

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SKAGIT COUNTY, WASH
FILED

MAR 24 2003

NANCY K. SCOTT, CO CLERK
By: _____ Deputy

**STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT**

03 2 00492 1

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO.

**ORDER ENTERING CONSENT
DECREE**

Having reviewed the Consent Decree signed by the parties to this matter, the Motion for Entry of the Consent Decree, the Declaration of Michael L. Dunning, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 24 day of March, 2003.

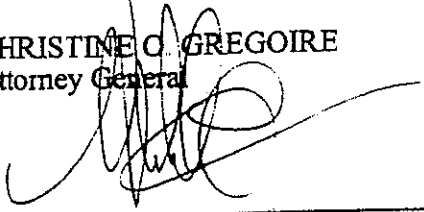
JOHN M. MEYER

JUDGE/COMMISSIONER
Skagit County Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

CHRISTINE C. GREGOIRE
Attorney General



MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 586-6752

DATED: March 20, 2003

2003 MAR 21 AM 10:44

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO. **03 2 00492 1**

MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, Washington State Department of Ecology (Ecology), represented by Christine O. Gregoire, Attorney General, and Michael L. Dunning, Assistant Attorney General, brings this Motion seeking entry of the attached Consent Decree. This Motion is based upon the pleadings filed in this matter, including the Declaration of Michael L. Dunning.

II. RELIEF REQUESTED

Ecology requests that the Court approve and enter the attached Consent Decree with Defendant Port of Anacortes that requires remedial investigations and cleanup at the Former Scott Paper Mill Site (Site), where there has been a release of hazardous substances. Ecology also requests that the Court retain jurisdiction over this action until the action required by the Consent Decree is completed and the parties request a dismissal of this action.

1
2
3
4
5
6
7
8

III. AUTHORITY

RCW 70.105D.030 authorizes Ecology to issue such orders as may be necessary to effectuate the purposes of the Model Toxics Control Act, RCW 70.105D, and to enter into consent decrees through judicial proceedings. In addition, RCW 70.105D.040(4) authorizes the Attorney General to agree to a settlement with a potentially liable person and to request that the settlement be entered as a consent decree in the superior court of the county where a violation is alleged to have occurred.

9
10
11
12

IV. CONCLUSION

Ecology believes it is appropriate for the Court to exercise its judicial discretion and approve the attached Consent Decree, and hereby requests that the Court enter the attached Order.

DATED this 20th day of MARCH, 2003.

13
14
15
16
17
18
19
20
21
22
23
24
25
26


CHRISTINE C. GREGOIRE
Attorney General

MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 586-6753

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SKAGIT COUNTY, WASH
FILED

MAR 24 2003

NANCY K. SCOTT, CO. CLERK

By: Deput

**STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO. **03 2 00492 1**

CONSENT DECREE

TABLE OF CONTENTS

17	I. INTRODUCTION	1
18	II. JURISDICTION	2
19	III. PARTIES BOUND	3
20	IV. DEFINITIONS	3
21	V. STATEMENT OF FACTS	5
22	VI. WORK TO BE PERFORMED	11
23	VII. DESIGNATED PROJECT COORDINATORS	14
24	VIII. PERFORMANCE	15
25	IX. ACCESS	15
26	X. SAMPLING, DATA REPORTING, AND AVAILABILITY	16

1	XI. PROGRESS REPORTS.....	16
2	XII. RETENTION OF RECORDS	17
3	XIII. TRANSFER OF INTEREST IN PROPERTY	17
4	XIV. RESOLUTION OF DISPUTES.....	18
5	XV. AMENDMENT OF CONSENT DECREE	19
6	XVI. EXTENTION OF SCHEDULE.....	20
7	XVII. ENDANGERMENT	21
8	XVIII. OTHER ACTIONS.....	22
9	XIX. INDEMNIFICATION	23
10	XX. COMPLIANCE WITH APPLICABLE LAWS	23
11	XXI. REMEDIAL AND INVESTIGATIVE COSTS	24
12	XXII. IMPLEMENTATION OF REMEDIAL ACTION.....	25
13	XXIII. PUBLIC PARTICIPATION	25
14	XXIV. CONTRIBUTION PROTECTION.....	26
15	XXV. RESERVATION OF RIGHTS	27
16	XXVI. CLAIMS AGAINST THIRD PARTIES	27
17	XXVII. COVENANT NOT TO SUE	27
18	XXVIII. DURATION OF DECREE.....	28
19	XXIX. FIVE YEAR REVIEW	29
20	XXX. CLAIMS AGAINST THE STATE.....	29
21	XXXI. EFFECTIVE DATE	29
22	XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT	29
23	Exhibit A – Site Diagram	
24	Exhibit B – Property Map	
25	Exhibit C – Scope of Work	
26	Exhibit D – Deliverables and Schedule	

1 I. INTRODUCTION

2 A. This Consent Decree ("Decree") is made and entered into by and between the
3 Washington State Department of Ecology ("Ecology"), and the Port of Anacortes ("Port" or
4 "Defendant") (collectively, "Parties"). The mutual objective of the Parties is to provide for
5 remedial actions at a portion of the former Scott Paper Company mill site in Anacortes,
6 Washington where there has been a release or threatened release of hazardous substances. This
7 Decree requires the Port to undertake certain remedial actions so as to promote the expeditious
8 completion of investigation, evaluation and cleanup of a portion of the former mill site. The
9 remedial actions are described in Section VI, Work to Be Performed. Ecology has determined
10 that the actions called for in this Decree are necessary to protect public health and the
11 environment.

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

18 C. In signing this Decree, the Port agrees to its entry and agrees to be bound by its
19 terms.

20 D. By entering into this Decree, the Parties do not intend to discharge nonsettling
21 parties from any liability they may have with respect to matters alleged in the Complaint. The
22 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
23 sums expended to evaluate and conduct the actions called for in this Decree.

24 E. This Decree shall not be construed as proof of liability or responsibility for any
25 release or threatened release of hazardous substances or for costs for remedial actions nor an
26

1 admission of any fact; provided, however, that the Port shall not challenge the jurisdiction of
2 Ecology in any proceeding to enforce this Decree.

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

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

6 II. JURISDICTION

7 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
8 to Chapter 70.105D RCW, the Model Toxics Control Act ("MTCA"), and venue is proper in
9 Skagit County.

10 B. Authority is conferred upon the Washington State Attorney General by
11 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after
12 public notice and hearing, Ecology finds the proposed settlement would lead to a more
13 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
14 settlement be entered as a consent decree issued by a court of competent jurisdiction.

15 C. Ecology has determined that a release or threatened release of hazardous
16 substances has occurred at the Property, as defined in Section IV, which is the subject of this
17 Decree.

18 D. Ecology has given notice to the Port, as set forth in RCW 70.105D.020(15), of
19 Ecology's determination that the Port is a potentially liable person ("PLP") for the Site.
20 Ecology also notified Kimberly Clark, as successor in interest to Scott Paper Company, that it
21 is a PLP for the Site and that its activities have contributed to a release or threatened release of
22 hazardous substances at the Site. Ecology also notified Shared Healthcare Systems, Inc.
23 (formerly known as SHS.com and as Sun Healthcare Systems, Inc.) that it is a PLP for the Site.
24 Ecology also notified MJB Properties Inc. that it is a PLP for the Site.

25 E. By signing this Decree, the Port has voluntarily waived its right to comment
26 under RCW 70.105D.020(8) and accepted Ecology's determination that it is a PLP, but only as

1 to the portion of the Site described herein as the Property. Acceptance by the Port of status as
2 a PLP with respect to the Property is not to be construed as an admission of liability or waiver
3 of any claims or defenses the Port may have.

4 F. The actions to be taken pursuant to this Decree are necessary to protect public
5 health, welfare, and the environment.

6 G. By entering into this Decree, the Port agrees not to challenge the jurisdiction of
7 Ecology in any proceeding to enforce this Decree. The Port has agreed to undertake the
8 actions specified in this Decree and consents to the entry of this Decree under the MTCA.

9 III. PARTIES BOUND

10 This Decree shall apply to and be binding upon the signatories to this Decree, their
11 successors and assigns. The undersigned representative(s) of each party hereby certifies that
12 he or she is fully authorized to enter into this Decree and to execute and legally bind such party
13 to comply with the Decree. The Port agrees to undertake all actions required by the terms and
14 conditions of this Decree. No change in ownership or organizational status shall alter the
15 responsibility of the Port under this Decree. The Port shall provide a copy of this Decree to the
16 contractors and subcontractors retained by the Port to perform the work required by this Decree
17 and shall condition any contract for such work on compliance with this Decree.

18 IV. DEFINITIONS

19 Except as specified herein, all definitions in WAC 173-340-200 apply to the terms in
20 this Decree.

21 A. Consent Decree or Decree: Refers to this Consent Decree and each and all of
22 the exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent
23 Decree.

24 B. Days: Refers to calendar days unless otherwise specified.

25 C. Defendant: Refers to the Port of Anacortes ("Port").
26

1 D. Marine Area: The Marine Area refers to a part of the Property (defined below)
2 and includes those areas from the top of the bank of the Uplands Area (defined below)
3 eastward to the inner harbor line, northward to the breakwater, and southward to an extension
4 of the Parcel 1 southern property line. The Port owns and purchased from Scott Paper
5 Company the Marine Area, with the exception of a pie-shaped parcel shown in Exhibit B and
6 located immediately south of the breakwater.

