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CONFORM AND RETURN

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**STATE OF WASHINGTON  
WHATCOM COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF BELLINGHAM,

Defendant.

NO. **14 2 02700 8**

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and the Port of Bellingham (Defendant) under this Decree is to provide for remedial  
4 action at a facility where there has been a release or threatened release of hazardous  
5 substances. The Second Amendment to Agreed Order No. 6834 (2013) separated the Georgia-  
6 Pacific West Site (Site) into two remedial action units (RAU) for the purpose of expediting  
7 remedial actions and facilitating redevelopment of the Site. This Decree requires Defendant to  
8 conduct a final cleanup of one of the units, the Pulp/Tissue Mill RAU, at the Site (as shown on  
9 Exhibit A) by implementing the Cleanup Action Plan (CAP) attached as Exhibit B, according  
10 to the schedule and other requirements identified in this Decree and all exhibits thereto.

11 B. The other RAU at the Site, the Chlor-Alkali RAU, is described in Exhibit A and  
12 is not subject to the terms and conditions of this Decree, nor is liability for the Chlor-Alkali  
13 RAU addressed or settled in this Decree.

14 C. The Parties anticipate that to the extent further remedial actions are required  
15 under the Model Toxics Control Act (MTCA), RCW 70.105D, at the remainder of the Site  
16 (Chlor-Alkali RAU), such actions will be performed under an amendment to this Decree and  
17 CAP to address releases or threatened releases of hazardous substances including mercury and  
18 PAH contaminated soils, and mercury, PAH, VOC, and pH contaminated groundwater.

19 D. Ecology has determined that these actions are necessary to protect human health  
20 and the environment.

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

1 F. By signing this Decree, the Parties agree to its entry and agree to be bound by  
2 its terms.

3 G. By entering into this Decree, the Parties do not intend to discharge non-settling  
4 parties from any liability they may have with respect to matters alleged in the Complaint. The  
5 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
6 sums expended under this Decree.

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

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

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

14 **II. JURISDICTION**

15 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
16 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

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

22 C. Ecology has determined that a release or threatened release of hazardous  
23 substances has occurred at the Site, a portion of which is the subject of this Decree.

24 D. Ecology has given notice to Defendant of Ecology's determination that  
25 Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

26

1 E. The actions to be taken pursuant to this Decree are necessary to protect public  
2 health and the environment.

3 F. This Decree has been subject to public notice and comment.

4 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
5 hazardous substances at a portion of the Site in compliance with the cleanup standards  
6 established under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

7 H. Defendant has agreed to undertake the actions specified in this Decree and  
8 consents to the entry of this Decree under MTCA.

9 **III. PARTIES BOUND**

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

19 **IV. DEFINITIONS**

20 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and  
21 WAC 173-340-200 shall control the meanings of the terms in this Decree.

22 A. Site: The 74 acre Site is referred to as the former Georgia-Pacific West  
23 property and is generally located on the tidal flats of Bellingham Bay adjacent to the Whatcom  
24 Waterway in Bellingham, Washington, and is generally located between the Whatcom  
25 Waterway and Cornwall Avenue, with Roeder Avenue and West Chestnut Street to the  
26 northeast, and the Bellingham Shipping Terminal to the southwest. The Site consists of

1 property owned by the Port of Bellingham, Burlington Northern Santa Fe Railroad (BNSF), the  
2 City of Bellingham, the Department of Natural Resources (for state-owned aquatic lands). The  
3 Site includes the Pulp/Tissue Remedial Action Unit at the northeast end of the Site and the  
4 Chlor-Alkali Remedial Action Unit at the southwest end of the Site. The Site, the Pulp/Tissue  
5 Remedial Action Unit and the Chlor-Alkali Remedial Action Unit are more particularly  
6 described in the Site Diagram (Exhibit A). The Site constitutes a Facility under  
7 RCW 70.105D.020(8).

