



FILED
COUNTY CLERK

2025 JUN 16 P 1:06

WHATCOM COUNTY
WASHINGTON

SCANNED 91

STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF BELLINGHAM, a
Washington Municipal Corporation; and
UNIVAR SOLUTIONS USA LLC, a
Washington limited liability corporation,

Defendants.

NO. 25 2 01160 37

CONSENT DECREE

TABLE OF CONTENTS

18	I.	INTRODUCTION	3
19	II.	JURISDICTION	4
20	III.	PARTIES BOUND	5
21	IV.	DEFINITIONS	5
22	V.	FINDINGS OF FACT	6
23	VI.	WORK TO BE PERFORMED.....	11
24	VII.	DESIGNATED PROJECT COORDINATORS.....	15
25	VIII.	PERFORMANCE.....	16
26	IX.	ACCESS	17
	X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY.....	18
	XI.	ACCESS TO INFORMATION	18
	XII.	RETENTION OF RECORDS	19
	XIII.	TRANSFER OF INTEREST IN PROPERTY	20

1	XIV.	RESOLUTION OF DISPUTES	20
2	XV.	AMENDMENT OF DECREE.....	22
3	XVI.	EXTENSION OF SCHEDULE.....	23
4	XVII.	ENDANGERMENT	24
5	XVIII.	COVENANT NOT TO SUE	25
6	XIX.	CONTRIBUTION PROTECTION	27
7	XX.	INDEMNIFICATION	27
8	XXI.	COMPLIANCE WITH APPLICABLE LAWS	27
9	XXII.	REMEDIAL ACTION COSTS	29
10	XXIII.	IMPLEMENTATION OF REMEDIAL ACTION.....	30
11	XXIV.	PERIODIC REVIEW	30
12	XXV.	PUBLIC PARTICIPATION.....	31
13	XXVI.	DURATION OF DECREE.....	32
14	XXVII.	CLAIMS AGAINST THE STATE	32
15	XXVIII.	EFFECTIVE DATE.....	33
16	XXIX.	WITHDRAWAL OF CONSENT.....	33

EXHIBIT A	Site Location Diagrams
EXHIBIT B	Cleanup Action Plan
EXHIBIT C	Upland Area Schedule

1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Defendant Univar Solutions USA LLC (Univar) and the Defendant Port of
4 Bellingham (Port) (collectively Defendants) under this Decree is to provide for remedial action
5 at a facility where there has been a release or threatened release of hazardous substances. This
6 Decree requires the Defendants to perform the remedial actions at the Upland area of the Harris
7 Avenue Shipyard (Site) in Bellingham, Washington, as depicted in Exhibit A, in accordance
8 with the Cleanup Action Plan (CAP) attached as Exhibit B to this Decree.

9 2. The remaining portion of the Site, the In-Water area, is not subject to the terms
10 and conditions of this Decree, nor is liability for that remaining portion of the Site addressed or
11 settled in this Decree.

12 3. The Parties anticipate that the remedial actions required under the Model Toxics
13 Control Act (MTCA), RCW 70A.305 et seq., at the In-Water Area will be performed under an
14 amendment to this Decree and the CAP.

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

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

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

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

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 8. 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 the Defendants shall not challenge the authority of the Attorney General
6 and Ecology to enforce this Decree.

7 9. 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 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 public meeting, Ecology finds the proposed settlement
16 would lead to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b)
17 requires that such a settlement be entered as a consent decree issued by a court of competent
18 jurisdiction.

19 3. Ecology has determined that a release or threatened release of hazardous
20 substances has occurred at the Site that is the subject of this Decree.

21 4. Ecology has given notice to the Defendants of Ecology's determination that
22 Defendants are PLPs for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

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

25 6. This Decree has been subject to public notice and comment.
26

1 in Exhibit A, Figure 3 as the Upland / Settlement Area. The Settlement Area does not
2 include the In-Water Area of the Site.

3 C. Consent Decree or Decree: Refers to this Consent Decree and each of the
4 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
5 Decree.

