeuser and Eatonville shall prepare and submit to Ecology for review and approval a work plan to implement an RI in accordance with WAC 173-340-350. Weyerhaeuser and Eatonville may consult with Ecology prior to writing the RI Work Plan, to discuss scope of the work and outline for the work plan.

B. Conduct RI. Weyerhaeuser and Eatonville shall perform an RI that meets the requirements of WAC 173-340-350 and implement the Final RI Work Plan. Weyerhaeuser and Eatonville shall begin RI fieldwork within 45 days of receiving Ecology's approval of the final RI Work Plan and completion of any necessary additional National Historic Preservation Section 106 consultation, receipt of any necessary permits, and safe site conditions that allows the investigation to be feasible.

C. Draft RI Report. Weyerhaeuser and Eatonville shall prepare and submit to Ecology for review and approval an agency review draft RI Report documenting the findings of the RI that meets the requirements of WAC 173-340-350. Weyerhaeuser and Eatonville may consult with Ecology prior to writing the agency review draft RI Report, to discuss the report outline. The Draft RI Report shall incorporate relevant data from any previous reports and studies, and those data shall be discussed in the text and incorporated into maps and tables of the RI Report along with the data from the RI fieldwork. After making revisions based on Ecology's

comments on the agency review draft RI report, Weyerhaeuser and Eatonville shall submit a public review draft RI report.

D. Draft FS. Weyerhaeuser and Eatonville shall prepare and submit to Ecology for review and approval an agency review draft FS that meets the requirements of WAC 173-340-350(8). Weyerhaeuser and Eatonville may consult with Ecology prior to writing the agency review draft FS to discuss the report outline and scope of alternatives to be considered. After making revisions based on Ecology's comments on the draft FS, Weyerhaeuser and Eatonville shall submit a public review draft FS.

E. Electronic Data Submittal. In accordance with Section VIII.E (Sampling, Data Submittal, and Availability) of this Order, Weyerhaeuser and Eatonville shall submit all data generated for the RI to Ecology's EIM database. Weyerhaeuser and Eatonville may coordinate with Ecology project manager before uploading data to the EIM database. Weyerhaeuser and Eatonville will submit data to EIM database within 30 days from completion of data validation.

F. Draft Cleanup Action Plan. After Ecology approval of the public review draft RI and FS reports, Weyerhaeuser and Eatonville shall prepare and submit to Ecology for review a draft Cleanup Action Plan (dCAP) that meets the requirements in WAC 173-340-380.

G. If Weyerhaeuser or Eatonville 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 any media. Weyerhaeuser and Eatonville, 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.

H. All plans or other deliverables submitted by Weyerhaeuser and Eatonville for Ecology's review and approval under the Scope of Work and Schedule of Deliverables (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order. Weyerhaeuser and Eatonville shall take any action required by such deliverables.

I. 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.

J. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, Weyerhaeuser and Eatonville shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology in coordination with the parties. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville are required to conduct the interim action in accordance with the approved Interim Action Work Plan. 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 70A.305, or to undertake the interim action itself.

K. If Ecology determines that Weyerhaeuser and Eatonville have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Weyerhaeuser and Eatonville and after providing Subject PLPs a reasonable opportunity to correct any deficiency, perform any or all portions of the remedial action. In an emergency, Ecology is not required to provide notice to Weyerhaeuser and Eatonville, or an opportunity for dispute resolution. Weyerhaeuser and Eatonville shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

L. Except where necessary to abate an emergency situation or where required by law, Weyerhaeuser and Eatonville 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, Weyerhaeuser and Eatonville must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within forty-eight (48) hours of the discovery of the event.

### **VIII. TERMS AND CONDITIONS**

#### **A. Payment of Remedial Action Costs**

Weyerhaeuser and Eatonville 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 70A.305, including remedial actions and RI Work Plan 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). Ecology has accumulated \$8,464.20 in remedial action costs related to this Site as of May 25, 2021. For all Ecology costs incurred, Weyerhaeuser and Eatonville 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 70A.305.060, file a lien against real property subject to remedial actions to recover unreimbursed remedial action costs.