8 B. Parties: Refers to the State of Washington, Department of Ecology (Ecology)  
9 and the Port of Bellingham (the Port).

10 C. Defendant: Refers to the Port.

11 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
12 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
13 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

14 E. Pulp/Tissue Mill Remedial Action Unit (RAU): Refers to the portion of the Site  
15 that is the subject of this Consent Decree. The Pulp/Tissue Mill RAU contains contamination  
16 that is generally distinct from and not co-mingled with that of the Chlor-Alkali RAU, the  
17 portion of the Site which is not addressed by this Consent Decree.

## 18 V. FINDINGS OF FACTS

19 Ecology makes the following findings of fact without any express or implied  
20 admissions of such facts by Defendant.

21 A. The Site is located in Bellingham, Washington, and consists of approximately  
22 74 acres. The Site is bounded by Whatcom Waterway and Cornwall Avenue with Roeder  
23 Avenue and West Chestnut Street to the northeast and the Bellingham Shipping Terminal to  
24 the southwest. The Pulp/Tissue Mill RAU is located at the northern portion of the Site and was  
25 primarily used for the manufacturing of pulp and paper products. A diagram of the Site is  
26 attached as Exhibit A and shows the relative location of the Pulp/Tissue Mill RAU.

1 B. Between approximately 1926 and 1963, the Pulp/Tissue Mill RAU was used by  
2 the Puget Sound Pulp and Timber Company, which then merged with Georgia-Pacific West,  
3 Inc., Georgia Pacific Corporation, and Georgia Pacific, L.L.C. (collectively G-P), and  
4 continued operating the facility.

5 C. Contamination at the Pulp/Tissue Mill RAU is related to the operations of the  
6 former Pulp and Tissue Mill. The facility contained six individual plants producing primary  
7 sulfite pulp, Permachem pulp, sulfuric acid, chlorine, sodium hydroxide, alcohol, and  
8 lignosulfonate products. Steam heat was supplied to the Mill by burning fuel oil (Bunker C  
9 oil) in the Steam Plant. The fuel oil was stored in a 375,000 gallon tank located east of the  
10 Steam Plant and, later, in one of the Million Gallon Tanks (Tank 2) located immediately north  
11 of the BNSF main line and west of the Pulp and Tissue Mill RAU area.

12 D. Ecology named G-P as a Potentially Liable Person (PLP) for the Site on  
13 May 4, 1999.

14 E. In 2001, G-P closed the pulp mill.

15 F. In 2002, Ecology and G-P entered Agreed Order No. DE 02-TCPIS-4722,  
16 requiring G-P to complete a Remedial Investigation/Feasibility Study (RI/FS).

17 G. In 2004, G-P contracted with Aspect Consulting to perform a Phase II  
18 Environmental Site Assessment of its Bellingham operations, including the former pulp mill  
19 area and the then-operating tissue plant at the Pulp/Tissue Mill RAU. The results of that  
20 assessment showed soil contamination at the pulp and tissue mill areas in concentrations  
21 exceeding MTCA unrestricted soil cleanup levels for petroleum hydrocarbons, metals, semi  
22 volatile organic compounds (SVOCs), dioxins, furans, and polycyclic aromatic hydrocarbons  
23 (PAHs). The assessment also indicated groundwater contamination in concentrations  
24 exceeding applicable MTCA cleanup levels for petroleum hydrocarbons, metals, certain VOCs  
25 and PAHs.

26

1 H. In January of 2005, the Port purchased the majority of G-P's property, including  
2 the Pulp/Tissue Mill RAU. Ecology named the Port as a PLP on June 2, 2005. After the Port's  
3 purchase of the property, G-P continued to operate its tissue plant until December 2007 when it  
4 ceased the last of its operations at the Site and initiated demolition of the tissue plant and  
5 associated structures.

6 I. In August 2009, Ecology and the Port entered Agreed Order No. 6834,  
7 superseding Agreed Order No. DE 02-TCPIS-4722 and requiring the Port to perform the RI/FS  
8 at the Site.