7 E. Parties: Refers to the Washington State Department of Ecology ("Ecology")
8 and the Port.

9 F. Property: The Property refers to that portion of the Site (defined below) that is
10 or was owned by the Port. The location of the Property is shown in Exhibit A. The Property is
11 shown in diagrammatic form in Exhibit B to this Decree. For purposes of implementing the
12 work under this Decree, the Property is divided into two areas: the Uplands Area and the
13 Marine Area, also identified in Exhibit B.

14 G. Site: The Site, commonly referred to as the former Scott Paper Company mill
15 site, generally includes the former Scott Paper Company mill pulping operations and
16 associated facilities that were located at 15th Street and Q Avenue on Fidalgo Bay in
17 Anacortes, Washington. The Site also includes associated offshore lands and any area where
18 hazardous and deleterious substances from the mill site have come to be located, including the
19 entire former Scott Paper Company mill site, a portion of which is the Property as defined in
20 this Section IV.

21 H. Uplands Area: The Uplands Area refers to a part of the Property and includes
22 those areas bounded to the north by the top of the riprap that forms the southern boundary of
23 Cap Sante Marina and bounded to the south by the property owned by MJB Properties Inc.,
24 and bounded to the east by the Marine Area and to the west by Q Avenue. For purposes of this
25 Decree, the Uplands Area is divided into three sections identified as Parcels 1, 2 and 3.
26 Parcel 1 is situated along Q Avenue, Parcel 2 is situated east of Parcel 1, and Parcel 3, which

1 includes Seafarers' Memorial Park, is generally east of Parcel 2, but also extends north of
2 Parcels 1 and 2. The Uplands Area is depicted in Exhibit B.

3 **V. STATEMENT OF FACTS**

4 A. Ecology makes the following findings of fact without any express or implied
5 admissions by the Port and without prejudice to the Port to deny or otherwise challenge these
6 findings of fact.

7 1. The Port of Anacortes is a Washington municipal corporation.

8 2. The Site is more particularly defined in Section IV, but is generally the former
9 Scott Paper Company mill site including the adjacent marine sediments where a release or
10 threatened release of hazardous or deleterious substances from the facility has come to be
11 located.

12 3. The Property, that is the subject of this Decree and more particularly defined in
13 Section IV, is generally that part of the Site that is or was owned by the Port, including the
14 adjacent marine sediments where a release or threatened release of hazardous or deleterious
15 substances from operations at the Property has come to be located.

16 4. Sawmill operations started at the mill site about 1895 and continued until about
17 the 1950s. The pulp mill operated from about 1925 until 1978 or thereabouts, when Scott
18 Paper Company ceased pulping operations at the mill site. In 1978 and 1979, the Port
19 purchased a portion of the former mill site from Scott Paper Company. The remainder of the
20 former Scott Paper Company mill site, located to the south of the Property, was purchased by
21 Snelsen-Anvil at about the same time and is currently owned by MJB Properties Inc. The
22 pulping operations and known discharge points to Fidalgo Bay were located on the MJB-
23 owned portion of the former mill site.

24 5. A portion of what is now Parcel 2 of the Property was used by Scott Paper
25 Company for a "tailings" pond which was installed to reduce the solids content of the
26 wastewater from the pulp mill. Historical records indicate that the Property included two

1 storage sheds, a chip shed, chip bins, fuel bins, a dry kiln, a refuse burner, a boiler room, a
2 smokestack, above-ground storage tanks, and numerous docks and piers.

3 6. By letter dated June 7, 2000, Ecology notified the Port that Ecology had
4 determined that the Port was a PLP for the Site. Ecology also notified Shared Healthcare
5 Systems, Inc., Kimberly Clark, and MJB Properties Inc. of Ecology's determination that they
6 were PLPs for the Site, including the entire area once owned and operated by Scott Paper
7 Company. The Port asserts that it is not a PLP at the Site except to the extent that it owned or
8 owns the Property as defined in Section IV. Neither Ecology nor the Attorney General agree
9 with this assertion. The Port and Ecology initiated negotiations for a Decree in November,
10 2000. The Port and Ecology made numerous attempts to engage Kimberly Clark and MJB in
11 the negotiations, and in January 2002, MJB and Kimberly Clark agreed to negotiate an Agreed
12 Order for the southern portion of the site and Ecology and the Port continued negotiations for a
13 Decree. MJB challenged Ecology's determination that it was a PLP; on March 6, 2001,
14 Ecology made a final determination that MJB is a PLP for the Site.

15 7. Throughout the 1980s, the Port and others conducted geotechnical and
16 environmental analyses primarily by subsurface borings and test pits. The results of the
17 analyses are set forth in *Preliminary Geotechnical Site Evaluation, Cap Sante Marina Uplands*
18 *Area, Anacortes, Washington*, dated March 29, 1985, and prepared by Hart Crowser and
19 Associates, Inc.

20 a. Dated in September 1979, Anvil Corporation prepared a report entitled
21 *Preliminary Sub-Surface Soils Investigation Report of Cap Sante Waterway Improvements,*
22 *Anacortes, Washington*, which reports on, among other activities, eight test pits in the vicinity
23 of the Property.

24 b. Ecology files show that in February 1982, Anvil Corporation submitted
25 a memorandum entitled *Project: Cap Sante Marina Expansion; Subject: Soils Investigation,*
26

1 | which included undated or later-dated boring logs for ten test pits in the vicinity of the
2 | Property.

3 | c. Ecology files contain additional reports, memoranda and correspondence
4 | regarding investigations and evaluations at the Site.

5 | 8. In the late 1980s, the Port began remedial investigation activities including the
6 | following investigations:

7 | a. On November 1, 1989, Hart Crowser prepared a letter report entitled
8 | *Results of Sampling and Chemical Analysis of Tailings Pond Waste and Marine Sediments,*
9 | *Scott Paper Property, Anacortes, Washington* which identified the presence of metals, dioxin
10 | and furan isomers, and resin acids in the former tailing pond area and in the sediments.
11 | Dioxins and furans were measured in soil at concentrations up to a calculated 9.475 ng/kg
12 | (TCDD-TEQ) in the tailing pond area.

13 | b. On June 8, 1992, A-1-Pump Service, Inc. prepared a *Site Assessment re:*
14 | *Scott Paper Site* which reported on the results of six composite soil samples tested for metals,
15 | total petroleum hydrocarbons and benzene, toluene, ethylbenzene and xylene ("BTEX").
16 | Arsenic, lead and TPH were detected in soil at concentrations up to 47.1 mg/kg, 269 mg/kg
17 | and 301 mg/kg respectively.

18 | c. On June 14, 1993, ENSR prepared a letter report entitled *Log Sort Yard*
19 | *Site Characterization Technical Memorandum for Work Conducted to Date*, which reported on
20 | nine soil borings and installation of three groundwater monitoring wells. The soil borings
21 | showed diesel range petroleum, in concentrations as high as 16,000 mg/kg. In addition to
22 | diesel-range petroleum, lead was detected in soil at concentrations up to 540 mg/kg and
23 | carcinogenic polynuclear aromatic hydrocarbons ("cPAHs") were detected in soil at
24 | concentrations up to 6.28 mg/kg. Free petroleum product was present in the groundwater.

1 d. On January 17, 1994, Advanced Soil Mechanics prepared the *Borehole*
2 *Investigation for the South Harbor Park Site*, which described the results of boreholes near the
3 former stack and showed the presence of diesel-range petroleum hydrocarbons.

4 e. On February 16, 1995, Hart Crowser prepared a letter report which
5 discussed the results of hydrogen sulfide (H₂S) monitoring in the area now known as Seafarers'
6 Memorial Park, and concluded that such emissions were within acceptable levels. A
7 subsequent letter report was submitted by Hart Crowser on October 10, 1996 which discussed
8 additional H₂S monitoring showing concentrations up to 7 ppm.

9 f. On September 27, 1996, Mark T. Otten, Engineering Consultant,
10 prepared a *Remedial Action for Petroleum Hydrocarbons, Cap Sante South Basin Uplands*,
11 which described the installation of twelve test pits. "Black, viscous oil with a tar-like
12 consistency" was observed in two test pits; a visible, spotty oil sheen was observed in four test
13 pits; and no petroleum-like materials were encountered in the remaining test pits.

14 g. On October 1, 1997, Mark T. Otten, Engineering Consultant, prepared a
15 *Phase 2 Environmental Assessment, South Basin and A-Dock Sediments* which described the
16 collection and analysis of sediment samples, including three samples from the area east of
17 South Harbor Park. Concentrations of metals, polynuclear aromatic hydrocarbons ("PAHs"),
18 volatile organic compounds, and polychlorinated biphenyls ("PCBs") were below Sediment
19 Management Standards ("SMS") criteria. In one sample the measured concentration, of 3 and
20 4 methylphenol, exceeded the SMS criteria for 4 methylphenol. Dioxin and furan congeners
21 were detected in two of the three samples, and two of the planned five samples could not be
22 collected because of the presence of wood debris, kelp and eelgrass.

23 9 The results of the above investigations were summarized and evaluated in the
24 *Remedial Investigation and Feasibility Study for Soils at Parcel 2 of the Former Scott Paper*
25 *Mill Site*, ThermoRetec, January 8, 1999 ("Parcel 2 Soils RI/FS"). During the Parcel 2 Soils
26 RI/FS, additional investigations showed free petroleum product in the diesel and oil range and

1 the following compounds in soil on Parcel 2 at the following maximum concentrations, cPAHs
2 at 3.6 mg/kg, chromium at 143 mg/kg, copper at 9,599 mg/kg, lead at 6,428 mg/kg, mercury at
3 29 mg/kg, arochlor 1242 at 8.8 mg/kg, arochlor 1254 at 4.3 mg/kg, arochlor 1260 at 15 mg/kg,
4 and dioxins and furans at 61.81 ng/kg TCDD-TEQ.