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Craig Rankine, Cleanup Project Manager  
Washington State Department of Ecology  
SWRO-Vancouver Field Office  
12121 NE 99<sup>th</sup> St, Suite 2100  
Vancouver, WA 98682  
(360) 216-9394  
Craig.Rankine@ecy.wa.gov

The project coordinator for Weyerhaeuser and Eatonville is:

Carol Wiseman  
Remediation Project Manager  
220 Occidental Avenue South  
Seattle, WA 98104  
(206) 539-4074  
carol.wiseman@weyerhaeuser.com

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 Weyerhaeuser and Eatonville, 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.

Weyerhaeuser and Eatonville shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel 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 Weyerhaeuser and Eatonville 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 Weyerhaeuser's and Eatonville'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 Weyerhaeuser and Eatonville. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or

controlled by Weyerhaeuser and Eatonville 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.

Weyerhaeuser and Eatonville shall make best efforts to secure access rights for those properties within the Site not owned or controlled by Weyerhaeuser and Eatonville where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Weyerhaeuser and Eatonville would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 30 days after the effective date of this Order, Weyerhaeuser and Eatonville are unable to accomplish what is required through “best efforts,” they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist Weyerhaeuser and Eatonville, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from Weyerhaeuser and Eatonville for all costs, including cost of attorneys’ time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

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

With respect to the implementation of this Order, Weyerhaeuser and Eatonville 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, Weyerhaeuser and Eatonville shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by

Weyerhaeuser and Eatonville pursuant to implementation of this Order. Weyerhaeuser and Eatonville shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Weyerhaeuser and Eatonville 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.D (Access), Ecology shall notify Weyerhaeuser and Eatonville 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 be responsible for providing public notice of this Order pursuant to RCW 70A.305.030(2) 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.

Ecology shall maintain the responsibility for public participation at the Site. However, Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville that do not receive prior Ecology approval, Weyerhaeuser and Eatonville 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 maintain a repository to be located at:

- a. Eatonville Library Regional Library  
205 Center Street West  
Eatonville, WA 98328
- b. Washington State Department of Ecology  
Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98503

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. Access to Information**

Weyerhaeuser and Eatonville shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Weyerhaeuser's and Eatonville's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing,

correspondence, or other documents or information regarding the work. Weyerhaeuser and Eatonville shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right Weyerhaeuser and Eatonville may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If Weyerhaeuser and Eatonville withholds any requested Records based on an assertion of privilege, Weyerhaeuser and Eatonville shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

#### **H. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, Weyerhaeuser and Eatonville 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.

Nothing in this Order is intended to waive any right Weyerhaeuser and Eatonville may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege, the attorney-client privilege, and/or any other applicable privilege under Washington law. If Weyerhaeuser and Eatonville withhold any requested records based on an assertion of privilege, Weyerhaeuser and Eatonville shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege.

#### **I. Resolution of Disputes**

1. In the event that Weyerhaeuser and Eatonville elect to invoke dispute resolution, Weyerhaeuser and Eatonville 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), Weyerhaeuser and Eatonville have twenty-one (21) 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 thirty (30) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those thirty (30) calendar days, then within fourteen (14) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Weyerhaeuser and Eatonville position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. Weyerhaeuser and Eatonville may then request regional management review of the dispute. Weyerhaeuser and Eatonville must submit this request (Formal Dispute Notice) in writing to the Southwest Region Toxics Cleanup Section Manager within fourteen (14) 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 Weyerhaeuser and Eatonville'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 endeavor to issue a written decision regarding the dispute (Decision on Dispute) within forty-five (45) 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.I (Work to be Performed) or initiating enforcement under Section X (Enforcement).

**J. Extension of Schedule**

1. Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville

- b. A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- c. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- d. 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 Weyerhaeuser and Eatonville.

3. Ecology shall act upon any Weyerhaeuser's and Eatonville's written request for extension in a timely fashion. Ecology shall give Weyerhaeuser and Eatonville 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 Weyerhaeuser's and Eatonville'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).

**K. 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 Weyerhaeuser and Eatonville.

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, Weyerhaeuser and Eatonville 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).

**L. 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 Weyerhaeuser and Eatonville to cease such activities for such period of time as it deems necessary to abate the danger. Weyerhaeuser and Eatonville shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, Weyerhaeuser and Eatonville'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.

**M. Reservation of Rights**

This Order is not a settlement under RCW 70A.305. 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 Weyerhaeuser and Eatonville to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Weyerhaeuser and Eatonville regarding remedial actions required by this Order, provided Weyerhaeuser and Eatonville complies with this Order.

