

June 12, 2024

VIA ELECTRONIC MAIL

James DeMay
Industrial Section Manager
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Request for Operable Units at the WestRock Tacoma Site (FSID 39; CSID 16842)

Dear Mr. DeMay:

We are following up on information the Department of Ecology ("Ecology") provided during the recent meeting to discuss the listing of the Tacoma pulp and paper mill and nearby Commencement Bay sediments as a new site (FSID 39; CSID 16842) (the "Site") under the Model Toxics Control Act ("MTCA"). Ecology has indicated that it plans to issue a single draft agreed order to WestRock CP, LLC ("WestRock"), Simpson Tacoma Kraft Company, LLC ("Simpson"), and International Paper Company ("IP") requiring a remedial investigation and feasibility study for the Site. As further explained below, WestRock, IP and Simpson are proposing an alternative approach that would be based on the same cleanup standards that would apply under a MTCA agreed order and accomplish Ecology's remedial objectives while more expeditiously returning the mill property to productive use. Specifically, the parties propose that Ecology separate the uplands (i.e., the former paper mill operations area) and the sediments into distinct operable units, with work in the uplands to be completed under the Expedited Voluntary Cleanup Program ("VCP") and work in the sediments to be completed under an order that is consistent with federal and state law.

Redevelopment of the mill property benefits the surrounding community. Tacoma has invested in its waterfront for decades and has a strong interest in returning the mill property to productive use. One of MTCA's primary policy goals is to "minimize industrial development pressures on undeveloped land and to make clean [industrial] land available for future social use."¹ Similarly, when authorizing the current Expedited VCP, the Washington legislature found that redeveloping industrial sites "is essential to the health and economic prosperity of our communities."²

The Tacoma mill property has several attributes that make it uniquely well suited to an Expedited VCP approach. For example, the facility has a relatively small footprint consisting of approximately 60 acres and is mostly paved. There are no landfills, lagoons, septic systems or underground storage tanks on the property, and the major components of the existing UNOX wastewater treatment system are above grade structures. Since the 1970s, a perimeter retaining wall has minimized the potential for off-site releases and the facility has been connected to the City of Tacoma's sanitary sewer system. Additionally, for decades, Ecology has regulated the mill

¹ RCW 70.105D.010(4).

² [Substitute House Bill 1290, Chapter 95, Laws of 2019.](#)

pursuant to air, wastewater, stormwater, and solid waste regulations and permits, and there is an extensive, existing database of information about environmental conditions at the property. In contrast, investigation and remedial work in sediments adjacent to the mill property will take considerably more time, resources, and coordination, and will involve technical assessments and implementation complications stemming from the location of the sediments in the Commencement Bay/Nearshore Tideflats ("CB/NT") Superfund Site.

Proceeding with operable units would accelerate investigation and potential cleanup and return the mill property to productive use, without precluding work in the sediments. Addressing cleanup sites in phases, including through property-specific and operable unit no further action determinations, is a well-known practice for expediting Brownfields cleanups, and has been embraced by Ecology.³

Ecology has the authority to proceed with operable units. "A remedial investigation may be conducted, or required by ecology to be conducted ... for separate parts of a site, such as a sediment cleanup unit as defined in WAC 173-204-505."⁴ Ecology commonly separates uplands from sediments, often addressing them under different programs and orders.

- Port Angeles Harbor. Ecology initiated a MTCA investigation in the Port Angeles Harbor in 2008. Rather than addressing upland and sediment sources in a single order, Ecology has implemented separate processes for upland sources and in sediments. Port Angeles Harbor includes at least five distinct cleanup areas and sites: Rayonier Mill Study Area; Western Port Angeles Harbor Study Area; Terminals 5 6 & 7 Uplands; K Ply; and Marine Trades Area.⁵
- Port Gamble. The Port Gamble Bay and Mill Site includes more than two square miles of subtidal and shallow intertidal habitat, and an upland area with a former sawmill. Ecology focused initially on cleanup of the in-water portion of the site, separating the in-water area into five designated sediment management areas. Following cleanup of the in-water

³ "To reflect changes in the marketplace and better achieve the purposes of the VCP, Ecology has decided to also provide opinions on the sufficiency of cleanups of individual parcels of real property located within sites." Ecology, Guidelines for Property Cleanups under the Voluntary Cleanup Program, Publication No. 08-09-044 at p. 1 (July 2015); *see also* Ecology, Washington State Brownfield Policy Recommendations, Publication No. 11-09-051, at p. 2-5 (Sept. 2011) ("Ecology has developed a policy to provide an NFA for a specific property to allow redevelopment within a larger contaminated site."); Ecology, Sediment Cleanup User's Manual, Publication No. 12-09-057, at p. 2-6 (Dec. 2021) (describing use of sediment cleanup units at sediment sites).