9 J. In September 2009, the Agreed Order No. DE 02-TCPIS-4722 was terminated  
10 due to the Port taking over lead responsibility for cleaning up the Site under Agreed Order  
11 No. 6834.

12 K. In 2011, Agreed Order No. 6834 was amended (First Amendment) to allow an  
13 interim action to be performed to excavate and remove petroleum contaminated soils from the  
14 former Bunker C Tank Area.

15 L. The Port contracted with Aspect Consulting to perform an Interim Action Pre-  
16 Design Investigation Report in 2011. The results of that document showed petroleum  
17 hydrocarbon (Bunker C) saturated soils and free product present in the vicinity of the former  
18 Bunker C Tank. PAHs also exist above MTCA unrestricted soil cleanup levels. The Interim  
19 Action Pre-Design Investigation Report was used to inform the soil removal interim action  
20 performed at the Bunker C Tank area in 2011. This work successfully removed 4,333 tons of  
21 petroleum contaminated soils from the Pulp/Tissue Mill RAU.

22 M. In 2013, a Second Amendment to Agreed Order No. 6834 was entered,  
23 separating the Site into two remedial action units for the purpose of expediting remedial action  
24 and facilitating redevelopment of the Site.

25 N. In 2013, Aspect Consulting completed a Remedial Investigation for the Site.  
26 The results of that investigation showed soil contaminated with petroleum hydrocarbon, PAHs,



1 and dioxin/furans exceed MTCA cleanup levels in the Bunker C Tank area. Metals and acidic  
2 pH in soil and groundwater in the Acid Plant area exceed MTCA cleanup levels. VOCs in  
3 groundwater in the Lignin Plant area exceed MTCA cleanup levels. Miscellaneous metals in  
4 groundwater in the area around the Alcohol Plant, Lignin Plant and Lignin Warehouse B  
5 exceed MTCA cleanup levels, and Pulp/Tissue Mill RAU wide soils exceeding miscellaneous  
6 metals, PAH, and dioxin/furan MTCA cleanup levels associated with the historic industrial use  
7 of the facility.

8 O. In April 2014, to further expedite remedial actions at the Pulp/Tissue Mill RAU  
9 under this Decree, the Pulp/Tissue Mill RAU and Chlor-Alkali RAU boundaries were redrawn  
10 such that the entire BNSF Railway Company property and easements were removed from the  
11 Pulp/Tissue Mill RAU and contained within the Chlor-Alkali RAU. Ecology considers this  
12 change to Agreed Order No. 6834 (Order), which does not alter the elements of the work to be  
13 performed, to be a minor modification pursuant to Section VIII.L of the Order.

14 P. The contaminants of concern at the Pulp/Tissue Mill RAU that exceed MTCA  
15 cleanup levels are petroleum hydrocarbon in soil, dioxin/furan in soil, acidic pH in soil and  
16 groundwater, metals in soil and groundwater, VOCs in groundwater. Ecology has assigned the  
17 Site an overall priority ranking of 5 pursuant to MTCA.

18 Q. As documented in the CAP (Exhibit B), the cleanup action to be implemented at  
19 the Pulp/Tissue Mill RAU includes the excavation and disposal of petroleum hydrocarbon  
20 (Bunker C) contaminated soils in the Bunker C Tank area, monitored natural attenuation of  
21 metals and acidic pH contaminated groundwater in the Acid Plant and miscellaneous metals  
22 area, and on-site containment and institutional controls for miscellaneous soil contamination  
23 throughout the Pulp/Tissue Mill RAU.

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**VI. WORK TO BE PERFORMED**

This Decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Pulp/Tissue Mill RAU.

A. In accordance with Exhibit C (Schedule of Deliverables), the work to be performed for this Cleanup Action Plan will include the following.

