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**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

POPE RESOURCES, A DELAWARE
LIMITED PARTNERSHIP; OPG
PROPERTIES LLC; and OPG PORT
GAMBLE LLC,

Defendants.

NO. 20-2-01674-18

CONSENT DECREE

Port Gamble Bay and Mill Site Upland
Area

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I. INTRODUCTION

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2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), and Pope Resources, A Delaware Limited Partnership (PR), OPG Properties LLC
4 (OPG), and OPG Port Gamble LLC (OPG-PG) (collectively Defendants) under this Decree is to
5 provide for final remedial action at the Upland Area (defined below) of the Port Gamble Bay
6 and Mill Site (Site), where a release or threatened release of hazardous substances has occurred.
7 The 2013 Consent Decree (defined below) addressed the final remedial actions for the In-Water
8 Area (defined below) of the Site.

9 2. As more specifically described in the attached Cleanup Action Plan, this Decree
10 requires Defendants to perform focused removal of contaminated soils, backfill with clean
11 material, and place clean capping material on identified portions of the Upland Area; implement
12 institutional controls on the Upland Area; and provide for compliance monitoring of the cleanup
13 actions implemented on the Upland Area. The actions outlined in this Decree, together with the
14 actions performed by Defendants under the 2013 Decree, are expected to constitute the final
15 cleanup for the Site.

16 3. Ecology has determined that these actions are necessary to protect human health
17 and the environment.

18 4. The Complaint in this action is being filed simultaneously with this Decree. An
19 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
20 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
21 Parties agree that settlement of these matters without litigation is reasonable and in the public
22 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

23 5. By signing this Decree, the Parties agree to its entry and agree to be bound by its
24 terms.

25 6. By entering into this Decree, the Parties do not intend to discharge non-settling
26 parties from any liability they may have with respect to matters alleged in the Complaint. The

1 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
2 sums expended under this Decree.

3 7. This Decree shall not be construed as proof of liability or responsibility for any
4 releases of hazardous substances or cost for remedial action nor an admission of any facts;
5 provided, however, that Defendants shall not challenge the authority of the Attorney General
6 and Ecology to enforce this Decree.

7 8. The Court is fully advised of the reasons for entry of this Decree, and good cause
8 having been shown:

9 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

10 II. JURISDICTION

11 1. This Court has jurisdiction over the subject matter and over the Parties pursuant
12 to the Model Toxics Control Act (MTCA), RCW 70A.305.

13 2. Authority is conferred upon the Washington State Attorney General by
14 RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
15 after public notice and any required hearing, Ecology finds the proposed settlement would lead
16 to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b) requires that
17 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

18 3. Ecology has determined that a release or threatened release of hazardous
19 substances has occurred at the Site.

20 4. Ecology has given notice to Defendants PR and OPG of Ecology's determination
21 that Defendants are PLPs for the Site, as required by RCW 70A.305.020(26) and
22 WAC 173-340-500. On May 6, 2020, Defendant OPG-PG acquired from PR the real property
23 within the Upland Area of the Site addressed in this Decree. OPG-PG has requested to be
24 included as a Defendant.

25 5. The actions to be taken pursuant to this Decree are necessary to protect public
26 health and the environment.

1 6. This Decree has been subject to public notice and comment.

2 7. Ecology finds that this Decree will lead to a more expeditious cleanup of
3 hazardous substances at the Upland Area in compliance with the cleanup standards established
4 under RCW 70A.305.030(2)(e) and WAC 173-340.

5 8. Defendants have agreed to undertake the actions specified in this Decree and
6 consent to the entry of this Decree under MTCA.

7 **III. PARTIES BOUND**

8 1. This Decree shall apply to and be binding upon the Parties to this Decree, their
9 successors and assigns. The undersigned representative of each party hereby certifies that he or
10 she is fully authorized to enter into this Decree and to execute and legally bind such party to
11 comply with this Decree. Defendants agree to undertake all actions required by the terms and
12 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
13 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,
14 contractors, and subcontractors retained to perform work required by this Decree, and shall
15 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
16 this Decree.

17 **IV. DEFINITIONS**

18 1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and
19 WAC 173-340 shall control the meanings of the terms in this Decree.

20 A. Site: The Site is referred to as the Port Gamble Bay and Mill Site. The
21 Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a
22 hazardous substance, other than a consumer product in consumer use, has been deposited,
23 stored, disposed of, or placed, or otherwise come to be located. The Site consists of the
24 In-Water Area addressed in the 2013 Consent Decree, together with the Upland Area,
25 which includes the former sawmill area, and upland areas to the west and south of the
26 former sawmill area identified in the Supplemental Remedial Investigation and

1 Feasibility Study, all of which are generally located near the eastern terminus of NE View
2 Drive in Port Gamble, Washington.

3 B. Upland Area: Refers to that area of the Site other than the In-Water Area
4 addressed in the October 2013 Cleanup Action Plan included in the 2013 Consent
5 Decree.

