

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Georgia-Pacific Corporation

**AGREED ORDER FOR INTERIM
ACTION**

NO. 02TCPHQ-3966

TO: Georgia-Pacific Corporation
133 Peachtree Street N.E.
P.O. Box 105605
Atlanta, Georgia 30348-5605

I.

JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of
RCW 70.105D.050(1).

II.

FINDINGS OF FACT

The Department of Ecology (hereinafter "Ecology") makes the following Findings of Fact, without admission of such facts by Georgia-Pacific Corporation (hereinafter "G-P").

1. G-P has owned and operated a pulp and paper mill in Bellingham, Washington, located directly adjacent to the Whatcom Waterway Site, since the 1960's.
2. From 1965 through 1979, G-P discharged wastewater containing mercury to the Whatcom Waterway from G-P's chlor-alkali plant located at its pulp and paper mill.
3. Pursuant to the conduct of a Remedial Investigation/Feasibility Study (RI/FS) of the Whatcom Waterway Site performed under Agreed Order Number DE 95TC-N399, sediments at the Whatcom Waterway Site have been determined to contain hazardous substances including mercury and phenol.
4. An interim action is necessary to collect data to be used to design cleanup actions for the Whatcom Waterway Site.

III.

ECOLOGY DETERMINATIONS

1. G-P is an "owner or operator" as defined at RCW 70.105D.020(12) of a portion of the Whatcom Waterway Site, and G-P is a generator as defined at RCW 70.105D.040(1)(c).
2. Mercury and phenol found at the Whatcom Waterway Site are "hazardous substances" as defined at RCW 70.105D.020(7).

3. Based on the presence of hazardous substances at the Site and all factors known to the Department, there is a release or threatened release of hazardous substances from the Site, as defined at RCW 70.105D.020(20).

4. By letter dated March 6, 1995, Ecology notified G-P of its status as a "potentially liable person" for the Whatcom Waterway Site under RCW 70.105D.040 after notice and opportunity for comment.

5. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

6. G-P has completed a Remedial Investigation and Feasibility Study pursuant to Agreed Order No. DE 95TC-N399.

7. G-P has completed construction requirements for a combined interim remedial action and habitat restoration of the G-P Log Pond pursuant to Agreed Order No. 00TCPNR-1418. Environmental monitoring of the Log Pond is ongoing.

8. Based on the foregoing facts, Ecology believes the interim remedial action required by this Order is in the public interest.

IV.

WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, Ecology and G-P agree that G-P will take the following interim remedial actions and that these actions be conducted in accordance with the Model Toxics Control Act (MTCA; Chapter 173-340 WAC), and

the Sediment Management Standards (SMS; Chapter 173-204 WAC), unless otherwise specifically provided for herein.

1. Purpose and Scope of the Interim Remedial Work (the "Work").

The purpose of the Work will be to collect data to be used to design the cleanup action for the Whatcom Waterway Site and associated sites in Bellingham Bay. The need for sediment remedial action at the Site is described in detail in the Final Whatcom Waterway Site RI/FS and Draft Supplement Whatcom Waterway Site FS, hereby incorporated into this Agreed Order by reference.

2. Description of the Work.

The Work to be performed by G-P is a pre-remedial design evaluation, to inform remedial design of all potential remedies evaluated in the Final Whatcom Waterway Site RI/FS and Draft Supplement Whatcom Waterway Site FS, as well as in the Final Bellingham Bay Comprehensive Strategy Environmental Impact Statement (EIS) and Draft Supplemental EIS, as they pertain to the Whatcom Waterway Site. The Work will consist of the following elements:

- a. Using chemical and biological testing procedures, refine the areal boundaries of sediments exceeding Sediment Quality Standards (SQS) as defined in Chapter 173-204 WAC, as basis for subsequent remedial design;
- b. Working with and through the Puget Sound Dredge Material Management Office (DMMO), determine whether certain sediments located in the outer Whatcom Waterway channel area (units 1A and 1B described in the EIS), may be suitable for beneficial reuse; and
- c. Perform appropriate elutriate, thin-column leaching, and column settling tests of prospective dredge materials, to be used as a basis for subsequent

remedial design of dredging and disposal actions, including disposal of sediments in a local confined disposal facility (e.g., G-P Aerated Stabilization Basin or Cornwall Confined Aquatic Disposal).

The Work to be performed includes work plan preparation, sampling/analysis, and reporting tasks.

A. Pre-Remedial Design Work Plan.

The Pre-remedial design work plan will describe planning activities and specific sampling/analysis activities to be performed under this Order. The draft work plan will include a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP), or amendments to the existing Whatcom Waterway RI/FS SAP and QAPP, that describes in detail the procedures to be used. A project implementation schedule will be included in the draft work plan.