⁴ WAC 173-340-350(3)(b); WAC 173-340-351(3)(b).

⁵ *See, e.g.*, In re Port of Port Angeles et al., CSID 11907, Agreed Order No. DE9781, at pp. 10–11 (May 28, 2013) ("Any such upland sources identified under this Order will be addressed under separate actions, agreements, permits or orders."); In re Port of Port Angeles, Agreed Order No. DE 21560 (June 1, 2023) (requiring investigation at upland site in Western Port Angeles Harbor); Ecology, Western Port Angeles Harbor, available at <https://apps.ecology.wa.gov/cleanupsearch/site/11907>.

areas, Ecology started to address the mill uplands under a separate order starting in 2017.⁶

- Bellingham Bay (I&J Waterway, Whatcom Waterway, and Central Waterfront). Bellingham Bay is the location of several adjacent MTCA cleanup sites. The Port of Bellingham, for example, owns a 51-acre upland area known as the Central Waterfront Site, which is next to two sediment cleanup areas, the I&J Waterway and the Whatcom Waterway. Work in the sediments and in the uplands has proceeded under different pathways since the early 2000s.⁷

Separating the upland and sediment areas is appropriate based on site-specific conditions. The uplands area of the mill property has been used for the same purpose – pulp and papermaking – throughout its history. WestRock, IP, and Simpson operate, or have in the past operated, similar facilities throughout the country, and each company has a thorough understanding of the processes conducted and materials used on the Site. These factors will facilitate the preparation and implementation of a remedial investigation work plan for the uplands.

In contrast to the upland mill property, sediment investigations and cleanup actions are complex, which Ecology explicitly recognized when implementing the sediment management standards, WAC Chapter 173-204.

Sediments receive contaminants from diffuse sources such as air emissions and numerous point and nonpoint stormwater discharges. These types of sources are not easily distinguishable from one another and do not have distinct and identifiable depositional zones once they reach the aquatic environment. Unlike most upland environments, contaminants in sediment can be redistributed well beyond the source by currents, wave action, and biological and human activity such as bioturbation and propeller wash. This can result in contaminants from one source being distributed and mixed with

⁶ See, e.g., In re Pope Resources LP and Olympic Property Group LLC, CSID 3444, Agreed Order No. DE 15448, at p. 1 (Feb. 5, 2018) (“Ecology and the Companies expect to enter into a new consent decree that will cover Upland Area and be separate from the [2013] Consent Decree ... that required sediment remediation.”); State of Washington v. Pope Resources, LP, Consent Decree, at p. 3 (Kitsap Cnty. Super. Ct. Jan. 14, 2020) (“[T]his Decree requires Defendants to perform focused removal of contaminated soils, backfill with clean material, and place clean capping material on identified portions of the Upland Area ...”); Ecology, Port Gamble Bay and Mill Site, available at <https://apps.ecology.wa.gov/cleanupsearch/site/3444>.

⁷ See, e.g., In re the Port of Bellingham, CSID 2012, Agreed Order No. DE 22068, at p. 5 (Nov. 6, 2023) (“The Port agreed to continue the Olivine Hilton Upland area [(now part of the Central Waterfront site)] cleanup under the Voluntary Cleanup Program [and later agreed orders] and work with Ecology on the Olivine Hilton Sediment Site [(now the I&J Waterway site)] under an agreed order.”); Ecology, Bellingham Bay Cleanup, available at <https://ecology.wa.gov/spills-cleanup/contamination-cleanup/cleanup-sites/puget-sound/bellingham-bay>.

many other sources within an embayment or river, making it difficult to distinguish particular sources or releases.⁸

Ecology has suggested that historical releases to the Puyallup River, the St. Paul Waterway, and the Middle Waterway should be investigated and possibly remediated by WestRock, IP, and Simpson under MTCA; however, these areas potentially have been impacted by releases from countless sources over more than a century of development in the Tacoma waterfront. In addition to the complexity of identifying the potentially liable parties for releases of hazardous substances to sediments, the scope and timing of any work within the CB/NT Superfund Site also will be affected by the potentially large areal extent of the investigation, the seasonal limitations of work in sediments, and the need to coordinate with federal agencies, as discussed below. Although WestRock, IP, and Simpson do not believe that Ecology has identified a reasonable basis for requiring work in the sediments, depending on the scope of anticipated work, the process is likely to take substantially more time and effort than a MTCA action in the uplands.