Ecology nevertheless reserves its rights under RCW70A.305, 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, Weyerhaeuser and Eatonville do not admit to any liability for the Site. Although Weyerhaeuser and Eatonville are committing to conducting the work required by this Order under the terms of this Order, Weyerhaeuser and Eatonville 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.

**N. 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 Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Weyerhaeuser and Eatonville 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, Weyerhaeuser and Eatonville shall notify Ecology of said transfer. Upon transfer of any interest, Weyerhaeuser and Eatonville 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.

**O. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by Weyerhaeuser and Eatonville 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 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. Weyerhaeuser and Eatonville have 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 Weyerhaeuser and Eatonville, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Weyerhaeuser and Eatonville must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Weyerhaeuser and Eatonville pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no federal, state, or local 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 Weyerhaeuser and Eatonville, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Weyerhaeuser and Eatonville must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), Weyerhaeuser and Eatonville may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Weyerhaeuser and Eatonville shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(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 federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

4. Weyerhaeuser and Eatonville have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Weyerhaeuser and Eatonville determines that additional permits or approvals addressed in RCW 70A.305.090(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 Weyerhaeuser and Eatonville shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville and on how Weyerhaeuser and Eatonville must meet those requirements. Ecology shall inform Weyerhaeuser and Eatonville in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Weyerhaeuser and Eatonville shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(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 Weyerhaeuser and Eatonville shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

**P. Indemnification**

Weyerhaeuser and Eatonville agree 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 Weyerhaeuser and Eatonville, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Weyerhaeuser and Eatonville 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 Weyerhaeuser and Eatonville's receipt of written notification from Ecology that Weyerhaeuser and Eatonville has completed the remedial activity required by this Order, as amended by any modifications, and that Weyerhaeuser and Eatonville has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

Pursuant to RCW 70A.305.050, 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 70A.305.070.

Effective date of this Order: \_\_\_\_\_

WEYERHAEUSER COMPANY

TOWN OF EATONVILLE

\_\_\_\_\_  
Kristen Sawin  
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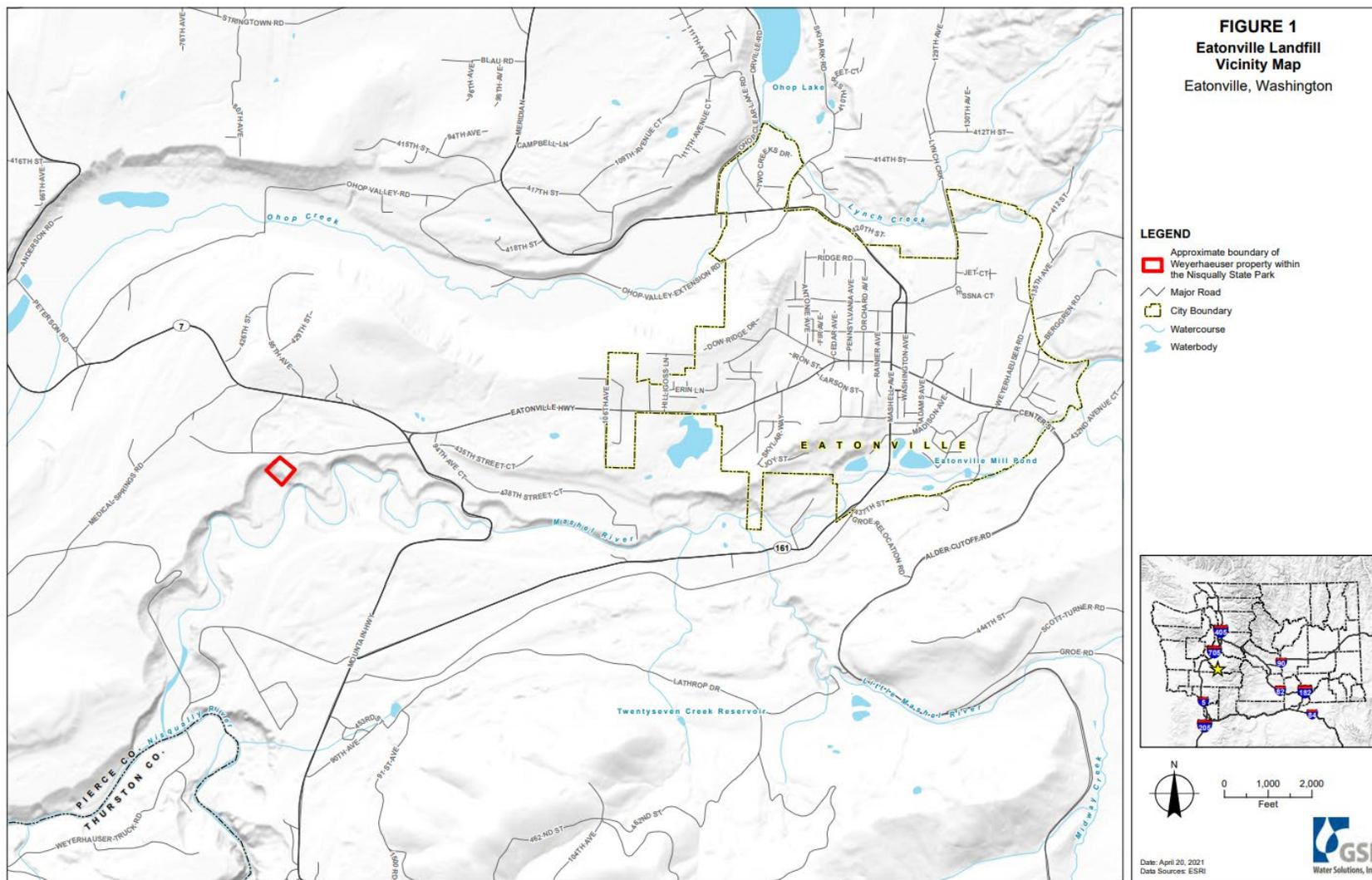
\_\_\_\_\_  
The Honorable Mayor Mike Schaub  
Town of Eatonville  
P.O. Box 309  
Eatonville, WA 98328  
mayor@eatonville-wa.gov