6 C. In-Water Area: Refers to that area of the Site addressed in the October
7 2013 Cleanup Action Plan included in the 2013 Consent Decree.

8 D. Consent Decree or Decree: Unless otherwise indicated, refers to this
9 Consent Decree and each of the exhibits to this Decree. All exhibits are integral and
10 enforceable parts of this Consent Decree.

11 E. 2013 Consent Decree: Refers to the consent decree between Ecology and
12 Defendants that was filed in Kitsap County Superior Court under Case No. 13-2-02720-0.

13 F. Study Area: Refers to the area investigated in the May 2019 Supplemental
14 Remedial Investigation and Feasibility Study. The Study Area is more specifically
15 identified in Exhibit B (Site and Property Diagram).

16 G. Cleanup Action Plan or CAP: Unless otherwise indicated, refers to the
17 Cleanup Action Plan (CAP) (Exhibit A) issued by Ecology for the Upland and all
18 attachments to the CAP.

19 H. Defendants: Refers to PR, OPG, and OPG-PG.

20 I. Parties: Refers to the State of Washington, Department of Ecology and
21 Defendants.

22 V. FINDINGS OF FACT

23 1. Ecology makes the following findings of fact without any express or implied
24 admissions of such facts by Defendants.

25 A. Based upon factors currently known to Ecology, the Upland Area is
26 generally located at the eastern terminus of NE View Drive in Port Gamble, Washington,

1 as shown in the Site and Property Diagram (Exhibit B). While the Supplemental
2 Remedial Investigation and Feasibility Study evaluated a larger Study Area, surficial
3 chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (dioxin/furan) soil
4 contamination above unrestricted land use concentrations were identified within the
5 Upland Area delineated in Exhibit B, specifically within portions of the northern, and
6 eastern wharf areas, and along the southern shoreline. In the northern and eastern wharf
7 areas, elevated dioxin/furan contamination extends to a depth of 15 feet, and to 11 feet
8 in the southern shoreline. Also in the eastern wharf area, two surficial lead samples and
9 one surficial carcinogenic polynuclear aromatic hydrocarbons (cPAHs) sample exceeded
10 MTCA Method B cleanup levels. One groundwater sample in the southern area of the
11 Upland Area exceeded MTCA Method B groundwater cleanup levels for arsenic. The
12 locations of exceedances are shown in the CAP (Exhibit A).

13 B. In 1853, the corporate predecessor to Pope & Talbot, Inc. (P&T)
14 established one of the first sawmills on Puget Sound on a sand spit projecting east from
15 the base of a bluff that forms the western boundary to the mouth of Port Gamble Bay.
16 A forest products manufacturing facility was operated at this location for approximately
17 142 years (1853 to 1995). The facility underwent several changes over that period
18 including filling activities that expanded the spit on which the facility was located,
19 relocating buildings, and changing building and structure uses. Between 1853 and 1995,
20 operations included a succession of sawmill buildings, two chip loading facilities, a log
21 transfer facility, log rafting and storage areas, wood treatment and a “hog fuel” boiler.

22 C. In 1985, P&T spun off its timberland, development branch, and its real
23 estate, including the sawmill, uplands and adjacent tidelands to PR. P&T continued wood
24 products manufacturing at the Site until 1995 under a lease with PR. OPG was formed in
25 1998 to manage PR’s real estate in Kitsap County and presently manages portions of the
26

1 Site including areas that it leases and that contain property improvements. In November
2 2007, P&T filed for bankruptcy in Delaware, Case No. 07-11738 (CSS).

3 D. Mill operations ceased in 1995 and the sawmill facility was dismantled
4 and removed in 1997. Since 1997, portions of the Upland Area have been leased to a
5 variety of parties for use as a log sort and wood chipping yard, material handling
6 activities, and a marine laboratory.

7 E. In January 1997, Ecology conducted an initial investigation of the former
8 mill area, which consisted of sampling sediment in four catch basins. The results of that
9 investigation indicated that concentrations of petroleum hydrocarbons and metals were
10 present at levels above applicable MTCA chemical criteria for these compounds.
11 Subsequently, a contractor removed accumulated materials from catch basins, vaults, and
12 sumps in 1997. In July 1998, Ecology notified P&T of the potential listing of the former
13 sawmill site on Ecology's Confirmed and Suspected Contaminated Site List. Thereafter,
14 detailed environmental investigations were conducted by P&T and its corporate
15 predecessors to characterize soil, groundwater, surface water, and sediment quality
16 conditions at the former mill area. The Site characterization data confirmed the presence
17 of hazardous substances in soil and groundwater in the Upland Area. Based on these data,
18 Ecology added the Site to the hazardous sites list in 2001.

19 F. Between 2002 and 2005, approximately 26,310 tons of contaminated soils
20 were excavated from the former mill area uplands as interim remedial actions.