5 10. In 1995, the Port established South Harbor Park, now known as Seafarers'
6 Memorial Park, and constructed a building and paved parking area on what is now Parcel 3.

7 11. On January 24, 1997, Ecology provided an Early Notice letter to the Port
8 regarding the inclusion of the Site on the Confirmed and Suspected Contaminated Sites Report.

9 12. In March, 1999, the Port sold Parcel 2 to Shared Healthcare Systems ("Sun")
10 for the development of an office complex. Sun is currently the owner of Parcel 2. As part of
11 that transaction, Sun conducted a remedial investigation and feasibility study, (i.e., Parcel 2
12 Soils RI/FS) and prepared the *Cleanup Action Plan for Soils at Parcel 2 of the Former Scott*
13 *Paper Company Mill Site*, ThermoRetec, February 8, 1999. ("Parcel 2 Soils CAP") By letter
14 dated March 25, 1999, Ecology expressed no objection to proceeding to implement the
15 Parcel 2 Soils CAP as an independent cleanup action. Additional independent cleanup actions
16 as described in the *Interim Action Work Plan, Parcel 2, Former Scott Paper Mill Site,*
17 *Anacortes, Washington*, prepared by Landau Associates, March, 1999, were incorporated in the
18 independent cleanup action. The independent cleanup actions were undertaken in Spring, 1999
19 and documented in *Progress Report for the Cleanup Action at Parcel 2 of the Former Scott*
20 *Paper Mill Site*, ThermoRetec, December 7, 1999, and the *Completion Report for the Soils*
21 *Cleanup Action*, ThermoRetec, May 18, 2000.

22 13. Ecology requested additional investigations as part of the review of the Parcel 2
23 Soils CAP. These investigations were completed and submitted to Ecology in the following
24 three documents:

25 a. *South Basin Uplands Site Limited Investigation Report*, EarthTech,
26 March 25, 1999, which described collection and analysis of samples from ten test pits in

1 Parcel 1. Arsenic was detected in soil at concentrations up to 30 mg/kg and mercury was
2 detected in soil at concentrations up to 8.6 mg/kg.

3 b. *South Harbor Beach Area Limited Investigation Report*, EarthTech,
4 March 25, 1999, which described collection and analysis of samples from nine locations in the
5 shoreline area. Total PCBs, total organic carbon and total cPAHs were detected at 5.4 mg/kg,
6 13% and 5.02 mg/kg, respectively. Copper was detected in sediments at concentrations up to
7 755 mg/kg, lead was detected at concentrations up to 1,020 mg/kg, and mercury was detected
8 at concentrations up to 0.9 mg/kg. Dioxins and furans were measured in soils at concentrations
9 up to a calculated 2.31 ng/kg TCDD-TEQ. Anthropogenic material, including wood debris,
10 was identified in the sediment samples.

11 c. *South Harbor Park Limited Investigation Report*, EarthTech, March 25,
12 1999, which described collection and analysis of samples from six test pits on Parcel 3.
13 Dioxins and furans were reported at concentrations up to 14.59 ng/kg (TCDD-TEQ).
14 However, when calculated including one-half the detection limits for non-detected congeners,
15 the highest sample concentration is 12.26 ng/kg (TCDD-TEQ).

16 14. By letter dated October 26, 2000 and subject to the limitations therein, Ecology
17 determined that no further remedial action is necessary with regard to the soils on Parcel 2.

18 15. The investigations described in Paragraphs 7 through 13 were conducted as
19 independent remedial actions consistent with Ch. 173-340 WAC, and all reports have been
20 provided to Ecology, and were incorporated into the Parcel 2 CAP and this Decree.

21 16. The Site will be addressed through this Decree and a separate Agreed Order
22 with other parties which will cover the southern portion of the former mill site. Taken together
23 the provisions of this Decree and the Agreed Order will address the entire former mill site.

24 B. Based on the facts set forth herein, Ecology has determined that a release or
25 threatened release of hazardous substances at the Site and the Property require remedial and
26 response actions to protect human health and the environment. This Decree sets forth the

1 remedial and response measures on the Property necessary to protect public health, welfare and
2 the environment.

3 VI. WORK TO BE PERFORMED

4 A. This Decree contains a program designed to protect public health, welfare and
5 the environment from the known, or threatened release of hazardous substances or
6 contaminants at, on, or from the Property. This Decree and the Agreed Order for the southern
7 portion of the former mill site shall address the entire former mill site. The Port shall perform
8 remedial actions specified below and in more detail in the Scope of Work (Exhibit C) and
9 according to the Deliverables and Schedule (Exhibit D). Exhibits C and D are integral and
10 enforceable parts of this Decree.

11 B. The work will generally consist of the following:

12 1. TASK 1. The Port will conduct an Uplands Area Remedial
13 Investigation/Feasibility Study ("Uplands Area RI/FS") Work Plan and conduct the Uplands
14 Area RI/FS; the work plan will address the soils at Parcels 1 and 3 and groundwater on the
15 entire Uplands Area. The soils of Parcel 2 require no further action as determined by Ecology
16 by letter dated October 26, 2000 ("NFA Letter"). The groundwater requirements for Parcel 2,
17 previously set forth in the NFA Letter, will be addressed in the Uplands Area RI/FS. Upon the
18 filing of this Decree, Ecology will reissue the NFA Letter excluding the detailed discussion of
19 groundwater requirements from the letter.

20 a. TASK 1a. The Port wishes to expedite remedial actions at Parcel 1.
21 The Parcel 1 Soils RI/FS work will be conducted prior to completion of the remainder of the
22 Uplands Area RI/FS and will include only the soils at Parcel 1. The Port will submit a Parcel 1
23 Soils RI/FS Report.

24 b. TASK 1b. The Port will complete an Uplands Area RI/FS according to
25 the Uplands Area RI/FS Work Plan and submit the Uplands Area RI/FS Report upon
26

1 completion. The Uplands Area RI/FS will address soils on Parcels 1 and 3 and groundwater on
2 the Uplands Area.

3 c. TASK 1c. Within 60 days after the submittal of the Uplands Area RI/FS
4 Report, or upon the submittal of an uplands RI/FS Report for the southern portion of the
5 former mill site by other parties under the Agreed Order, whichever is later, the Port will
6 review all of the uplands area remedial investigations described in those reports to identify
7 whether any site-wide issues have not been evaluated. Upon completion of that review, the
8 Port will submit to Ecology either: (a) a work plan to address any such issues that have been
9 identified; or (b) a statement describing the review and evaluation and the conclusion that no
10 such issues have been identified or, if such issues have been identified and will not be
11 undertaken by the Port, a statement that such issues are being addressed by the parties to the
12 Agreed Order. If a work plan is required to address such site-wide issues, the work plan shall
13 describe the issues and the actions to be taken to address the issues. The work plan shall
14 include the time necessary to undertake the work. Upon Ecology's determination that any and
15 all site-wide issues have been identified and Ecology's approval of the work plan, the Port will
16 implement the work plan. Upon completion of the work called for by this TASK 1c, the Port
17 shall submit a supplement to the Uplands Area RI/FS, which describes the results of the work.

18 2. TASK 2. The Port will prepare a Marine Area Remedial
19 Investigation/Feasibility Study ("Marine Area RI/FS") Work Plan and conduct a Marine Area
20 RI/FS in the near shore sediments that are part of the Property. The Marine Area RI/FS Work
21 Plan will set forth the work to be included in the Marine Area RI/FS and will focus on
22 evaluating the presence of deleterious and hazardous substances in the Marine Area, including
23 wood debris.

24 a. TASK 2a. The Port will complete a Marine Area RI/FS according to the
25 Marine Area RI/FS Work Plan and submit a Marine Area RI/FS Report.

1 b. TASK 2b. Within 60 days after the submittal of the Marine Area RI/FS
2 Report, or upon the submittal of a marine area RI/FS report for the southern portion of the
3 former mill site by other parties under the Agreed Order, whichever is later, the Port will
4 review all of the marine area remedial investigations described in those reports to identify
5 whether any site-wide issues have not been evaluated. Upon completion of that review, the
6 Port will submit to Ecology either: (a) a work plan to address any such issues that have been
7 identified; or (b) a statement describing the review and evaluation and the conclusion that no
8 such issues have been identified or, if such issues have been identified and will not be
9 undertaken by the Port, a statement that such issues are being addressed by the parties to the
10 Agreed Order. If a work plan is required to address such issues, the work plan shall describe
11 the issues and the actions to be taken to address the issues. The work plan shall include the
12 time necessary to undertake the work. Upon Ecology's determination that any and all site-
13 wide issues have been identified and Ecology's approval of the work plan, the Port will
14 implement the work plan. Upon completion of the work called for by this TASK 2b, the Port
15 shall submit a supplement to the Marine Area RI/FS which describes the results of the work.

16 3. TASK 3. The Port will prepare the Parcel 1 Soils CAP upon the completion of
17 the Parcel 1 Soils RI/FS. Ecology will issue the final Parcel 1 Soils CAP if Ecology finds it
18 acceptable under MTCA and after public notice and comment and Ecology's response to
19 comments, if any. The Parcel 1 Soils CAP will be implemented under this Decree.