6 D. Defendants: Refers to the Port of Bellingham and Univar Solutions USA
7 LLC.

8 E. Parties: Refers to the State of Washington, Department of Ecology and
9 Defendants.

10 V. FINDINGS OF FACT

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

13 A. Based upon factors currently known to Ecology, the Site is generally
14 located at 201 Harris Avenue in Bellingham, Washington as shown in the Site Location
15 Diagram (Exhibit A, Figure 2). In June 2019, a Remedial Investigation for the Upland
16 Area of the Site found MTCA Site cleanup level (CUL) exceedances of metals and
17 organic compounds in groundwater, and metal and organic compounds in soil, as
18 depicted in Exhibit A, Figures 4–6.

19 B. Between approximately 1915 to 1966, Pacific American Corporation
20 owned the Port Uplands and leased the Harbor Areas from the Washington State
21 Department of Natural Resources (DNR). In 1966, Pacific American Corporation
22 transferred ownership of the Port Uplands to the Port and assigned to the Port its interests
23 in the Harbor Area leases. The Port continued to lease the state-owned portion of the
24 Harbor Areas from DNR from 1966 until 1997. Since 1997, the Port has managed the
25 state owned portion of the Harbor Areas under a Port Management Agreement (PMA)
26 signed with DNR. Neither the Port nor DNR conducted industrial operations at the Site.

1 C. In 1967, Pacific American Corporation merged with the company that is
2 now known as Univar.

3 D. Both the Port Uplands and Harbor Areas have been used by various
4 parties for shipbuilding and ship maintenance since approximately 1915 under various
5 leases to and from Pacific American Corporation, and from the Port and DNR. Entities
6 that conducted historic shipyard operations at the Site include: Pacific American
7 Fisheries (a.k.a. Pacific American Corporation and now part of Univar); Northwestern
8 Shipbuilding Company Post Point Marine, Inc. (a.k.a. Post Point Industries); Associated
9 Venture Capital, Inc.; Fairhaven Shipyard, Inc. and its parent company Weldit
10 Corporation (a.k.a., Fairhaven Industries); Maritime Contractors, Inc.; and Bellingham
11 Bay Shipyard. Such shipyard operations used or produced various hazardous substances,
12 including but not limited to metals and organic compounds.

13 E. Other historical uses at the Site have included vessel moorage, bulk fuel
14 and oil storage, shipbuilding, and ship repair activities. During the 1930s and 1940s, a
15 100,000 gallon above ground storage tank (AST) was present on the Port Uplands near
16 the main dock. The tank was labeled "Union Oil." This AST was used for bulk fuel
17 storage and distribution.

18 F. The Site has been leased by Fairhaven Industrial Marine Repair Facility,
19 LLC since 2021 for uses such as a marine repair and manufacturing facility, lay berth of
20 vessels, and commercial fish processing operations, and subleased to Sayak Logistics,
21 LLC, d/b/a Northline Seafoods, for mooring the vessel known as the Hannah,
22 construction work on the Hannah, and ancillary uses consistent with the vessel work.
23 Prior to these uses, the Site was occupied by Puglia Engineering, Inc., which operated a
24 shipyard under lease with the Port. Puglia Engineering, Inc. vacated the property in 2019.

25 G. In 1993, Ecology conducted sediment sampling at the Site. This sampling
26 confirmed the presence of hazardous substances (arsenic, copper, lead, zinc, tributyltin,

1 polychlorinated biphenyls, and phenols) in sediments at the Site. Based on that sampling,
2 Ecology added the Site to its list of Confirmed and Suspected Contaminated Sites. At
3 that time, Ecology issued Early Notice Letters to the Port and to Maritime Contractors,
4 Inc.

5 H. In 1995, Ecology conducted a Site Hazard Assessment and placed the Site
6 on the Hazardous Site List. The Site was ranked number "2," where 1 represents the
7 highest relative risk and 5 the lowest. In 1996, Ecology listed the Site on its Sediment
8 Management Standards Contaminated Sediment Site List.

9 I. The Port previously performed work at the Site under Ecology's
10 Voluntary Cleanup Program. This work included the following activities:

11 1. During 1998, the Port implemented Phase 2 Sediment Sampling
12 at the Site.

13 2. During 1998, the Port conducted Phase 2 Sampling of Soil and
14 Groundwater at the Site.