21 G. In May 2008, Ecology and the Defendants PR and OPG entered into
22 Agreed Order No. DE 5631, pursuant to which two focused Remedial Investigation and
23 Feasibility Study (RI/FS) Reports for portions of the Site including the former mill area
24 and In-Water Area were completed, submitted, and released for public comment in
25 February and March 2011. In December 2012, based on public comment, the reports
26 were revised and combined into a Partial RI/FS (PRI/FS) that summarized existing

1 remedial investigation results for the former mill area and Port Gamble Bay, and
2 evaluated remedial alternatives for the In-Water Area.

3 H. In December 2013, based on the conclusions of the PRI/FS, Ecology and
4 the Defendants PR and OPG entered into the 2013 Consent Decree to design, permit, and
5 implement a sediment cleanup action for the In-Water Area. In-water construction
6 actions began in September 2015 and were completed in January 2017. In total 8,592
7 pilings were removed, 77,297 cubic yards of contaminated marine sediments were
8 dredged, and 33,240 cubic yards of contaminated intertidal material was excavated. The
9 resulting excavated and dredged materials, consisting primarily of mixed sediment and
10 wood debris, were temporarily stored in stockpiles on the upland former mill area. They
11 were subsequently rinsed with water to reduce salinity and ammonia to acceptable levels
12 for off-site disposal. The stockpiles were removed from the former mill area between
13 July and September 2017.

14 I. In February 2018, Ecology and the Defendants PR and OPG entered into
15 Agreed Order No. DE 15448 to complete a supplemental RI/FS that compiled and
16 summarized existing data regarding previous investigations and remedial actions in the
17 Upland Area, developed a conceptual site model, identified and investigated data gaps
18 related to the lateral and vertical extent of dioxin and furan contamination, and evaluated
19 cleanup action alternatives. Release(s) and/or potential release(s) of hazardous
20 substances occurred at the Upland Area. The following hazardous substances at the
21 Upland Area have been detected at concentrations above MTCA cleanup levels:
22 dioxin/furan, cPAHs and lead in soils, and arsenic in groundwater. These hazardous
23 substances have been, and may continue to be, released at the Site into the environment
24 including soils and groundwater.

25 J. Ecology has assigned the Site an overall priority ranking of 2 pursuant to
26 MTCA.

1 K. As documented in the Cleanup Action Plan, Ecology has chosen a final
2 cleanup action to be implemented in the Upland Area.

3 L. On May 6, 2020, PR transferred its interest in the real property at the Site
4 to OPG-PG.

5 VI. WORK TO BE PERFORMED

6 1. This Decree contains a program designed to protect human health and the
7 environment from the known release, or threatened release, of hazardous substances or
8 contaminants at, on, or from the Upland Area. All remedial action(s) conducted by Defendants
9 in the Upland Area shall be done in accordance with WAC 173-340.

10 2. The Defendants shall implement the CAP (Exhibit A) in accordance with the
11 Milestones and Schedule included as Appendix C of the CAP. Among other remedial actions,
12 the CAP requires Defendants to remove all near surface soils (to 6 feet below ground surface)
13 that exceed the dioxin/furan remediation level protective of terrestrial ecological receptors, along
14 with surface and sub-surface soils at any depth that exceed the dioxin/furan remediation level
15 protective of groundwater, surface water and sediment. All residual sub-surface soils that exceed
16 the cleanup level for unrestricted land use must be capped. Defendants must perform compliance
17 monitoring on the implemented remedy to ensure protectiveness is maintained.

18 3. All plans or other deliverables submitted by Defendants for Ecology's review and
19 approval under the CAP (Exhibit A) including the attached Milestones and Schedule (CAP
20 Appendix C) shall, upon Ecology's approval, become integral and enforceable parts of this
21 Decree.

22 4. If Defendants learn of a significant change in conditions in the Upland Area,
23 including but not limited to a statistically significant increase in contaminant and/or chemical
24 concentrations in soils and groundwater, surface water or sediments, Defendants, within seven
25 (7) days of learning of the change in condition, shall notify Ecology in writing of said change
26

1 and provide Ecology with any reports or records (including laboratory analyses, sampling
2 results) relating to the change in conditions.

3 **VII. FINANCIAL ASSURANCE**

4 1. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and
5 adequate financial assurance mechanisms to cover all costs associated with the operation and
6 maintenance of the remedial action in the Upland Area, including institutional controls,
7 compliance monitoring, and corrective measures.

8 A. Within sixty (60) days of the effective date of this Decree, Defendants
9 shall submit to Ecology for review and approval an estimate of the costs associated with
10 the operation and maintenance of the remedial action in the Upland Area that it will incur
11 in carrying out the terms of this Decree. Within sixty (60) days after Ecology approves
12 the aforementioned cost estimate, Defendants shall provide proof of financial assurances
13 sufficient to cover those costs in a form acceptable to Ecology as provided for in
14 WAC 173-340-440(11).