20 a. TASK 3a. Upon Ecology's approval and adoption of the final Parcel 1
21 Soils CAP, the Port will conduct the cleanup actions, if any, for the Parcel 1 Soils, and submit
22 a Parcel 1 Soils Cleanup Action Completion Report.

23 C. The Port agrees not to perform any remedial actions outside the scope of this
24 Decree. All work conducted under this Decree shall be done in accordance with Chapter 173-
25 340 WAC unless otherwise provided herein.

26

1 D. Ecology shall review and approve or comment upon all documents in a timely
2 fashion and will endeavor to provide written responses to work plans, remedial design, and
3 interim action plans within 21 days and to draft remedial investigations, draft feasibility
4 studies, or draft cleanup action plans within 28 days except for those documents which require
5 a public comment period.

6 VII. DESIGNATED PROJECT COORDINATORS

7 The project coordinator for Ecology is:

8 Ron Timm Telephone: (425) 649-7185
9 Toxics Cleanup Program Facsimile: (425) 649-7098
10 Northwest Regional Office E-Mail: rtim461@ecy.wa.gov
11 3190 160th Avenue SE
12 Bellevue, WA 98008-5452

13 The project coordinator for Port is:

14 Margaret Schwertner Telephone: (360) 299-1827
15 Port of Anacortes Facsimile: (360) 293-9608
16 First and Commercial Avenue E-Mail: mschwertner@portofanacortes.com
17 P. O. Box 297
18 Anacortes, WA 98221

19 With copy to:

20 Lynda L. Brothers Telephone: (415) 882-0344
21 SONNENSCHN NATH & ROSENTHAL Facsimile: (415) 543-5472
22 685 Market Street, 6th Floor E-Mail: LBrothers@sonnenschein.com
23 San Francisco, CA 94105

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. The Ecology project coordinator will be Ecology's designated representative for the
26 Property. To the maximum extent possible, communications between Ecology and the Port
and all documents, including reports, approvals, and other correspondence concerning the
activities performed pursuant to the terms and conditions of this Decree, shall be directed
through the project coordinators. Electronic messages shall not be used for time-sensitive

1 notice unless accompanied by telephonic communication to confirm receipt. Otherwise all
2 notices shall be in writing by U.S. mail. The project coordinators may designate, in writing,
3 working level staff contacts for all or portions of the implementation of the remedial work
4 required by this Decree. The project coordinators may agree to minor modifications to the
5 work to be performed without formal amendments to this Decree. Minor modifications will be
6 documented in writing by Ecology.

7 Any party may change its respective project coordinator. Written notification shall be
8 given to the other parties at least ten (10) working days prior to the change.

9 VIII. PERFORMANCE

10 All work performed pursuant to this Decree shall be under the direction and
11 supervision, as necessary, of an appropriate professional, with experience and expertise in
12 hazardous waste site investigation and cleanup. Any construction work pursuant to this Decree
13 must be under the supervision of a professional engineer.

14 IX. ACCESS

15 A. Ecology or any Ecology authorized representative shall have the authority to
16 enter and freely move about the Site at all reasonable times for the purposes of, inter alia:
17 inspecting records, operation logs, and contracts related to the work being performed pursuant
18 to this Decree; reviewing the Port's progress in carrying out the terms of this Decree;
19 conducting such tests or collecting such samples as Ecology may deem necessary; using a
20 camera, sound recording, or other documentary type equipment to record work done pursuant
21 to this Decree; and verifying the data submitted to Ecology by the Port. Ecology will
22 endeavor, except in emergency situations, to provide the Port's project coordinator with two
23 (2) working days notice prior to entering the Property. Ecology shall make the results of all
24 sampling, laboratory reports, videos, and/or test results generated by it or on its behalf,
25 available to the Port unless an exemption from disclosure is available under Chapter 42.17
26

1 RCW. All parties with access to the Property pursuant to this paragraph shall comply with
2 health and safety plans.

3 B. Provided that the parties to the Agreed Order provide advance written notice to
4 the Port requesting access and include an approved work plan which describes the work to be
5 performed on the Property, the Port will provide reasonable access for work under the Agreed
6 Order that will be negotiated between other parties and Ecology and will cover the southern
7 portion of the former mill site.

8 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

9 A. With respect to the implementation of this Decree, the Port shall make the
10 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
11 available to Ecology and shall submit these results in accordance with Section VI of this
12 Decree.

13 B. If requested by Ecology, the Port shall allow split or duplicate samples to be
14 taken by Ecology and/or its authorized representatives of any samples collected by the Port
15 pursuant to this Decree. Except in the case of emergency, the Port shall provide Ecology with
16 fourteen (14) days general notice of any sample collection or work activity on the Property.
17 Ecology shall, upon request of the Port, allow split or duplicate samples to be taken by the Port
18 or its authorized representatives of any samples collected by Ecology pursuant to the
19 implementation of this Decree. Without limitation on Ecology's rights under Section IX,
20 Ecology shall endeavor to notify the Port prior to any sample collection activity.

21 XI. PROGRESS REPORTS

22 A. The Port shall submit to Ecology written monthly progress reports which
23 describe the actions taken during the previous month to implement the requirements of this
24 Decree. The frequency of progress reports may be changed to quarterly by agreement of the
25 project coordinators. The progress report shall include the following:

26 I. A list of on-site activities that have taken place during the period;

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

3 3 Description of all deviations from the schedule whether as set forth in
4 Exhibit D, work plans or other documents, during the current period and any planned
5 deviations in the upcoming period;

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

8 4 A list of deliverables for the upcoming period.

9 B. All progress reports shall be submitted by the fifteenth day of the month in
10 which they are due commencing the second full month after the effective date of this Decree.
11 Unless otherwise specified, progress reports and any other documents submitted pursuant to
12 this Decree shall be sent by U.S. mail, or equivalent to Ecology's project coordinator.

13 XII. RETENTION OF RECORDS

14 The Port shall preserve, during the pendency of this Decree and for ten (10) years from
15 the date this Decree is no longer in effect as provided in Section XXVIII, all records, reports,
16 documents, and underlying data in its possession relevant to the implementation of this Decree
17 and shall insert in contracts with project contractors and subcontractors a similar record
18 retention requirement. Upon request by Ecology, the Port shall make all non-archived records
19 available to Ecology and allow access for review. All archived records shall be made available
20 to Ecology within a reasonable period of time.

21 XIII. TRANSFER OF INTEREST IN PROPERTY

22 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
23 or other interest in any portion of the Property owned by the Port shall preclude or adversely
24 impact the continued operation and maintenance of any containment system, treatment system,
25 and monitoring system installed or implemented pursuant to this Decree. Parcel 2 of the
26

1 Property is owned by Shared Healthcare Systems, Inc., for which a recorded deed restriction
2 constitutes compliance with this Section XIII.

3 Prior to transfer by the Port of any legal interest which must be recorded in all or any
4 portion of the Property or a lease for a period of less than two years, and only during the
5 effective period of this Decree, the Port shall provide a copy of this Decree to any prospective
6 purchaser, lessee, assignee, or other successor in interest who may take such interest directly
7 from the Port. The Port will notify Ecology thirty (30) days in advance of any transfer of such
8 legal interest in the Property.

9 XIV. RESOLUTION OF DISPUTES

10 A. In the event a dispute arises as to an approval, disapproval, proposed
11 modification, proposed amendment, or other decision or action by Ecology's project
12 coordinator, the parties shall utilize the dispute resolution procedure set forth below.

13 1. Upon receipt of the Ecology project coordinator's decision, the Port has
14 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the
15 decision.

16 2. The parties' project coordinators shall then confer in an effort to resolve the
17 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
18 Ecology's project coordinator shall issue a written decision.

19 3. The Port may then request Ecology management review of the decision. This
20 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)
21 days of receipt of Ecology's project coordinator's decision.

22 4. Ecology's Program Manager shall conduct a review of the dispute and shall
23 issue a written decision regarding the dispute within thirty (30) days of the Port's request for
24 review. The Program Manager's decision shall be Ecology's final decision on the disputed
25 matter.

26

1 B. If Ecology's final written decision is unacceptable to the Port or if Ecology fails
2 to issue a final decision within thirty (30) days, the Port has the right to submit the dispute to
3 the Court for resolution. The parties agree that one judge should retain jurisdiction over this
4 case and shall, as necessary, resolve any dispute arising under this Decree. In the event the
5 Port presents an issue to the Court for review, the Court shall review the action or decision of
6 Ecology on the basis of whether such action or decision was arbitrary and capricious and
7 render a decision based on such standard of review.

8 C. The parties agree to only utilize the dispute resolution process in good faith and
9 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
10 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
11 the other party may seek sanctions.

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

15 XV. AMENDMENT OF CONSENT DECREE

16 A. Except as set forth for minor modifications in Section VII and for schedule
17 extensions pursuant to Section XVI, this Decree may only be amended by order of the Court or
18 by a written stipulation among the Parties to this Decree that is entered by the Court. Such
19 amendment shall become effective upon entry by the Court. Agreement to amend shall not be
20 unreasonably withheld by any party to the Decree. If the amendment to the Decree is
21 substantial, Ecology shall determine whether public notice and opportunity for comment is
22 required and, if necessary, provide for such public notice and opportunity for comment.

23 B. The Port shall submit any request for an amendment to Ecology for approval.
24 Ecology shall indicate its approval or disapproval in a timely manner. Reasons for any
25 disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment,
26

1 the disagreement may be addressed through the dispute resolution procedures described in
2 Section XIV of this Decree.