15 3. Between 1998 and 2002, the Port in coordination with DNR
16 conducted additional studies at the Site, including preparation of a draft
17 investigation and feasibility study for site sediments.

18 J. In 2002, Ecology notified the Port and DNR that they are PLPs for the
19 Site, including both the Port Uplands and Harbor Areas (including the sediments) of the
20 Site.

21 K. In 2003, the Port and Ecology entered into Agreed Order No. DE
22 03TCPBE-5670 (2003 AO) in which the Port agreed to perform a remedial investigation
23 and feasibility study for the sediments at the Site (the Sediment RI/FS) under formal
24 oversight.

25 L. Additional sediment sampling, along with some limited upland sampling,
26 was performed and a Draft Sediment RI/FS was prepared under the 2003 AO; however,

1 the Ecology review process for the report was not completed and the document was not
2 finalized.

3 M. In 2007, Ecology and the Port agreed to expand the scope of work
4 performed at the Site to provide a site-wide RI/FS that addressed the full extent of
5 contamination (both the upland and sediment portions) at the Site.

6 N. On March 22, 2010, Ecology and the Port entered into the 2010 Order that
7 required the Port to perform a remedial investigation/feasibility study (RI/FS) for the
8 Site.

9 O. Remedial investigation sampling and data collection was conducted at the
10 Site between March 2011 and 2016.

11 P. On July 11, 2016, Ecology and the Port amended the 2010 Order. This
12 first amendment to the 2010 Order modified the schedule set forth in the 2010 Order and
13 required the Port to perform an Interim Action at the Site.

14 Q. From 2017 through 2018, the Port conducted an Interim Action at the Site.
15 The Interim Action work included:

- 16 • Demolition and removal of the wooden portion of the Harris Avenue Pier and the
17 Carpenter Building and its supporting pier (including the East Marine Walkway).
- 18 • Dredging in subtidal sediment at and near the Harris Avenue Pier to cleanup
19 levels or remediation goals identified in the Interim Action Work Plan.
- 20 • Removal of contaminated intertidal sediments at and near the Harris Avenue Pier
21 to approximately 3 feet below the mudline and capping of the intertidal areas with
22 clean fill to match existing grades.
- 23 • Shallow surface soil excavation (typically less than 4 feet deep) and backfilling
24 with clean fill in the upland area of the shipyard in the vicinity of the Harris
25 Avenue Pier and the Carpenter Building and its supporting pier.
- 26 • Construction of a sheet pile bulkhead and a new concrete pier in the location of
the existing wooden portion of the Harris Avenue Pier to restore existing
functions and maintain site operations.
- Reconstruction of the East Marine Walkway on the east side of the marine railway
to restore prior functions.

1 R. The Port previously performed work at the Site under Ecology's
2 Voluntary Cleanup Program. This work included the following activities:

3 1. During 1998, the Port implemented Phase 2 Sediment Sampling
4 at the Site.

5 2. During 1998, the Port conducted Phase 2 Sampling of Soil and
6 Groundwater at the Site.

7 3. Between 1998 and 2002, the Port, in coordination with DNR,
8 conducted additional studies at the Site, including preparation of a draft RI/FS for
9 site sediments.

10 S. In June 2019, an RI/FS for the Site, prepared by Floyd | Snider, was
11 finalized after public notice and opportunity to comment. The RI found MTCA Site CUL
12 exceedances of metals, PCBs, and organic compounds in sediment, metals and organic
13 compounds in groundwater, and metals and organic compounds in soil.

14 T. On March 4, 2021, the Port and Ecology entered into Agreed Order No.
15 DE 19450, which required the Port to complete the design of the cleanup action described
16 in the Draft CAP (DCAP) (2021 AO). The DCAP, which became the final CAP without
17 further edits, was an exhibit to the 2021 AO after public notice and an opportunity to
18 comment.

19 U. Release(s) and/or potential release(s) of hazardous substances occurred at
20 the Site. The following hazardous substances at the Upland area of the Site have been
21 detected at concentrations above MTCA CULs: arsenic, copper, zinc, and 1-
22 methylnaphthalene in groundwater; and arsenic copper, zinc, total petroleum
23 hydrocarbons in the soil. These hazardous substances have been, and may continue to be,
24 released at the Site into the environment including soil and groundwater.

