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1 Selenium at .75 mg/kg, and Method 7741 establishing a POL for Silver at .1 mg/kg. Memorandum 3,
2 Table II, at p.7; Ex. B. to Lucia Decl.

3 The Port generally alleges that “scientific calculations” utilizing a back-calculating approach
4 derive safe soil contaminant levels for the protection of water quality. Port Brief at 20. However, the
5 analysis, calculations and tables of DOE’s own expert, Chung Yee, show that for some contaminants
6 the 3-phase “back-calculating” model for deriving soil contamination levels for the protection of
7 surface and ground water would require contaminant levels much lower than those allowed by the
8 Amended Certification. Eglick Decl., Ex. J (Email from Ecology’s Chung Yee). For example, Mr.
9 Yee calculated that in order to protect groundwater only 5.79 mg/kg of Antimony should be allowed,
10 yet the Certification allows approximately 3 times that much Antimony (16 mg/kg). *Id.* Similarly, Mr.
11 Yee calculated that only 2.92 mg/kg of Arsenic should be allowed in order to protect groundwater. *Id.*
12 Thus, at maximum, Ecology should have set the Arsenic level at natural background (7mg/kg) rather
13 then the 20 mg/kg allowed in the Certification.
14
15

16 That the revised Certification sets the level of acceptable contamination too high for purposes
17 of ensuring water quality and protecting plants and animals is clear from Ecology’s own Toxics
18 Cleanup Program senior environmental engineer, Peter Kmet, quoted by ACC in our opening brief.
19 *See Memo in Support of Motion for Stay at 19 and Exs. G and H of First Eglick Decl.* In response,
20 Ecology was only able to obtain from Mr. Kmet a two-page declaration, which we urge the Board to
21 scrutinize carefully for what it does -- and does not -- say. Mr. Kmet’s declaration only cautions that
22 his emails “should not be construed to conclude that the acceptable fill criteria . . . are or are not
23 protective of water quality.” Kmet Decl. at ¶ 3 (emphasis added).
24

25 ACC’S REPLY MEMORANDUM IN SUPPORT OF
ITS MOTION FOR A STAY - 35

HELSELL FETTERMAN LLP
1500 Puget Sound Plaza
1325 Fourth Avenue
Seattle, WA 98101-2509

Rachael Paschal Osborn
Attorney at Law
2421 West Mission Ave.
Spokane, WA 99201

AR 006512