3 **XVI. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be granted by Ecology when a request for an
5 extension is submitted in a timely fashion, generally at least fifteen (15) days prior to
6 expiration of the deadline for which the extension is requested, and good cause exists for
7 granting the extension. All extensions shall be requested in writing. The request shall specify
8 the reason(s) the extension is needed. An extension shall only be granted for such period of
9 time as Ecology determines is reasonable under the circumstances. A requested extension shall
10 not be effective until approved by Ecology or the Court and shall take effect upon approval.
11 Ecology shall act upon any written request for extension in a timely fashion. It shall not be
12 necessary to formally amend this Decree pursuant to Section XV when a schedule extension is
13 granted.

14 B. The burden shall be on the Port to demonstrate to the satisfaction of Ecology
15 that the request for such extension has been submitted in a timely fashion and that good cause
16 exists for granting the extension. Good cause includes, but is not limited to, the following.

17 1. Circumstances beyond the reasonable control and despite the due diligence of
18 the Port including delays caused by unrelated third parties or Ecology, such as (but not limited
19 to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port;
20 or

21 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
22 other unavoidable casualty; or

23 3. Endangerment as described in Section XVII.

24 However, increased costs of performance of the terms of the Decree shall not be
25 considered circumstances beyond the reasonable control of the Port.
26

1 C. Ecology may extend the schedule for a reasonable period of time where an
2 extension is needed as a result of:

3 1. Delays in the issuance of a necessary permit which was applied for in a timely
4 manner; or

5 2. Other circumstances deemed exceptional or extraordinary by Ecology; or

6 3. Endangerment as described in Section XVII.

7 Ecology shall give the Port written notification in a timely fashion of any extensions
8 granted pursuant to this Decree.

9 XVII. ENDANGERMENT

10 In the event Ecology determines that activities implementing or in noncompliance with
11 this Decree, or any other circumstances or activities, are creating or have the potential to create
12 a danger to the health or welfare of the people on or near the site or to the environment,
13 Ecology may order the Port to stop further implementation of this Decree for such period of
14 time as needed to abate the danger. During any stoppage of work under this section, the
15 obligations of the Port with respect to that work which has been ordered to be stopped shall be
16 suspended. The time periods for performance of that work, as well as the time period for any
17 other work dependent upon the work which is stopped, shall be extended, pursuant to
18 Section XVI of this Decree, for such period of time as Ecology determines is reasonable under
19 the circumstances.

20 In the event the Port determines that activities undertaken in furtherance of this Decree
21 or any other circumstances or activities are creating an endangerment to the people on the site
22 or in the surrounding area or to the environment, the Port may stop implementation of this
23 Decree for such periods of time necessary for Ecology to evaluate the situation and determine
24 whether the Port should proceed with implementation of the Decree or whether the work
25 stoppage should be continued until the danger is abated. The Port shall telephonically notify
26 Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours

1 after such stoppage of work, and thereafter provide Ecology with documentation of the basis
2 for the work stoppage. If Ecology disagrees with the Port's determination, it may order the
3 Port to resume implementation of this Decree. If Ecology concurs with the work stoppage, the
4 Port's obligations shall be suspended and the time period for performance of that work, as well
5 as the time period for any other work dependent upon the work which was stopped, shall be
6 extended, pursuant to Section XVII of this Decree, for such period of time as Ecology
7 determines is reasonable under the circumstances. Any disagreements pursuant to this clause
8 shall be resolved through the dispute resolution procedures in Section XIV.

9 XVIII. OTHER ACTIONS

10 A. Ecology reserves its rights to institute remedial action(s) at the Property and
11 subsequently pursue recovery of its costs, and Ecology reserves its rights to issue orders and/or
12 penalties or take any other enforcement action pursuant to available statutory authority under
13 the following circumstances:

14 1. Where the Port, after notice, fails to comply with any requirement of this
15 Decree;

16 2. In the event or upon the discovery of a release or threatened release at the
17 Property not addressed by this Decree, and except as set forth in Section XVIII A.3 below,
18 provided that Ecology has provided written notice to the Port and an appropriate opportunity
19 for the Port to respond;

20 3. Upon Ecology's determination that actions beyond the terms of this Decree are
21 necessary to abate an emergency situation which threatens public health or welfare of the
22 environment at the Property; or

23 4. Upon the occurrence or discovery of a situation beyond the scope of this
24 Decree, as to which Ecology has the authority to perform a remedial action or to issue an order
25 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the
26 Property as defined in Section IV.

1 B. Ecology reserves all rights regarding the injury to, destruction of, or loss of
2 natural resources resulting from the release or threatened release of hazardous substances from
3 the Site.

4 C. Ecology reserves the right to take any enforcement action whatsoever, including
5 a cost recovery action, against potentially liable persons not party to this Decree.

6 XIX. INDEMNIFICATION

7 To the extent permitted by law, the Port agrees to indemnify and save and hold the
8 State of Washington ("State"), its employees, and agents harmless from any and all claims or
9 causes of action for death or injuries to persons or for loss or damage to property arising from
10 or on account of acts or omissions of the Port, its officers, employees or agents in entering into
11 and implementing this Decree. However, the Port shall not indemnify the State nor save nor
12 hold its employees and agents harmless from any claims or causes of action arising out of the
13 reckless, willful or negligent acts or omissions of the State, or the employees or agents of the
14 State.

15 XX. COMPLIANCE WITH APPLICABLE LAWS

16 A. All actions carried out by the Port pursuant to this Decree shall be done in
17 accordance with all applicable federal (including the National Contingency Plan, as
18 appropriate), state, and local requirements, including requirements to obtain necessary permits,
19 except as provided in paragraph B of this section.

20 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
21 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
22 local government permits or approvals for any remedial action under this Decree, are
23 incorporated into this Decree and are binding and enforceable requirements of the Decree.

24 C. The Port has a continuing obligation to determine whether permits or approvals
25 addressed in RCW 70.105D.090(1) would otherwise be required for any remedial actions
26 under this Decree. In the event either the Port or Ecology determines that additional permits or

1 | approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
2 | action under this Decree, it shall promptly notify the other party of this determination.
3 | Ecology shall determine whether Ecology or the Port shall be responsible to contact the
4 | appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult
5 | with the appropriate state and/or local agencies and provide Ecology with written
6 | documentation from those agencies of the substantive requirements those agencies believe are
7 | applicable to the remedial action. Ecology in consultation with the Port shall make the final
8 | determination on the additional substantive requirements that must be met by the Port and on
9 | how the requirements will be met by the Port. Ecology shall inform the Port in writing of these
10 | requirements. Once established by Ecology, the additional requirements shall be enforceable
11 | requirements of this Decree. The Port shall not begin or continue the remedial action,
12 | potentially subject to the additional requirements until Ecology makes its final determination.
13 | Ecology shall ensure that notice and opportunity for comment is provided to the public and
14 | appropriate agencies prior to establishing the substantive requirements under this section.

15 | D. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
16 | exemption from complying with the procedural requirements of the laws referenced in RCW
17 | 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
18 | for the State to administer any federal law, the exemption shall not apply and the Port shall
19 | comply with both the procedural and substantive requirements of the laws referenced in RCW
20 | 70.105D.090(1), including any requirements to obtain permits.

21 | **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

22 | The Port agrees to pay costs incurred by Ecology pursuant to this Decree. The costs to
23 | be paid under this Decree shall include work performed by Ecology or its contractors for, or
24 | on, the Property under Ch. 70.105D RCW both prior to and subsequent to the issuance of this
25 | Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight
26 | and administration. Ecology costs shall include costs of direct activities and support costs of

1 direct activities as defined in WAC 173-340-550(2). The Port agrees to pay the required
2 amount within ninety (90) days of receiving from Ecology an itemized statement of costs that
3 includes a summary of costs incurred, an identification of involved staff, the amount of time
4 spent by involved staff members on the project and a brief statement of the work performed.
5 Itemized statements of costs shall be prepared and submitted to the Port quarterly. Failure to
6 pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in
7 interest charges.

8 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that the Port has failed without good cause to implement the
10 remedial action(s) called for by this Decree, Ecology may, after notice to the Port, perform any
11 or all portions of the remedial action(s) that remain incomplete. If Ecology performs all or
12 portions of the remedial action(s) because of the Port's failure to comply with its obligations
13 under this Decree, the Port shall reimburse Ecology for the costs of doing such work in
14 accordance with Section XXI, provided, however, that the Port is not obligated under this
15 section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope
16 of this Decree.