15 B. Defendants shall adjust the financial assurance coverage and provide
16 Ecology's project coordinator with documentation of the updated financial assurance for:

17 i. Inflation, annually, within thirty (30) days of the anniversary date
18 of the entry of this Decree; or if applicable, the modified anniversary date
19 established in accordance with this section, or if applicable, ninety (90) days after
20 the close of Defendants' fiscal year if the financial test or corporate guarantee is
21 used.

22 ii. Changes in cost estimates, within thirty (30) days of issuance of
23 Ecology's approval of a modification or revision to the CAP that result in
24 increases to the cost or expected duration of remedial actions. Any adjustments
25 for inflation since the most recent preceding anniversary date shall be made
26 concurrent with adjustments for changes in cost estimates. The issuance of

1 Ecology's approval of a revised or modified CAP will revise the anniversary date
2 established under this section to become the date of issuance of such revised or
3 modified CAP.

4 2. After initially providing financial assurances in a form acceptable to Ecology,
5 Defendants may propose at any time to change financial assurance mechanisms by providing
6 proof of the new financial assurance mechanisms sufficient to cover all costs associated with the
7 operation and maintenance of the remedial action in the Upland Area, including institutional
8 controls, compliance monitoring, and corrective measures, in a form acceptable to Ecology.
9 Once Ecology has approved the new financial assurance mechanism, Defendants may utilize it.
10 Ecology shall provide the Defendants with a written release of the superseded financial assurance
11 mechanism.

12 **VIII. LAND USE RESTRICTIONS**

13 1. As detailed in the CAP, institutional controls are required in the Upland Area.
14 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

15 A. In consultation with Defendants, Ecology will prepare the Environmental
16 (Restrictive) Covenants consistent with WAC 173-340-440 and RCW 64.70. The
17 Environmental (Restrictive) Covenants shall restrict future activities and uses of the
18 Upland Area as agreed to by Ecology and Defendants.

19 B. After approval by Ecology, Defendants shall record the Environmental
20 (Restrictive) Covenants for affected properties it owns with the office of the Kitsap
21 County Auditor as generally described in the CAP (Exhibit A). Defendants shall provide
22 Ecology with the original recorded Environmental (Restrictive) Covenants within
23 thirty (30) days of the recording date.

24 **IX. PROGRESS REPORTS**

25 1. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
26 written monthly Progress Reports that describe the design, permitting, and construction actions

1 taken during the previous month to implement the requirements of this Decree. All Progress
2 Reports shall be submitted by the tenth (10th) day of the month in which they are due after the
3 effective date of this Decree. Unless otherwise specified in writing by Ecology, Progress Reports
4 and any other documents submitted pursuant to this Decree shall be sent electronically to
5 Ecology's project coordinator. The Progress Reports shall include the following:

6 A. A list of on-site activities that have taken place during the month.

7 B. Description of any sample results that deviate from the norm.

8 C. Detailed description of any deviations from required tasks not otherwise
9 documented in project plans or amendment requests.

10 D. Description of all deviations from the Milestones and Schedule (CAP
11 Appendix C) during the current month and any planned deviations in the upcoming
12 month.

13 E. For any deviations in schedule, a plan for recovering lost time and
14 maintaining compliance with the schedule.

15 F. All raw data (including laboratory analyses) received during the previous
16 quarter (if not previously submitted to Ecology), together with a detailed description of
17 the underlying samples collected.

18 G. A list of planned activities for the upcoming month.

19 **X. DESIGNATED PROJECT COORDINATORS**

20 1. The project coordinator for Ecology is:

21 John Evered
22 Toxics Cleanup Program
23 PO Box 47600
24 Olympia, WA 98504-7600

1 2. The project coordinator for Defendants is:

2 Clay Patmont
3 Anchor QEA, LLC
4 1201 3rd Avenue, Suite 2600
5 Seattle, WA 98101

6 3. Each project coordinator shall be responsible for overseeing the implementation
7 of this Decree. Ecology’s project coordinator will be Ecology’s designated representative for the
8 Upland Area. To the maximum extent possible, communications between Ecology and
9 Defendants and all documents, including reports, approvals, and other correspondence
10 concerning the activities performed pursuant to the terms and conditions of this Decree shall be
11 directed through the project coordinators. The project coordinators may designate, in writing,
12 working level staff contacts for all or portions of the implementation of the work to be performed
13 required by this Decree.

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

16 **XI. PERFORMANCE**

17 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
18 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
19 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
20 supervision of an engineer registered by the State of Washington.

21 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
22 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
23 registered by the State of Washington.

24 3. Except as otherwise provided for by RCW 18.43.130, all construction work
25 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
26 registered by the State of Washington or a qualified technician under the direct supervision of a
professional engineer registered by the State of Washington.

1 4. As required by RCW 18.43 and 18.220, any documents submitted containing
2 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
3 professional.

4 5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
5 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
6 of this Decree, in advance of their involvement at the Upland Area.

7 XII. ACCESS

8 1. Ecology or any Ecology authorized representative shall have access to enter and
9 freely move about all property in the Upland Area that Defendants either own, control, or have
10 access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records,
11 operation logs, and contracts related to the work being performed pursuant to this Decree;
12 reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests
13 or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
14 other documentary type equipment to record work done pursuant to this Decree; and verifying
15 the data submitted to Ecology by Defendants.