25 V. As documented in the CAP (Exhibit B), Ecology has chosen a final
26 cleanup action to be implemented at the Site.

1 3. To effectuate the work to be performed under this Decree in the most efficient
2 manner, the Port has elected to take the lead in performing various aspects of the work required
3 under this Decree. Language in this Decree, and the exhibits attached hereto, may reflect this
4 agreement among the Defendants. However, the Defendants remain strictly, jointly, and
5 severally liable for the performance of any and all obligations under this Decree. In the event the
6 party identified as a lead should fail to timely and properly complete performance of all or any
7 portion of its work, all Defendants must perform that remaining work, if any.

8 4. All plans or other deliverables submitted by Defendants for Ecology's review and
9 approval under the CAP (Exhibit B) or Schedule (Exhibit C) shall, upon Ecology's approval,
10 become integral and enforceable parts of this Decree.

11 5. If Defendants learn of a significant change in conditions at the Site, including but
12 not limited to a statistically significant increase in contaminant and/or chemical concentrations
13 in soil or groundwater media, Defendants, within seven (7) days of learning of the change in
14 condition, shall notify Ecology in writing of said change and provide Ecology with any reports
15 or records (including laboratory analyses, sampling results) relating to the change in conditions.

16 6. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and
17 adequate financial assurance mechanisms to cover all costs associated with the operation and
18 maintenance of the remedial action at the Settlement Area, including institutional controls,
19 compliance monitoring, and corrective measures.

20 A. Within sixty (60) days of the effective date of this Decree, Defendants
21 shall submit to Ecology for review and approval an estimate of the costs associated with
22 the operation and maintenance of the remedial action at the Settlement Area that it will
23 incur in carrying out the terms of this Decree. Within sixty (60) days after Ecology
24 approves the aforementioned cost estimate, Defendants shall provide proof of financial
25 assurance sufficient to cover those costs in a form acceptable to Ecology.
26

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

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

8 ii. Changes in cost estimates, within thirty (30) days of issuance of
9 Ecology's approval of a modification or revision to the CAP that result in
10 increases to the cost or expected duration of remedial actions. Any adjustments
11 for inflation since the most recent preceding anniversary date shall be made
12 concurrent with adjustments for changes in cost estimates. The issuance of
13 Ecology's approval of a revised or modified CAP will revise the anniversary date
14 established under this section to become the date of issuance of such revised or
15 modified CAP.

16 C. The Financial Assurance Officer for Ecology shall work with the project
17 coordinators to review and approve financial assurance coverage pursuant to this Decree
18 and make determinations on any adjustments necessary based on the annual reporting.
19 As of the execution date of this Decree, Ecology's Financial Assurance Officer is Joanna
20 Seymour, 360-485-5992 or Joar461@ecy.wa.gov.

21 7. As detailed in the CAP, institutional controls are required at the Settlement Area.
22 Environmental (Restrictive) Covenants or an Ecology-approved alternative system will be used
23 to implement the institutional controls.

24 A. In consultation with Defendants, Ecology will prepare the Environmental
25 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any
26

1 policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants
2 shall restrict future activities and uses of the Site as agreed to by Ecology and Defendants.

3 B. After approval by Ecology, Defendants shall record the Environmental
4 (Restrictive) Covenant for affected properties it owns with the office of the Whatcom
5 County Auditor as detailed in the Schedule (Exhibit C). Defendants shall provide
6 Ecology with the original recorded Environmental (Restrictive) Covenants within thirty
7 (30) days of the recording date.

8 C. As detailed in the CAP, as part of the remedial action for the Site,
9 institutional controls are required on properties not owned by Defendants. Defendants
10 will ensure that the owner of each affected property records an Ecology-approved
11 Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a
12 showing that Defendants has made a good faith effort to secure an Environmental
13 (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide
14 assistance to Defendants. Unless Ecology determines otherwise, affected properties
15 include the Upland area of the Site that is generally located at 201 Harris Avenue in
16 Bellingham, Washington. Defendants shall provide Ecology with the original recorded
17 Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

18 8. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
19 written monthly Progress Reports that describe the actions taken during the previous month to
20 implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth
21 (10th) day of the month in which they are due after the effective date of this Decree. Unless
22 otherwise specified in writing by Ecology, Progress Reports and any other documents submitted
23 pursuant to this Decree shall be sent electronically to Ecology's project coordinator. The
24 Progress Reports shall include the following:

- 25 A. A list of on-site activities that have taken place during the month.
26 B. Description of any sample results which deviate from the norm.