17 **XXIII. PUBLIC PARTICIPATION**

18 Ecology shall maintain the responsibility for public participation at the Property. The
19 Port reserves the right to conduct additional public participation as may be necessary to comply
20 with Port practices. The Port wishes to play an active role and shall cooperate with Ecology
21 and, if agreed to by Ecology, shall:

22 A. Prepare drafts of public notices and fact sheets at important stages of the
23 remedial action, such as the completion of Remedial Investigation/Feasibility Study reports
24 and implementation of cleanup actions at Parcel 1 Soils, if any. Ecology will finalize and
25 distribute such fact sheets and prepare and distribute public notices of any Ecology
26 presentations or meetings;

1 B. Notify Ecology's project coordinator prior to the issuance of all press releases,
2 and before any meetings called specifically to discuss actions under this Decree with the
3 interested public, local governments, or the Port Commissioners, but specifically excluding
4 regularly scheduled public meetings of the Port Commissioners where no specific actions or
5 approvals pursuant to this Decree are on the agenda. Likewise, Ecology shall notify the Port
6 prior to the issuance of all press releases and fact sheets, and before meetings with the
7 interested public and local governments. Except in a health and safety emergency, Ecology
8 shall provide the Port with the opportunity to review and comment on any press release or
9 public document; however, the content, timing, and issuance of Ecology press releases shall be
10 at its sole discretion. The Port shall provide Ecology with the opportunity to review and
11 comment on any press release related to the implementation of this Decree; however, the
12 content, timing, and issuance of the Port's press releases shall be at its sole discretion; and

13 C. Participate in public presentations on the progress of the remedial actions at the
14 Property. Participation may be through attendance at public meetings to assist in answering
15 questions, or as a presenter; and

16 D. In cooperation with Ecology, arrange and/or continue to maintain information
17 repositories to be located at the Port of Anacortes' office at First and Commercial Avenue,
18 Anacortes, WA 98221, and Ecology's Northwest Regional Office at 3190 160th Avenue SE,
19 Bellevue, WA 98008. At a minimum, copies of all public notices, fact sheets, and press
20 releases; remedial investigation/feasibility study reports and work plans, and all other
21 documents prepared pursuant to the remedial action required by this Decree shall be promptly
22 placed in these repositories.

23 XXIV. CONTRIBUTION PROTECTION

24 The Port shall not be liable for claims of contribution by other persons not signatories
25 to the Decree regarding matters addressed in this Decree as set forth in RCW 70.105D.040(4).

1 The percentage of remedial costs paid by the Port under this Decree shall in no way constitute
2 an admission as to an appropriate allocation of liability, if any, at the Site or the Property.

3 **XXV. RESERVATION OF RIGHTS**

4 While the Parties believe that the recitals contained in this Decree are accurate, the
5 execution and performance of the Decree is not an admission by the Port of any fact or liability
6 for any purpose other than as a foundation for the entry of this Decree. The Port's performance
7 under the Decree is undertaken without waiver of or prejudice to any claims or defenses
8 whatsoever that may be asserted in the event of further administrative proceedings or litigation
9 about or relating to the Property or the Site, with the sole exception of an action by Ecology to
10 enforce this Decree at the Property. Nor does the execution or performance of this Decree
11 constitute agreement by the Port to take any action at the Site or Property other than those
12 designated in this Decree.

13 **XXVI. CLAIMS AGAINST THIRD PARTIES**

14 The Port expressly reserves any and all rights including, but not limited to rights in
15 RCW 70.105D.080, and any and all federal laws, to seek to recover any costs incurred in
16 developing or implementing this Decree from any other potentially liable person not a party to
17 this Decree.

18 **XXVII. COVENANT NOT TO SUE**

19 A. In consideration of the Port's compliance with the terms and conditions of this
20 Decree, the State covenants not to institute legal, enforcement, or administrative actions
21 against the Port regarding the release or threatened release of hazardous and deleterious
22 substances covered by this Decree. Until cleanup standards are met at the Property, or unless
23 confirmational monitoring demonstrates that additional remedial actions are necessary at the
24 Property, compliance with this Decree shall satisfy the Port's obligations related to the
25 hazardous or deleterious substances covered by this Decree.
26

1 B. The terms and application of this Consent Decree are strictly limited to the
2 Property defined in Exhibit B and to those hazardous and deleterious substances which are
3 covered by this Decree. The Decree is not applicable to any other hazardous or deleterious
4 substance or area and Ecology retains its authority in such areas not covered in this Decree.

5 C. Ecology specifically reserves the right to institute legal or administrative actions
6 against the Port seeking to require the Port to perform additional response actions at the
7 Property, and to pursue appropriate cost recovery in accordance with RCW 70.105D.050,
8 under the following circumstances:

- 9 1. Upon the Port's failure to meet the requirements of this Decree.
- 10 2. Upon Ecology's determination that action beyond the terms of this Decree is
11 necessary to abate an imminent and substantial endangerment to public health or welfare or the
12 environment.
- 13 3. The covenant not to sue in this Section XXVII shall be amended if factors not
14 known at the time of entry of this Decree are discovered and present a previously unknown
15 threat to human health or the environment.

16 D. Any covenant not to sue concerning work to be performed under this Decree
17 shall have no applicability whatsoever to the following:

- 18 1. Criminal liability;
- 19 2. Liability for Natural Resource Damages;
- 20 3. Any Ecology action against potentially liable parties not a party to this Decree,
21 including cost recovery actions.

22 This covenant is expressly limited to the Property as defined in Exhibit B and to those
23 hazardous and deleterious substances of which Ecology has notice.

24 **XXVIII. DURATION OF DECREE**

25 This Decree shall remain in effect and the remedial program described in the Decree
26 shall be maintained and continued until the Port has received written notification from Ecology

1 that the requirements of this Decree have been satisfactorily completed. Ecology agrees to
2 provide a Notice of Completion upon satisfactory completion of any cleanup actions as may be
3 called for by the Parcel 1 Soils Cleanup Action Plan and described in the Parcel 1 Soils
4 Cleanup Action Completion Report. Ecology agrees to provide a Notice of Completion upon
5 satisfactory completion of the Uplands Area RI/FS and upon satisfactory completion of the
6 Marine Area RI/FS. Unless amended, the duration of this Decree terminates upon the
7 completion of the work described in Section VI.

8 **XXIX. FIVE YEAR REVIEW**

9 If remedial actions, such as groundwater or other monitoring, continue at the Property
10 beyond the final Notice of Completion described in Section XXVIII, the Parties agree to
11 review the data accumulated as the result of any monitoring on the Property as is appropriate
12 under the circumstances. At least every five years the Parties agree to meet to discuss the
13 status of actions at the Property and the need, if any, for further remedial actions. This
14 provision will remain in effect for the duration of the Decree.

15 **XXX. CLAIMS AGAINST THE STATE**

16 The Port hereby agrees that it will not seek to recover any costs accrued in
17 implementing the remedial action required by this Decree from the State of Washington or any
18 of its agencies: the Port expressly reserves its right to seek to recover any costs incurred in
19 implementing this Decree from any other potentially liable person.

20 **XXXI. EFFECTIVE DATE**

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


22 **XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

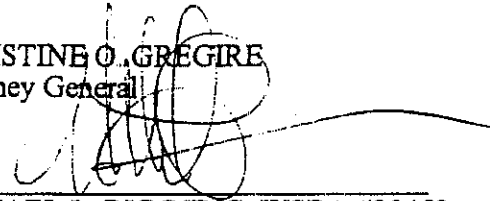
23 This Decree has been the subject of public notice and comment under
24 RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will
25 lead to a more expeditious cleanup of hazardous substances at the site.
26

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

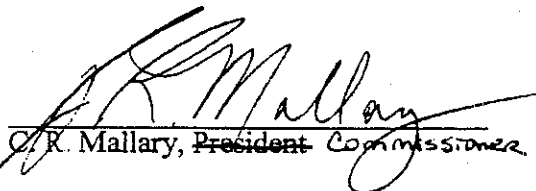
5 DEPARTMENT OF ECOLOGY

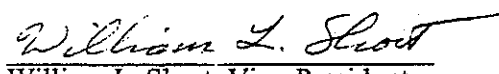
CHRISTINE O. GREGIRE
Attorney General

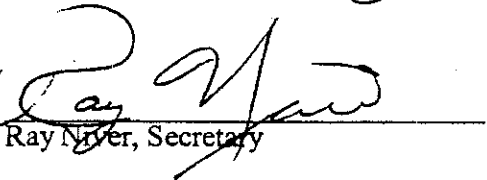
6 
7
8 JAMES PENDOWSKI
Program Manager
9 Toxics Cleanup Program

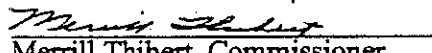

10
11 MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology

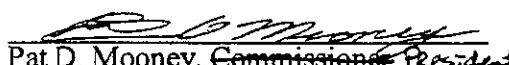
12 For the Port Commission of the Port of Anacortes, by:

13
14 
15 O.R. Mallery, ~~President~~ Commissioner


16 William L. Short, Vice-President

17
18 
Ray Nyer, Secretary

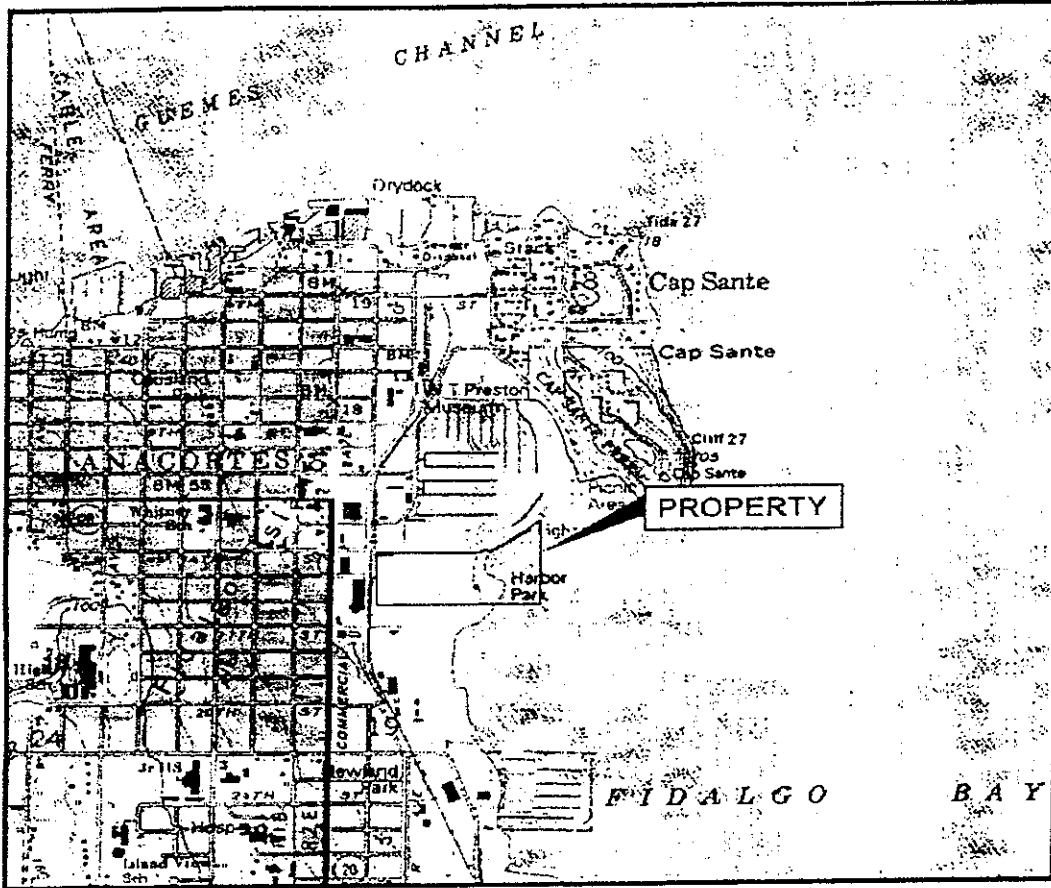

19 Merrill Thibert, Commissioner

20
21 
Pat D. Mooney, ~~Commissioner~~ President

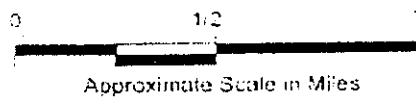
22
23 DATED this 24 day of March, 2003

24
25 JOHN M. MEYER
26 JUDGE
Skagit County Superior Court

Exhibit A

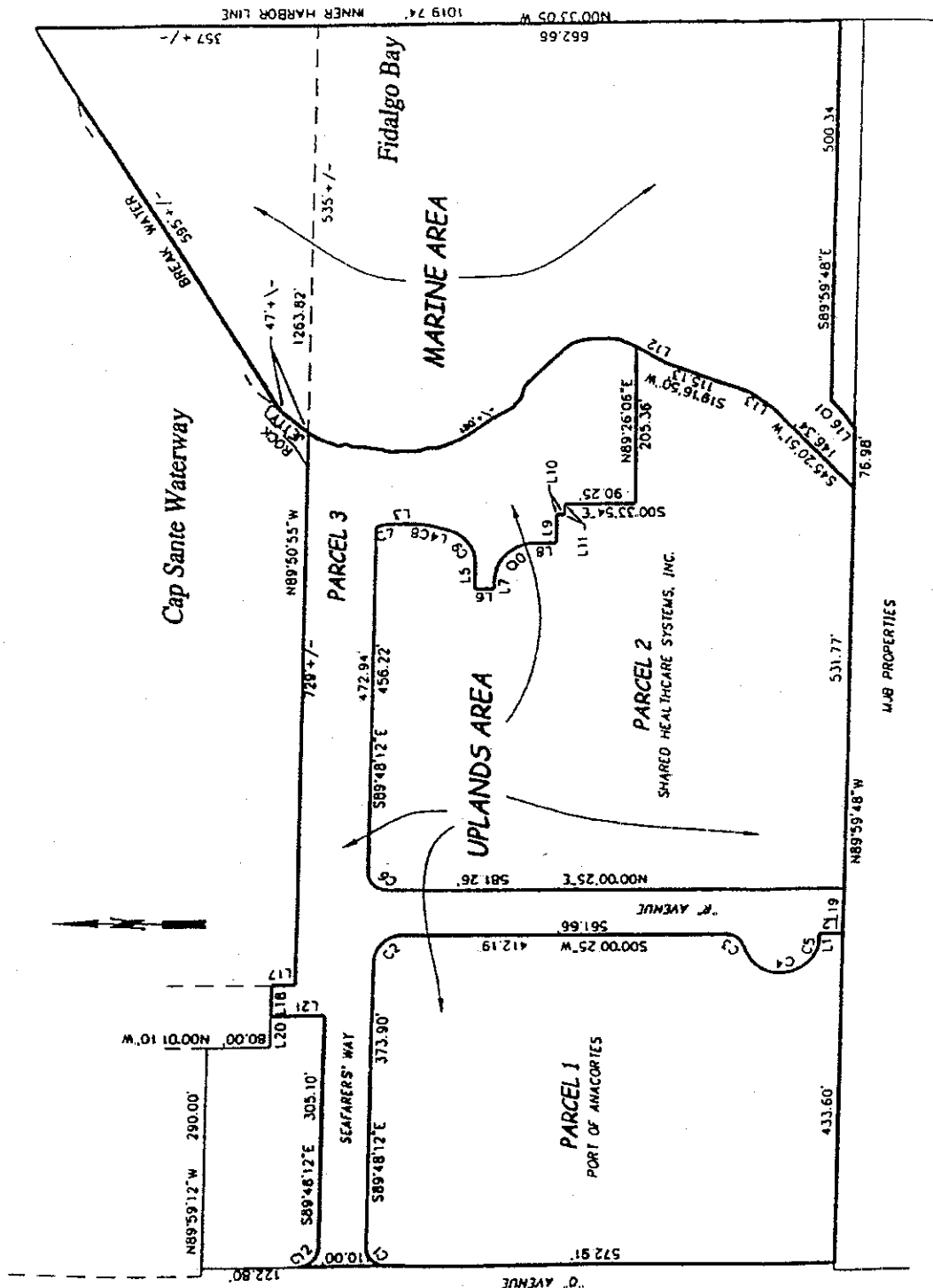


Map from Maptech Terrain Navigator 1998



Property Location
Anacortes, Washington

Exhibit
A



PROPERTY MAP for the PORT OF ANACORTES

EXHIBIT B

05NOV02

EXHIBIT C

**SCOPE OF WORK
FORMER SCOTT PAPER COMPANY MILL SITE**

All work performed at the Property pursuant to this Decree shall be in accordance with Ch. 173-340 WAC, and all work plans, investigation and analysis reports, and design documents prepared by the Port shall be submitted to Ecology for review and approval, pursuant to the schedule established in Exhibit D – Deliverables and Schedule. For purposes of project oversight and review of documents, the work is divided into three project tasks. These tasks are described below.

TASK 1 – Uplands Area Remedial Investigation/Feasibility Study

In order to complete the investigation of hazardous substances and identify and evaluate remedial alternatives, the Port shall perform an Uplands Area Remedial Investigation/Feasibility Study (“Uplands Area RI/FS”). However, a Parcel 1 Soils RI/FS will be completed on Parcel 1 Soils prior to the remainder of the Uplands Area RI/FS. The Uplands Area RI/FS Work Plan will reference all of the existing soils and groundwater information and describe additional investigations as may be needed.

TASK 1a – Parcel 1 Soils RI/FS Report

The Parcel 1 Soils RI/FS will characterize the nature and extent of hazardous substances in the soils at Parcel 1 resulting from former industrial activities at the Property and will enable the parties to make decisions regarding cleanup actions, if any. The Parcel 1 Soils RI/FS Report shall characterize any threats to human health and the environment posed by the substances identified. The Parcel 1 Soils RI/FS Report will identify remedial action objectives, establish cleanup levels and points of compliance, develop and evaluate cleanup alternatives and, as appropriate, identify a recommended cleanup alternative for Parcel 1 soils. The Parcel 1 Soils RI/FS Report will be completed prior to the Uplands Area RI/FS.

TASK 1b – Uplands Area RI/FS Report

The Uplands Area RI/FS will characterize the nature and extent of hazardous substances in the Uplands Area soils, except for soils at Parcels 1 and 2, resulting from former industrial activities at the Property, and will evaluate cleanup alternatives, establish cleanup levels and points of compliance, develop and evaluate cleanup alternatives, and identify a recommended cleanup alternative. The Uplands Area RI/FS shall also evaluate groundwater, including a determination of the depth and general characteristics of the groundwater, and the presence of any hazardous substances. The relevant and available background information, such as any known historic site operations which relate to any identified contamination, will be included in the Uplands Area RI/FS Report. The work shall be conducted according to the principles set forth in WAC 173-340-130.

TASK 1c – Statement or Work Plan on Site-Wide Uplands Area Issues

Upon the later of completion of the Uplands Area RI/FS or the submittal by other parties of an uplands area RI/FS for the southern portion of the former mill site, the Port will review all uplands area RI/FS reports and identify whether any site-wide issues have not been evaluated. The Port will submit to Ecology either: (a) a work plan to address any such issues identified; or (b) a statement describing the review and evaluation and the conclusion that either no such issues have been identified or, if such issues have been identified and will not be undertaken by the Port, a statement that such issues will be addressed by the parties responsible for the southern portion of the former mill site.

TASK 2 – Marine Area RI/FS Work Plan

The Port will prepare a Marine Area Remedial Investigation/Feasibility Study (“Marine Area RI/FS”) which will result in the identification of hazardous and deleterious substances including wood debris in the Marine Area of the Property from the historic operations. The Marine Area RI/FS will be based on the Marine Area RI/FS Work Plan. It will generally include a summary of the available information regarding contamination in the Marine Area which arose

from the historic operations at the Property. The Marine Area RI/FS Work Plan will identify any additional information that may be necessary prior to the evaluation of remedial alternatives. It will identify the number, type and location of sediment samples to be collected and the analysis to be performed thereon, as well as the collection methods, analytical methods and reporting limits.