Further action in the CB/NT Superfund Site poses special considerations. As you know, any investigation or cleanup work that Ecology may seek to require in the CB/NT Site sediments could only be done with EPA's involvement.⁹ The CB/NT Superfund Site includes, among other areas, "the Hylebos, Blair, Sitcum, Milwaukee, St. Paul, Middle, Wheeler-Osgood, and City waterways; the Puyallup River upstream to the Interstate-5 bridge; and the adjacent land areas."¹⁰ The CB/NT Superfund Site was added to the NPL in 1983 and has been investigated and remediated over several decades. The cleanup approved by EPA was based on the remediation of seven distinct "problem areas," including the St. Paul Waterway and the Middle Waterway, which were remediated under consent decrees with EPA. The CB/NT Superfund Site remains subject to ongoing five-year reviews by EPA. The last review was completed in 2020, and EPA is in the process of coordinating another review.

Apart from the Superfund site-specific considerations, work in the sediments requires additional federal approvals. The permit waiver provisions under MTCA do not apply to approvals such as Rivers and Harbors Act Section 10 permits, Clean Water Act Section 404 permits, and NPDES

⁸ Ecology, Concise Explanatory Statement, Chapter 173-204 WAC; Sediment Management Standards, Publication No. 13-09-044, at p. 27 (Feb. 2013).

⁹ The Comprehensive Environmental Response, Compensation, and Liability Act states that "no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized" by EPA. 42 U.S.C. § 9622(e)(6).

¹⁰ EPA, Commencement Bay Nearshore/Tideflats Record of Decision, at p. 5 (Sept. 1989).

permits.¹¹ Obtaining these federal approvals will extend the length of the investigation and (if needed) cleanup.¹²

In summary, attempting to manage the MTCA process under a single agreed order will prolong investigation and cleanup at the Tacoma mill property. This is not good for the community, the environment, Ecology or the parties performing the work. Additionally, Ecology's proposed approach presents several complicated legal issues relating to the CB/NT Superfund Site, which has long been considered a success story. Taking common-sense, environmentally protective steps to expeditiously return the mill property to productive use is in the best interests of all stakeholders, and the parties believe that the preferable approach to the Tacoma site would be to proceed with work in the uplands under the Expedited VCP and with work in the sediments under an order that is consistent with both federal and state law.

WestRock, IP and Simpson respectfully request that Ecology reconsider the issuance of a single agreed order under MTCA that would require a remedial investigation and feasibility study for both uplands and sediments. We are available to discuss this matter at your convenience.

Sincerely yours,

For WestRock CP, LLC

**For International Paper
Company**

**For Simpson Tacoma Kraft
Company, LLC**

By: 

By: 

By: 

Name: NINA RAUTAVA

Name: Brian E. Horn

Name: Kathryn Navarro

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¹¹ See, e.g., Toxics Cleanup Program, Policy 710A: Permit Exemptions for Remedial Actions under MTCA, Publication No. 15-09-339 (Nov. 2015) (acknowledging limits of the permit waiver provision under MTCA); Ecology, Sediment Cleanup User's Manual, Publication No. 12-09-057, at pp. 15-5 to 15-8 (Dec. 2021) (describing likely required permits for sediment work and review process, including "review of issues relating to wetlands; tribal treaty rights; threatened and endangered species; habitat impacts; historical/archeological resources; dredged material management; environmental impacts in accordance with NEPA; and other factors.").

¹² See also Toxics Cleanup Program, Policy 530A: Agreed Orders, Publication No. 16-09-069, Model Agreed Order, at p. 24 (Updated March 31, 2018) (requiring "permits or approvals" where MTCA permit exemption does not apply).