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
Rebecca S. Lawson, P.E., LHG  
Section Manager  
Toxics Cleanup Program  
Southwest Regional Office  
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**EXHIBIT A**  
**Eatonville Landfill**  
**Agreed Order 20072**

**SITE LOCATION FIGURE**



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**EXHIBIT B**  
**Eatonville Landfill**  
**Agreed Order 20072**

**SCOPE OF WORK AND SCHEDULE OF DELIVERABLES**

The schedule for project work and deliverables described in the Agreed Order is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date Weyerhaeuser and Town of Eatonville received such notification, comments or approval by certified mail, return receipt requested or by e-mail, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, by e-mail or the date of Ecology signature on a hand-delivery form.

<b>Deliverables</b>	<b>Completion Times</b>
Ecology receives Agency Review Draft Remedial Investigation (RI) Work Plan	45 calendar days following the effective date of the Agreed Order DE 20027
Ecology provides comments on Agency Review Draft Remedial Investigation (RI) Work Plan	Ecology endeavors to provide comments within 30 calendar days following Ecology's receipt of Agency Review Draft RI Work Plan
Ecology receives Final RI Report Work Plan	30 calendar days following the PLPs' receipt of Ecology approval of the Agency Review Draft RI Work Plan
Conduct RI Work	45 calendar days following Ecology approval of RI Work Plan
Ecology receives Agency Review Draft RI Report	90 calendar days following completion of RI field work
Ecology provides comments on Agency Review Draft RI Report	Ecology endeavors to provide comments within 45 calendar days following Ecology's receipt of Agency Review Draft RI Report
Ecology receives Public Review Ready Draft RI Report	60 calendar days following submittal of Ecology comments on the Agency Review Draft RI Report
Ecology receives Agency Review Draft Feasibility Study (FS)	120 calendar days following Ecology approval of the Public Review Ready Draft RI Report
Ecology provides comments on Agency Review Draft FS	Ecology endeavors to provide comments within 45 calendar days following receipt of Agency Review Draft FS
Ecology receives Public Review Ready Draft FS	60 calendar days following submittal of Ecology comments on the Agency Review Draft FS
Public Comment Period on Public Review Ready RI and FS documents	60 calendar days following receipt of Ecology comments on the Agency Review Draft FS
Ecology receives Agency Review Draft Cleanup Action Plan	90 calendar days following Ecology approval of the Public Review Ready RI and FS documents