TASK 2a – Marine Area RI/FS Report

The Marine Area RI/FS will characterize the aerial and vertical distribution of deleterious substances, including wood debris and the aerial and vertical extent of any hazardous substances at and sourced from historic activities at the Property. The Marine Area RI/FS Report will include a preliminary characterization of the current and potential threat to human health and the environment that may be related to historic activities at the Property and identify any relevant physical conditions or sediment properties that may affect cleanup actions. The Marine Area RI/FS Report will, in addition, identify remedial action objectives, establish cleanup levels and points of compliance, develop and evaluate cleanup action alternatives, and identify a recommended cleanup action.

TASK 2b – Statement or Work Plan on Site-Wide Marine Area Issues

Upon the later of completion of the Marine Area RI/FS or submittal by other parties of a marine area RI/FS for the southern portion of the former mill site, the Port will review all marine area RI/FS reports and identify whether any site-wide issues have not been evaluated. The Port will submit to Ecology either: (a) a work plan to address any such issues identified; or (b) a statement describing the review and evaluation and the conclusion that either no such issues have been identified or, if such issues have been identified and will not be undertaken by the Port, a statement that such issues will be addressed by the parties responsible for the southern portion of the former mill site.

TASK 3 – Parcel 1 Soils Cleanup Action Plan

The Port will prepare a draft Parcel 1 Soils Cleanup Action Plan (“Parcel 1 Soils CAP”) upon completion of the Parcel 1 Soils RI/FS Report. After public comment, Ecology will issue a final Parcel 1 Soils CAP.

TASK 3a – Parcel 1 Soils Completion Report

The Port will prepare a Parcel 1 Soils Completion Report upon completion of cleanup actions, if any, on Parcel 1 Soils. Ecology will issue a Parcel 1 Soils Notice of Completion upon completion of the cleanup actions set forth in the Parcel 1 Soils CAP.

EXHIBIT D

DELIVERABLES AND SCHEDULE

This Exhibit E constitutes a schedule for the delivery of the written deliverable documents that are necessary to accomplish the Scope of Work.

The parties agree that adherence to the schedule will greatly expedite the actions called for in the Scope of Work and allow a steady and consistent effort by both the Port and Ecology. Upon receipt of a deliverable, Ecology will advise the Port of the date upon which its comments will be provided. Ecology will use its best efforts to review and comment on all documents within twenty-one (21) days of receipt.

TASK 1

- | | | |
|----|------------------------------------|--|
| 1. | Draft Uplands Area RI/FS Work Plan | 30 days after effective date of Decree |
| 2. | Final Uplands Area RI/FS Work Plan | 30 days after receipt of Ecology's comments on the draft Uplands RI/FS Work Plan |

TASK 1a

- | | | |
|----|-----------------------------------|--|
| 3. | Draft Parcel 1 Soils RI/FS Report | 120 days after approval of Uplands Area RI/FS Work Plan |
| 4. | Final Parcel 1 Soils RI/FS Report | 30 days after receipt of Ecology's comments on draft Parcel 1 Soils RI/FS Report |

TASK 1b

- | | | |
|----|---------------------------------|--|
| 5. | Draft Uplands Area RI/FS Report | As set forth in the Uplands Area RI/FS Work Plan |
| 6. | Final Uplands Area RI/FS Report | 30 days after receipt of Ecology's comments on draft Uplands Area RI/FS Report |

TASK 1c

- | | | |
|----|--|---|
| 7. | Statement or Work Plan on Site-Wide Uplands Issues | Later of 60 days after final Uplands Area RI/FS Report or uplands RI/FS for southern portion of former mill site. |
|----|--|---|

TASK 2

- | | | |
|----|-----------------------------------|--|
| 8. | Draft Marine Area RI/FS Work Plan | 180 days after effective date of the Decree |
| 9. | Final Marine Area RI/FS Work Plan | 30 days after receipt of Ecology's comments on Draft Marine Area Work Plan |

TASK 2a

- | | | |
|-----|--------------------------------|--|
| 10. | Draft Marine Area RI Report | As set forth in the Marine Area Work Plan |
| 11. | Draft Marine Area FS Report | 60 days after draft Marine Area RI Report |
| 12. | Final Marine Area RI/FS Report | 30 days after receipt of Ecology's comments on the draft Marine Area RI and draft Marine Area FS Reports |

TASK 2b

- | | | |
|-----|---|---|
| 13. | Statement or Work Plan on Site-Wide Marine Issues | Later of 60 days after final Marine Area RI/FS Report or Marine RI/FS for southern portion of former mill site. |
|-----|---|---|

TASK 3

- | | | |
|-----|--------------------------|---|
| 14. | Draft Parcel 1 Soils CAP | 30 days after Ecology's approval of Parcel 1 Soils RI/FS Report |
|-----|--------------------------|---|

TASK 3a

- | | | |
|-----|-------------------------------------|---|
| 15. | Parcel 1 Soils Completion Report | 60 days after completion of cleanup actions, if any |
| 16. | Ecology issues Notice of Completion | 30 days after receipt of Parcel 1 Soils Completion Report |

2003 MAR 21 AM 10:43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO. **03 2 00492 1**

DECLARATION OF
MICHAEL L. DUNNING

I, Michael L. Dunning, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct.

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am an Assistant Attorney General assigned to represent the Washington State Department of Ecology on legal matters relating to the site in Skagit County, Washington referred to as the Former Scott Paper Mill Site (Site).

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations that led to the Consent Decree with the Port of Anacortes that is being presented to the Court.

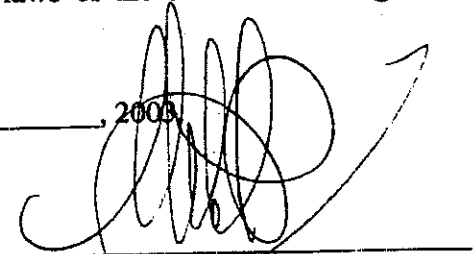
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a).

5. Ecology has determined that the proposed settlement and remedial action described in the Consent Decree will lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e).

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED this 30th day of MARCH, 2005


MICHAEL L. DUNNING

2003 MAR 21 AM 10:43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO. 03 2 00492 1
COMPLAINT

I. JURISDICTION

1.1 This Court has jurisdiction over the parties and over the subject matter under the Model Toxics Control Act, RCW 70.105D.

II. PARTIES

2.1 Plaintiff State of Washington, Department of Ecology (Ecology) is a state agency charged with the implementation of the Model Toxics Control Act.

2.2 Defendant Port of Anacortes has agreed to enter into a Consent Decree with Ecology under the Model Toxics Control Act for investigation and clean-up of the site.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. FACTUAL ALLEGATIONS

3.1 Site refers to the Former Scott Paper Mill Site (Site). The Site is more particularly described in Exhibit B, a detailed diagram, attached to the Decree submitted to settle this action.

3.2 Ecology has determined that there has been a release or threatened release of hazardous substances at the Site. Ecology has further determined that this release or threatened release requires remedial action to protect human health, welfare, and the environment; and that the Defendant is potentially liable person with respect to this Site.

3.3 Ecology and the Defendant have entered into a Consent Decree to resolve all of Ecology's claims against the Defendant for the matters addressed in the Consent Decree.

3.4 The Consent Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). The Consent Decree is being submitted to the Court along with this Complaint.

Ecology has determined that entry of the Consent Decree will lead to a more expeditious cleanup of the Site.

IV. CAUSE OF ACTION

4.1 Plaintiff re-alleges all preceding paragraphs.

4.2 Plaintiff alleges that the Defendant is responsible for investigation and cleanup at the Site pursuant to the MTCA, RCW 70.105D.050(3).

V. PRAYER FOR RELIEF

5.1 Ecology and Defendant request that the Court sign and enter the Consent Decree in this matter.

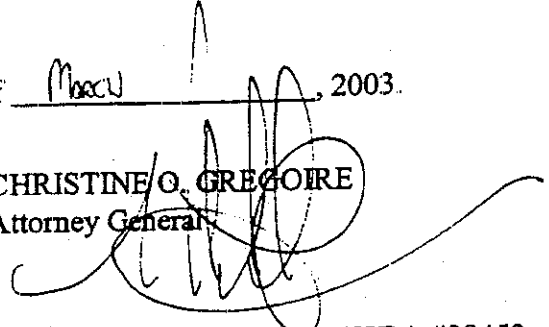
5.2 Ecology and Defendant further request that the Court retain jurisdiction to

1 enforce the terms of the Consent Decree.

2 Respectfully submitted this 20th day of March, 2003.

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

CHRISTINE O. GREGOIRE
Attorney General



MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 586-6753

2003 MAR 21 AM 10:43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
SKAGIT COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF ANACORTES,

Defendant.

NO. **03 2 00492 1**
SUMMONS

TO: Port of Anacortes;
AND TO: Lynda L. Brothers, Attorney for Defendant;
AND TO: The Clerk of the above-entitled Court.

A lawsuit has been started against you in the above-entitled Court by the State of Washington, Department of Ecology, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree.

//
//

1 Accordingly, this Summons shall not require the filing of an answer.

2 Respectfully submitted this 30th day of MARCH, 2003.

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

CHRISTINE O. GREGOIRE
Attorney General

MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 586-6753