1. Excavate and remove the remaining Bunker C Tank Area Soils in the vicinity of the tank piping, pier, and former Steam Plant with a contingent treatment option of in-situ solidification/stabilization if removal is impracticable.

2. Implement a monitored natural attenuation (MNA) remedy for the pH and metals contaminated groundwater in the Acid Plant Area, the metals contaminated groundwater in the Miscellaneous Metals Area, and the VOC contaminated groundwater in the vicinity of monitoring well LP-MW01. Several contingent remedies including enhanced source attenuation, down gradient groundwater buffering/treatment and/or control, and biostimulation may be considered if MNA is shown to fail.

3. Implement Pulp/Tissue Mill RAU-wide capping to control the soil direct contact and soil erosion pathways.

4. Provide institutional controls to manage exposure to the contaminated materials contained at the Pulp/Tissue Mill RAU.

B. Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the Parties agree to modify the CAP (Exhibit B) or Schedule of Deliverables (Exhibit C) to cover these actions. All work conducted by Defendant under this Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

1                                      **VII.            DESIGNATED PROJECT COORDINATORS**

2            The project coordinator for Ecology is:

3                                      Brian S. Sato, P.E.  
4                                      Washington State Department of Ecology  
5                                      3190 160<sup>th</sup> Avenue SE  
6                                      Bellevue, Washington 98008  
7                                      425 649-7265

8            The project coordinator for Defendant is:

9                                      Brian D. Gouran  
10                                     Port of Bellingham  
11                                     1801 Roeder Avenue  
12                                     Bellingham, Washington 98227  
13                                     360 676-2500

14           Each project coordinator shall be responsible for overseeing the implementation of this  
15           Decree. Ecology's project coordinator will be Ecology's designated representative for the  
16           Pulp/Tissue Mill RAU. To the maximum extent possible, communications between Ecology  
17           and Defendant and all documents, including reports, approvals, and other correspondence  
18           concerning the activities performed pursuant to the terms and conditions of this Decree shall be  
19           directed through the project coordinators. The project coordinators may designate, in writing,  
20           working level staff contacts for all or portions of the implementation of the work to be  
21           performed required by this Decree.

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

24     **VIII.            PERFORMANCE**

25           All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
26           the supervision and direction of a geologist or hydrogeologist licensed by the State of  
27           Washington or under the direct supervision of an engineer registered by the State of  
28           Washington, except as otherwise provided for by RCW 18.220 and 18.43.

1 All engineering work performed pursuant to this Decree shall be under the direct  
2 supervision of a professional engineer registered by the State of Washington, except as  
3 otherwise provided for by RCW 18.43.130.

4 All construction work performed pursuant to this Decree shall be under the direct  
5 supervision of a professional engineer or a qualified technician under the direct supervision of  
6 a professional engineer. The professional engineer must be registered by the State of  
7 Washington, except as otherwise provided for by RCW 18.43.130.

8 Any documents submitted containing geologic, hydrologic, or engineering work shall  
9 be under the seal of an appropriately licensed professional as required by RCW 18.220 and  
10 18.43.

11 Defendant shall notify Ecology in writing of the identity of any engineer(s) and  
12 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
13 of this Decree, in advance of their involvement at the Site.

#### 14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have access to enter and freely  
16 move about all property at the Site, including the Pulp/Tissue Mill RAU, that Defendant either  
17 owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*:  
18 inspecting records, operation logs, and contracts related to the work being performed pursuant  
19 to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree;  
20 conducting such tests or collecting such samples as Ecology may deem necessary; using a  
21 camera, sound recording, or other documentary type equipment to record work done pursuant  
22 to this Decree; and verifying the data submitted to Ecology by Defendant. Defendant shall  
23 make all reasonable efforts to secure access rights for those properties within the Site not  
24 owned or controlled by Defendant where remedial activities or investigations will be  
25 performed pursuant to this Decree. Ecology or any Ecology authorized representative shall  
26 give reasonable notice before entering any Site property owned or controlled by Defendant

1 unless an emergency prevents such notice. All Parties who access the Site pursuant to this  
2 section shall comply with any applicable health and safety plan(s). Ecology employees and  
3 their representatives shall not be required to sign any liability release or waiver as a condition  
4 of Site property access.