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

3 D. Description of all deviations from the work performed under the CAP
4 and/or Schedule (Exhibits B and C) during the current month and any planned deviations
5 in the upcoming month.

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

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

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

12 9. Except in the case of an emergency, Defendants agree not to perform any
13 remedial actions at the Site outside the scope of this Decree without prior written approval of
14 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial
15 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
16 emergency.

17 **VII. DESIGNATED PROJECT COORDINATORS**

18 1. The project coordinator for Ecology is:

19 John Rapp
20 913 Squalicum Parkway, Suite 101
21 Bellingham, WA 98225-2078
22 206-247-3242
23 john.rapp@ecy.wa.gov

24 2. The project coordinator for Defendants is:

25 Brian Gouran
26 Port of Bellingham
1801 Roeder Ave.
Bellingham, WA 98227
360-676-2500
briang@portofbellinham.com

1 **X. 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 WAC 173-340-
5 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
6 accordance with paragraph 8 of Section VI (Work to be Performed), 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 Site. 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 IX (Access), Ecology shall notify Defendants in writing by electronic mail prior to any
17 sample collection activity 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 **XI. ACCESS TO INFORMATION**

22 1. The Defendants shall provide to Ecology, upon request, copies of all records,
23 reports, documents, and other information (including records, reports, documents, and other
24 information in electronic form) (hereinafter referred to as “Records”) within the Defendants’
25 possession or control or that of their contractors or agents relating to activities at the Site or to
26 the implementation of this Decree, including, but not limited to, sampling, analysis, chain of

1 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
2 correspondence, or other documents or information regarding the work. Defendants shall also
3 make available to Ecology, for purposes of investigation, information gathering, or testimony,
4 their employees, agents, or representatives with knowledge of relevant facts concerning the
5 performance of the work.

6 2. Nothing in this Decree is intended to waive any right Defendants may have under
7 applicable law to limit disclosure of Records protected by the attorney work-product privilege
8 and/or the attorney-client privilege. If Defendants withhold any requested Records based on an
9 assertion of privilege, Defendants shall provide Ecology with a privilege log specifying the
10 Records withheld and the applicable privilege. No Site-related data collected pursuant to this
11 Decree shall be considered privileged, including: (1) any data regarding the Site, including, but
12 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,
13 radiological, biological, or engineering data, or the portion of any other record that evidences
14 conditions at or around the Site; or (2) the portion of any Record that Defendants are required to
15 create or generate pursuant to this Order.

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

19 **XII. RETENTION OF RECORDS**

20 1. During the pendency of this Decree, and for ten (10) years from the date this
21 Decree is no longer in effect as provided in Section XXVI (Duration of Decree), Defendants
22 shall preserve all records, reports, documents, and underlying data in its possession relevant to
23 the implementation of this Decree and shall insert a similar record retention requirement into all
24 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall
25 make all records available to Ecology and allow access for review within a reasonable time.
26

1 dispute; Ecology's position with regards to the dispute; and the extent of resolution
2 reached by informal discussion.

3 C. Defendant(s) may then request regional management review of the
4 dispute. Defendant(s) must submit this request (Formal Dispute Notice) in writing to the
5 Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of
6 receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include
7 a written statement of dispute setting forth: the nature of the dispute; the disputing Party's
8 position with respect to the dispute; and the information relied upon to support its
9 position.

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

13 E. If Defendant(s) finds Ecology's Regional Section Manager's decision of
14 the disputed matter unacceptable, Defendant(s) may then request final management
15 review of that decision. Defendant(s) must submit this request (Final Review Request)
16 in writing to the Toxics Cleanup Program Manager within seven (7) calendar days of
17 Defendant's receipt of the Decision on Dispute. The Final Review Request shall include
18 a written statement of dispute setting forth: the nature of the dispute; the disputing
19 Defendant's position with respect to the dispute; and the information relied upon to
20 support its position.