16 2. Defendants shall make all reasonable efforts to secure access rights for those
17 properties within the Upland Area not owned or controlled by Defendants where remedial
18 activities or investigations will be performed pursuant to this Decree.

19 3. Ecology or any Ecology authorized representative shall give reasonable notice
20 before entering any Upland Area property owned or controlled by Defendants unless an
21 emergency prevents such notice. All Parties who access the Upland Area pursuant to this section
22 shall comply with any applicable health and safety plan(s). Ecology employees and their
23 representatives shall not be required to sign any liability release or waiver as a condition of the
24 Upland Area property access.
25
26

1 **XIII. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

2 1. With respect to the implementation of this Decree, Defendants shall make the
3 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
4 available to Ecology by submitting data as detailed in this section. Pursuant to
5 WAC 173 340-840(5), all sampling data shall be submitted to Ecology in both printed and
6 electronic formats in accordance with Section IX (Progress Reports), Ecology’s Toxics Cleanup
7 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified
8 by Ecology for data submittal.

9 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
10 representative to take split or duplicate samples of any samples collected by Defendants pursuant
11 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance
12 of any sample collection or work activity at the Upland Area. Ecology shall, upon request, allow
13 Defendants and/or their authorized representative to take split or duplicate samples of any
14 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing
15 so does not interfere with Ecology’s sampling. Without limitation on Ecology’s rights under
16 Section XII (Access), Ecology shall notify Defendants prior to any sample collection activity
17 unless an emergency prevents such notice.

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

21 **XIV. RETENTION OF RECORDS**

22 1. During the pendency of this Decree, and for ten (10) years from the date this
23 Decree is no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants
24 shall preserve all records, reports, documents, and underlying data in its possession relevant to
25 the implementation of this Decree and shall insert a similar record retention requirement into all
26

1 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall
2 make all records available to Ecology and allow access for review within a reasonable time.

3 2. Nothing in this Decree is intended by Defendants to waive any right they may
4 have under applicable law to limit disclosure of documents protected by the attorney work-
5 product privilege and/or the attorney-client privilege. If Defendants withhold any requested
6 records based on an assertion of privilege, Defendants shall provide Ecology with a privilege log
7 specifying the records withheld and the applicable privilege. No Upland Area-related data
8 collected pursuant to this Decree shall be considered privileged.

9 **XV. TRANSFER OF INTEREST IN PROPERTY**

10 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
11 interest in any portion of the Upland Area shall be consummated by Defendants without
12 provision for continued operation and maintenance of any containment system, treatment
13 system, and/or monitoring system installed or implemented pursuant to this Decree.

14 2. Prior to a Defendant's transfer of any interest in all or any portion of the Upland
15 Area, and during the effective period of this Decree, the Defendant shall provide a copy of this
16 Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said
17 interest; and, at least thirty (30) days prior to any transfer, the Defendant shall notify Ecology of
18 said transfer. Upon its transfer of any interest, the Defendant shall notify all transferees of the
19 restrictions on the activities and uses of the property under this Decree and incorporate any such
20 use restrictions into the transfer documents.

21 **XVI. RESOLUTION OF DISPUTES**

22 1. In the event that Defendants elect to invoke dispute resolution, Defendants must
23 utilize the procedure set forth below.

24 A. Upon the triggering event (receipt of Ecology's project coordinator's
25 written decision or an itemized billing statement), Defendants have fourteen (14)
26

1 calendar days within which to notify Ecology's project coordinator in writing of its
2 dispute (Informal Dispute Notice).

3 B. The Parties' project coordinators shall then confer in an effort to resolve
4 the dispute informally. The parties shall informally confer for up to fourteen (14)
5 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
6 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
7 days (i.e., within twenty-one (21) calendar days from receipt of the Informal Dispute
8 Notice), Ecology's project coordinator shall issue a written decision (Informal Dispute
9 Decision) stating: the nature of the dispute; the Defendants' position with regards to the
10 dispute; Ecology's position with regards to the dispute; and the extent of resolution
11 reached by informal discussion.

12 C. Defendants may then request regional management review of the dispute.
13 This request (Formal Dispute Notice) must be submitted in writing to the Toxics Cleanup
14 Program (TCP) Headquarters Cleanup Section Manager within seven (7) calendar days
15 of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall
16 include a written statement of dispute setting forth: the nature of the dispute; the disputing
17 Party's position with respect to the dispute; and the information relied upon to support
18 its position.

19 D. The TCP Headquarters Cleanup Section Manager shall conduct a review
20 of the dispute and shall issue a written decision regarding the dispute (Decision on
21 Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

22 E. If Defendants find Ecology's TCP Headquarters Cleanup Section
23 Manager's decision unacceptable, Defendants may then request final management
24 review of the decision. This request (Final Review Request) shall be submitted in writing
25 to the Toxics Cleanup Program Manager within seven (7) calendar days of Defendants'
26 receipt of the Decision on Dispute. The Final Review Request shall include a written

1 statement of dispute setting forth: the nature of the dispute; the disputing Party's position
2 with respect to the dispute; and the information relied upon to support its position.