The draft work plan (with SAP, QAPP and schedule) shall serve as the final work plan if Ecology has no further comments and issues the notice to proceed. Otherwise, the final work plan shall fully address all comments made to the draft work plan.

B. Sampling and Analysis Activities.

Sampling and analysis activities will be performed as set forth in the final work plan.

C. Data Report.

After receipt of validated sampling and analysis data, G-P will submit a data report that presents the pre-remedial design data collected under this Order. All sediment data will be provided to Ecology in SEDQUAL format. Other data will be provided in EIM format.

D. Schedule for Submission of Major Deliverables.

To support overall coordination and schedule objectives of this project, Ecology will endeavor to perform review of deliverables as quickly as practicable. The schedule for submission of deliverables described in this Order is presented below:

Submission	Due Date
1. Draft Work Plan	Fourteen (14) days after Ecology's Notice to G-P to Proceed Under this Order
2. Final Work Plan	Fourteen (14) days after receipt of Ecology's comments on the Draft Work Plan
3. Field Sampling and Laboratory Analysis	As set forth in the Final Work Plan Schedule
4. Draft Data Report	Sixty (60) days after receipt of all validated data, or as set forth in the Final Work Plan Schedule
5. Final Data Report	Thirty (30) days after receipt of Ecology's comments on the Draft Data Report

V.

TERMS AND CONDITIONS OF THE ORDER

1. Definitions.

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

Pursuant to RCW 70.105D.030(2)(a), this Order shall be subject to concurrent public notice.

Ecology shall be responsible for providing such concurrent public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

G-P shall pay costs incurred by Ecology pursuant to oversight of this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). G-P shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request.

Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges of _____.

4. Designated Project Coordinators.

The project co-coordinators for Ecology are:

Ms. Lucille T. Pebles and Mr. Peter Adolphson
Washington Department of Ecology
Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7272 ; (360) 407-7557
e-mail: lpeb461@ecy.wa.gov ; pado461@ecy.wa.gov

The project coordinator for G-P is:

Mr. R. J. "Chip" Hilarides
Field Services Manager
Georgia-Pacific Corporation
300 West Laurel Street
Bellingham, WA 98225
Phone: (360) 647-5695
e-mail: rjhilari@gapac.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and G-P, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or G-P change project coordinator(s), written notification shall be provided to Ecology or G-P at least ten (10) calendar days prior to the change.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. G-P shall notify Ecology as to the identity of such engineer(s) or expert(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Whatcom Waterway Site. G-P shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, G-P shall not perform any remedial actions at the Whatcom Waterway Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access.

Ecology or any Ecology authorized representative shall have the authority to access the Whatcom Waterway Site and any associated work areas at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by G-P. By signing this Agreed Order, G-P agrees that this Order constitutes reasonable notice of access, and agrees to allow access at all reasonable times for purposes of overseeing work performed

under this Order. As necessary, Ecology shall allow split or replicate samples to be taken by G-P during an inspection unless doing so interferes with Ecology's sampling.

G-P shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation.

Public Participation shall adhere to the Whatcom Waterway Site Public Participation Plan dated February 1996. Ecology shall maintain the responsibility for public participation and G-P shall help coordinate and implement public participation.

8. Retention of Records.

G-P shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of G-P, then G-P agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

G-P may request Ecology to resolve disputes that may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. G-P is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement.

This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against G-P to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against G-P to require those remedial actions required by this Agreed Order, provided G-P complies with this Agreed Order.

11. Transference of Property.

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Whatcom Waterway Site shall be consummated by G-P without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest G-P may have in the Log Pond or any portions thereof, G-P shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, G-P shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by G-P pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV and are binding and enforceable requirements of the Order.

G-P has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event G-P determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or G-P shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, G-P shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by G-P and on how G-P must meet those requirements. Ecology shall inform G-P in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. G-P shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunities for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and G-P shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon G-P's receipt of written notification from Ecology that G-P has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

ENFORCEMENT

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to this Agreed Order.

C. In the event G-P refuses, without sufficient cause, to comply with any term of this Order, G-P will be liable for:

(1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and

(2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: _____

GEORGIA-PACIFIC
CORPORATION

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By James W. Cunningham
James W. Cunningham

By Steven M. Alexander

General Manager
Georgia-Pacific West, Inc.

Steven M. Alexander
Section Manager
Toxics Cleanup Program
Regional Manager -Northwest
Regional Office

Date May 17, 2002

Date May 30, 2002