21 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
22 the dispute and shall issue a written decision regarding the dispute (Final Decision on
23 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
24 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
25 disputed matter.
26

1 C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
2 or other unavoidable casualty.

3 D. Endangerment as described in Section XVII (Endangerment).

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

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

13 5. At Defendants' request an extension shall only be granted for such period of time
14 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
15 extensions exceeding ninety (90) days only as a result of one of the following:

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

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

19 C. Endangerment as described in Section XVII (Endangerment).

20 **XVII. ENDANGERMENT**

21 1. In the event Ecology determines that any activity being performed at the Site
22 under this Decree is creating or has the potential to create a danger to human health or the
23 environment, Ecology may direct Defendants to cease such activities for such period of time as
24 it deems necessary to abate the danger. Defendants shall immediately comply with such
25 direction.

- 1 A. Criminal liability.
- 2 B. Liability for damages to natural resources.
- 3 C. Any Ecology action, including cost recovery, against PLPs not a party to
- 4 this Decree.

5 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not

6 to Sue if factors not known at the time of entry of this Decree are discovered and present a

7 previously unknown threat to human health or the environment.

8 3. Reopeners: Ecology specifically reserves the right to institute legal or

9 administrative action against Defendants to require it to perform additional remedial actions at

10 the Settlement Area and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050,

11 under any of the following circumstances:

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

13 B. Failure of the remedial action to meet the cleanup standards identified in

14 the CAP (Exhibit B).

15 C. Upon Ecology's determination that remedial action beyond the terms of

16 this Decree is necessary to abate an imminent and substantial endangerment to human

17 health or the environment.

18 D. Upon the availability of information previously unknown to Ecology

19 regarding Settlement Area factors including the nature, quantity, migration, pathway, or

20 mobility of hazardous substances, and Ecology's determination, in light of this

21 information, that further remedial action is necessary at the Settlement Area to protect

22 human health or the environment.

23 E. Upon Ecology's determination that additional remedial actions are

24 necessary to achieve cleanup standards within the reasonable restoration time frame set

25 forth in the CAP.

26

1 or the Defendants, Ecology will document in writing if they are applicable to actions carried out
2 pursuant to this Decree, and the Defendants must implement those requirements.

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

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

19 4. Defendants have a continuing obligation to determine whether additional permits
20 or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
21 action under this Decree. In the event either Ecology or Defendants determine that additional
22 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
23 remedial action under this Decree, it shall promptly notify the other party of its determination.
24 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
25 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
26 with the appropriate state and/or local agencies and provide Ecology with written documentation

1 of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
2 monthly.

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

6 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

7 1. If Ecology determines that the Defendants have failed to make sufficient progress
8 or failed to implement the remedial action, in whole or in part, Ecology may, after written notice
9 to Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow
10 the Defendants opportunity to correct. In an emergency, Ecology is not required to provide notice
11 to Defendants, or an opportunity for dispute resolution. The Defendants shall reimburse Ecology
12 for the costs of doing such work in accordance with Section XXII (Remedial Action Costs).

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

21 **XXIV. PERIODIC REVIEW**

22 1. So long as remedial action continues at the Site, the Parties agree to review the
23 progress of remedial action at the Site, and to review the data accumulated as a result of
24 monitoring the Site as often as is necessary and appropriate under the circumstances. Unless
25 otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action
26 at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further

1 remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendants
2 shall submit a report to Ecology that documents whether human health and the environment are
3 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
4 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
5 under appropriate circumstances. This provision shall remain in effect for the duration of this
6 Decree.

7 **XXV. PUBLIC PARTICIPATION**

8 1. Ecology shall maintain the responsibility for public participation at the Site.
9 However, Defendants shall cooperate with Ecology, and shall:

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

16 B. Notify Ecology's project coordinator prior to the preparation of all press
17 releases and fact sheets, and before meetings related to remedial action work to be
18 performed at the Site with the interested public and/or local governments. Likewise,
19 Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets
20 related to remedial action work to be performed at the Site, and before meetings related
21 to remedial action work to be performed at the Site with the interested public and/or local
22 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
23 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate
24 to its audience that the press release, fact sheet, meeting, or other outreach effort was not
25 sponsored or endorsed by Ecology.
26

1 C. When requested by Ecology, participate in public presentations on the
2 progress of the remedial action at the Site. Participation may be through attendance at
3 public meetings to assist in answering questions, or as a presenter.