3 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
4 the dispute and shall issue a written decision regarding the dispute (Final Decision on
5 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
6 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
7 disputed matter.

8 2. If Ecology's Final Decision on Dispute is unacceptable to Defendants,
9 Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that
10 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
11 arising under this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial
12 decisions shall be upheld unless they are arbitrary and capricious.

13 3. The Parties agree to only utilize the dispute resolution process in good faith and
14 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
15 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
16 the other party may seek sanctions.

17 4. Implementation of these dispute resolution procedures shall not provide a basis
18 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
19 extension or the Court so orders.

20 5. Unless this dispute resolution process is timely invoked, the failure to proceed
21 with the work required by this Decree may result in Ecology's determination that insufficient
22 progress is being made in preparation of a deliverable, and may result in Ecology undertaking
23 the work under Section XXV (Implementation of Remedial Action).

24 **XVII. AMENDMENT OF DECREE**

25 1. The Parties may agree to minor changes to the work to be performed without
26 formally amending this Decree. Minor changes will be documented in writing by Ecology.

1 A. Circumstances beyond the reasonable control and despite the due
2 diligence of Defendants including delays caused by unrelated third parties or Ecology,
3 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
4 documents submitted by Defendants.

5 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
6 or other unavoidable casualty.

7 C. Endangerment as described in Section XIX (Endangerment).

8 3. However, neither increased costs of performance of the terms of this Decree nor
9 changed economic circumstances shall be considered circumstances beyond the reasonable
10 control of Defendants.

11 4. Ecology shall act upon any Defendant's written request for extension in a timely
12 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant
13 to this Decree. A requested extension shall not be effective until approved by Ecology or, if
14 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
15 amend this Decree pursuant to Section XVII (Amendment of Decree) when a schedule extension
16 is granted.

17 5. At the Defendant's request, an extension shall only be granted for such period of
18 time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
19 extensions exceeding ninety (90) days only as a result of one of the following:

20 A. Delays in the issuance of a necessary permit which was applied for in a
21 timely manner.

22 B. Other circumstances deemed exceptional or extraordinary by Ecology.

23 C. Endangerment as described in Section XIX (Endangerment).

24 **XIX. ENDANGERMENT**

25 1. In the event Ecology determines that any activity being performed in the Upland
26 Area under this Decree is creating or has the potential to create a danger to human health or the

1 environment, Ecology may direct Defendants to cease such activities for such period of time as
2 it deems necessary to abate the danger. Defendants shall immediately comply with such
3 direction.

4 2. In the event Defendants determine that any activity being performed in the
5 Upland Area under this Decree is creating or has the potential to create a danger to human health
6 or the environment, Defendants may cease such activities. Defendants shall notify Ecology's
7 project coordinator as soon as possible, but no later than twenty-four (24) hours after making
8 such determination or ceasing such activities. Upon Ecology's direction, Defendants shall
9 provide Ecology with documentation of the basis for the determination or cessation of such
10 activities. If Ecology disagrees with Defendants' cessation of activities, it may direct Defendants
11 to resume such activities.

12 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
13 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology
14 determines the danger is abated, and the time for performance of such activities, as well as the
15 time for any other work dependent upon such activities, shall be extended, in accordance with
16 Section XVIII (Extension of Schedule), for such period of time as Ecology determines is
17 reasonable under the circumstances.

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

20 **XX. COVENANT NOT TO SUE**

21 1. Covenant Not to Sue: In consideration of Defendants' compliance with the terms
22 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
23 against Defendants regarding the release or threatened release of hazardous substances addressed
24 in this Decree. This Covenant Not to Sue does not cover any other hazardous substance(s) or
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1 area. Ecology retains all of its authority relative to any hazardous substance(s) or area not
2 covered by this Decree.

3 This Covenant Not to Sue shall have no applicability whatsoever to:

4 A. Criminal liability.

5 B. Liability for damages to natural resources.

6 C. Any Ecology action, including cost recovery, against PLPs not a party to
7 this Decree.

8 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not
9 to Sue if factors not known at the time of entry of this Decree are discovered and present a
10 previously unknown threat to human health or the environment.

11 3. Reopeners: Ecology specifically reserves the right to institute legal or
12 administrative action against Defendants to require them to perform additional remedial actions
13 in the Upland Area and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050,
14 under any of the following circumstances:

15 A. Upon Defendants' failure to meet the requirements of this Decree.

16 B. Failure of the remedial action to meet the cleanup standards identified in
17 the CAP (Exhibit A).

18 C. Upon Ecology's determination that remedial action beyond the terms of
19 this Decree is necessary to abate an imminent and substantial endangerment to human
20 health or the environment.

21 D. Upon the availability of information previously unknown to Ecology
22 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
23 hazardous substances, and Ecology's determination, in light of this information, that
24 further remedial action is necessary to protect human health or the environment.
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1 E. Upon Ecology's determination that additional remedial actions are
2 necessary to achieve cleanup standards within the reasonable restoration time frame set
3 forth in the CAP.

4 4. Except in the case of an emergency, prior to instituting legal or administrative
5 action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen
6 (15) calendar days' notice of such action.

7 **XXI. CONTRIBUTION PROTECTION**

8 1. With regard to claims for contribution against Defendants, the Parties agree that
9 Defendants are entitled to protection against claims for contribution for matters addressed in this
10 Decree as provided by RCW 70A.305.040(4)(d).

11 **XXII. INDEMNIFICATION**

12 1. Defendants agree to indemnify and save and hold the State of Washington, its
13 employees, and agents harmless from any and all claims or causes of action (1) for death or
14 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
15 of acts or omissions of Defendants, their officers, employees, agents, or contractors in entering
16 into and implementing this Decree. However, Defendants shall not indemnify the State of
17 Washington nor save nor hold its employees and agents harmless from any claims or causes of
18 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
19 the employees or agents of the State, in entering into or implementing this Decree.

20 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

21 1. Applicable Law. All actions carried out by Defendants pursuant to this Decree
22 shall be done in accordance with all applicable federal, state, and local requirements, including
23 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits
24 or specific federal, state, or local requirements that the agency has determined are applicable and
25 that are known at the time of the execution of this Decree have been identified in the CAP.
26 Defendants have a continuing obligation to identify additional applicable federal, state, and local

1 requirements which apply to actions carried out pursuant to this Decree, and to comply with
2 those requirements. As additional federal, state, and local requirements are identified by Ecology
3 or the Defendants, Ecology will document in writing if they are applicable to actions carried out
4 pursuant to this Decree, and the Defendants must implement those requirements.

5 2. Relevant and Appropriate Requirements. All actions carried out by Defendants
6 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
7 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
8 apply have been identified in the CAP. If additional relevant and appropriate requirements are
9 identified by Ecology or the Defendants, Ecology will document in writing if they are applicable
10 to actions carried out pursuant to this Decree and the Defendants must implement those
11 requirements.

12 3. Pursuant to RCW 70A.305.090(1), Defendants may be exempt from the
13 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of
14 any laws requiring or authorizing local government permits or approvals. However, Defendants
15 shall comply with the substantive requirements of such permits or approvals. For permits and
16 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the
17 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
18 government permits and/or approvals. The exempt permits or approvals and the applicable
19 substantive requirements of those permits or approvals, as they are known at the time of the
20 execution of this Decree, have been identified in the CAP.

21 4. Defendants have a continuing obligation to determine whether additional permits
22 or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
23 action under this Decree. In the event either Ecology or a Defendant determines that additional
24 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
25 remedial action under this Decree, it shall promptly notify the other party of its determination.
26 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the

1 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
2 with the appropriate state and/or local agencies and provide Ecology with written documentation
3 from those agencies of the substantive requirements those agencies believe are applicable to the
4 remedial action. Ecology shall make the final determination on the additional substantive
5 requirements that must be met by Defendants and on how Defendants must meet those
6 requirements. Ecology shall inform Defendants in writing of these requirements. Once
7 established by Ecology, the additional requirements shall be enforceable requirements of this
8 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
9 additional requirements until Ecology makes its final determination.

10 5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the
11 exemption from complying with the procedural requirements of the laws referenced in
12 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary
13 for the state to administer any federal law, the exemption shall not apply and Defendants shall
14 comply with both the procedural and substantive requirements of the laws referenced in
15 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

16 **XXIV. REMEDIAL ACTION COSTS**

17 1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this
18 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by
19 Ecology or its contractors for, or on, the Upland Area under RCW 70A.305, including remedial
20 actions and Decree preparation, negotiation, oversight, and administration. These costs shall
21 include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs
22 shall include costs of direct activities and support costs of direct activities as defined in
23 WAC 173-340-550(2). For all costs incurred, Defendants shall pay the required amount within
24 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
25 summary of costs incurred, an identification of involved staff, and the amount of time spent by
26 involved staff members on the project. A general statement of work performed will be provided

1 upon request. Itemized statements shall be prepared quarterly. Pursuant to
2 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
3 itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per
4 annum, compounded monthly.

5 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
6 utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property
7 subject to the remedial actions to recover unreimbursed remedial action costs.

8 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

9 1. If Ecology determines that the Defendants have failed to make sufficient progress
10 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
11 Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow
12 the Defendants opportunity to correct. In an emergency, Ecology is not required to provide notice
13 to Defendants, or an opportunity for dispute resolution. The Defendants shall reimburse Ecology
14 for the costs of doing such work in accordance with Section XXIV (Remedial Action Costs),
15 provided that Defendants are not obligated under this section to reimburse Ecology for costs
16 incurred for work inconsistent with or beyond the scope of this Decree.