4 E. When requested by Ecology, arrange and/or continue information
5 repositories at the following locations:

- 6 i. Bellingham Public Library
7 210 Central Avenue
8 Bellingham, Washington 98225

9 At a minimum, copies of all public notices, fact sheets, and documents relating to public
10 comment periods shall be promptly placed in this repository. A copy of all documents
11 related to this Site shall be maintained at Ecology's Northwest Region Office in
12 Shoreline, Washington.

12 **XXVI. DURATION OF DECREE**

13 1. The remedial program required pursuant to this Decree shall be maintained and
14 continued until Defendants have received written notification from Ecology that the
15 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
16 effect until dismissed by the Court. When dismissed, Section XII (Retention of Records),
17 Section XVIII (Covenant Not to Sue), Section XIX (Contribution Protection), Section XX
18 (Indemnification), and Section XXVII (Claims Against the State) shall survive.

19 **XXVII. CLAIMS AGAINST THE STATE**

20 1. Defendants hereby agree that it will not seek to recover any costs accrued in
21 implementing the remedial action required by this Decree from the State of Washington or any
22 of its agencies; and further, that Defendants will make no claim against the State Toxics Control
23 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
24 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
25 Except as provided above, however, Defendants expressly reserve its right to seek to recover
26

1 any costs incurred in implementing this Decree from any other PLP. This section does not limit
2 or address funding that may be provided under WAC 173-322A.

3 **XXVIII. EFFECTIVE DATE**

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

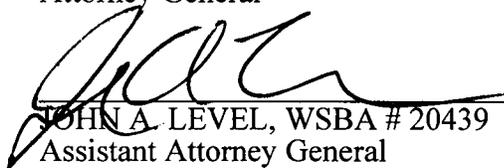
5 **XXIX. WITHDRAWAL OF CONSENT**

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

10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY

NICHOLAS W. BROWN
Attorney General

12 
13 _____
14 NHI IRWIN
15 Program Manager
16 Toxics Cleanup Program
17 360-791-5514


13 _____
14 JOHN A. LEVEL, WSBA # 20439
15 Assistant Attorney General
16 360-586-6753

17 Date: 6/3/25

Date: 6/4/25

18 PORT OF BELLINGHAM

UNIVAR SOLUTIONS USA LLC

19 _____
20 ROBERT FIX
21 Executive Director
22 Port of Bellingham
23 360-676-2500

ALEXA COLIN
General Counsel
Univar Solutions USA LLC
331-777-6070

24 Date: _____

25 //

26 //

//

1 any costs incurred in implementing this Decree from any other PLP. This section does not limit
2 or address funding that may be provided under WAC 173-322A.

3 **XXVIII. EFFECTIVE DATE**

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

5 **XXIX. WITHDRAWAL OF CONSENT**

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

10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY

NICHOLAS W. BROWN
Attorney General

12
13 _____
14 NHI IRWIN
15 Program Manager
16 Toxics Cleanup Program
17 360-791-5514

13 _____
14 JOHN A. LEVEL, WSBA # 20439
15 Assistant Attorney General
16 360-586-6753

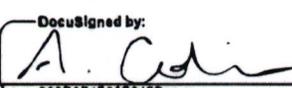
16 Date: _____

16 Date: _____

17 PORT OF BELLINGHAM

UNIVAR SOLUTIONS USA LLC

18 

18 DocuSigned by:


19 ROBERT FIX
20 Executive Director
21 Port of Bellingham
22 360-676-2500

19 ALEXA COLVIN
20 General Counsel
21 Univar Solutions USA LLC
22 331-777-6070

22 Date: 4/1/25

22 Date: April 7, 2025

23 //

24 //

25 //

26

1 ENTERED this 16 day of June 2025.

2
3 
4 JUDGE
5 Whatcom County Superior Court
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26