17 2. Except where necessary to abate an emergency situation or where required by
18 law, the Defendants shall not perform any remedial actions at the Upland Area outside those
19 remedial actions required by this Decree to address the contamination that is the subject of this
20 Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to
21 Section XVII (Amendment of Decree). In the event of an emergency, or where actions are taken
22 as required by law, Defendants must notify Ecology in writing of the event and remedial action(s)
23 planned or taken as soon as practical but no later than within twenty-four (24) hours of the
24 discovery of the event.

1 **XXVI. PERIODIC REVIEW**

2 1. So long as remedial action continues in the Upland Area, the Parties agree to
3 review the progress of remedial action in the Upland Area, and to review the data accumulated
4 as a result of monitoring the Upland Area as often as is necessary and appropriate under the
5 circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the
6 initiation of cleanup action in the Upland Area the Parties shall confer regarding the status of the
7 Upland Area and the need, if any, for further remedial action in the Upland Area. At least ninety
8 (90) days prior to each periodic review, Defendants shall submit a report to Ecology that
9 documents whether human health and the environment are being protected based on the factors
10 set forth in WAC 173-340-420(4). Under Section XX (Covenant Not to Sue), Ecology reserves
11 the right to require further remedial action in the Upland Area under appropriate circumstances.
12 This provision shall remain in effect for the duration of this Decree.

13 **XXVII. PUBLIC PARTICIPATION**

14 1. Ecology shall maintain the responsibility for public participation at the Upland
15 Area. However, Defendants shall cooperate with Ecology, and shall:

16 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
17 of public notices and fact sheets at important stages of the remedial action, such as the
18 submission of work plans, remedial investigation/feasibility study reports, cleanup action
19 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
20 distribute such fact sheets and prepare and distribute public notices of Ecology's
21 presentations and meetings.

22 B. Notify Ecology's project coordinator prior to the preparation of all press
23 releases and fact sheets, and before meetings related to remedial action work to be
24 performed in the Upland Area with the interested public and/or local governments.
25 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and
26 fact sheets related to remedial action work to be performed in the Upland Area, and

1 before meetings related to remedial action work to be performed in the Upland Area with
2 the interested public and/or local governments. For all press releases, fact sheets,
3 meetings, and other outreach efforts by Defendants that do not receive prior Ecology
4 approval, Defendants shall clearly indicate to its audience that the press release, fact
5 sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

6 C. When requested by Ecology, participate in public presentations on the
7 progress of the remedial action in the Upland Area. Participation may be through
8 attendance at public meetings to assist in answering questions, or as a presenter.

9 D. When requested by Ecology, arrange and/or continue information
10 repositories at the following locations:

11 i. Poulsbo Public Library
12 700 NE Lincoln Road
13 Poulsbo, Washington 98370

14 ii. Department of Ecology
15 Toxics Cleanup Program
16 Headquarters Office
17 300 Desmond Drive SE
18 Lacey, Washington 98503

19 At a minimum, copies of all public notices, fact sheets, and documents relating to public
20 comment periods shall be promptly placed in these repositories. A copy of all documents related
21 to the Upland Area shall be maintained in the repository at Ecology's Headquarters in Lacey,
22 Washington.

23 **XXVIII. DURATION OF DECREE**

24 1. The remedial program required pursuant to this Decree shall be maintained and
25 continued until Defendants have received written notification from Ecology that the
26 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
effect until dismissed by the Court. When dismissed, Section XIV (Retention of Records),
Section XX (Covenant Not to Sue), and Section XXI (Contribution Protection) shall survive.

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XXIX. CLAIMS AGAINST THE STATE

1. Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that Defendants will make no claim against the State Toxics Control Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account, or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322A.

XXX. EFFECTIVE DATE

1. This Decree is effective upon the date it is entered by the Court.

XXXI. WITHDRAWAL OF CONSENT

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Rebecca S. Lawson
E-Signature

REBECCA LAWSON
Acting Program Manager
Toxics Cleanup Program
360-407-7177

Date: 11/9/2020

ROBERT W. FERGUSON
Attorney General

J. Thompson


JONATHAN C. THOMPSON, WSBA 26375
Assistant Attorney General
360-586-6740

Date: 11/19/2020

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POPE RESOURCES, A DELAWARE LIMITED PARTNERSHIP


MARK BRIDWELL
Vice President, General Counsel, and
Corporate Secretary
360-697-6626

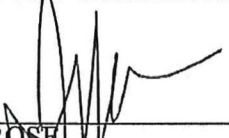
Date: October 29, 2020

OPG PROPERTIES LLC


JON ROSE
Vice President
360-509-0631

Date: 10-29-2020

OPG PORT GAMBLE LLC


JON ROSE
Vice President
360-509-0631

Date: 10-29-2020

ENTERED this 30 day of Nov. 2020.

KEVIN HULL

JUDGE/COURT COMMISSIONER
Kitsap County Superior Court