5 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

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

12 If requested by Ecology, Defendant shall allow Ecology and/or its authorized  
13 representative to take split or duplicate samples of any samples collected by Defendant  
14 pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days  
15 in advance of any sample collection or work activity at the Pulp/Tissue Mill RAU. Ecology  
16 shall, upon request, allow Defendant and/or its authorized representative to take split or  
17 duplicate samples of any samples collected by Ecology pursuant to the implementation of this  
18 Decree, provided that doing so does not interfere with Ecology's sampling. Without limitation  
19 on Ecology's rights under Section IX (Access), Ecology shall notify Defendant prior to any  
20 sample collection activity unless an emergency prevents such notice.

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

1 **XI. PROGRESS REPORTS**

2 Defendant shall submit to Ecology written quarterly Progress Reports that describe the  
3 actions taken during the previous quarter to implement the requirements of this Decree. The  
4 Progress Reports shall include the following:

- 5 A. A list of on-site activities that have taken place during the quarter;
- 6 B. Detailed description of any deviations from required tasks not otherwise  
7 documented in project plans or amendment requests;
- 8 C. Description of all significant deviations from the Schedule of Deliverables  
9 (Exhibit C) during the current quarter and any planned deviations in the upcoming quarter;
- 10 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
11 compliance with the schedule;
- 12 E. All raw data (including laboratory analyses) received by Defendant during the  
13 past quarter and an identification of the source of the sample; and
- 14 F. A list of deliverables for the upcoming quarter if different from the schedule.

15 All Progress Reports shall be submitted to Ecology's project coordinator by the tenth  
16 (10th) day of the month in which they are due after the effective date of this Decree.

17 **XII. RETENTION OF RECORDS**

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

25 Nothing in this Decree is intended by Defendant to waive any right it may have under  
26 applicable law to limit disclosure of documents protected by the attorney work-product

1 | privilege and/or the attorney-client privilege. If Defendant withholds any requested records  
2 | based on an assertion of privilege, Defendant shall provide Ecology with a privilege log  
3 | specifying the records withheld and the applicable privilege. No Pulp/Tissue Mill RAU-  
4 | related data collected pursuant to this Decree shall be considered privileged.

5 | **XIII. TRANSFER OF INTEREST IN PROPERTY**

6 | No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
7 | interest in any portion of the Pulp/Tissue Mill RAU shall be consummated by Defendant  
8 | without provision for continued operation and maintenance of any containment system,  
9 | treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

10 | Prior to Defendant's transfer of any interest in all or any portion of the Pulp/Tissue Mill  
11 | RAU, and during the effective period of this Decree, Defendant shall provide a copy of this  
12 | Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said  
13 | interest; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of  
14 | said transfer. Upon transfer of any interest, Defendant shall notify all transferees of the  
15 | restrictions on the activities and uses of the property under this Decree and incorporate any  
16 | such use restrictions into the transfer documents.

17 | **XIV. RESOLUTION OF DISPUTES**

18 | A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
19 | other decision or action by Ecology's project coordinator, or an itemized billing statement  
20 | under Section XXII (Remedial Action Costs), the Parties shall utilize the dispute resolution  
21 | procedure set forth below.

22 | 1. Upon receipt of Ecology's project coordinator's written decision, or the  
23 | itemized billing statement, Defendant has fourteen (14) days within which to notify Ecology's  
24 | project coordinator in writing of its objection to the decision or itemized statement.  
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1                   2.     The Parties' project coordinators shall then confer in an effort to resolve  
2 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
3 Ecology's project coordinator shall issue a written decision.

4                   3.     Defendant may then request regional management review of the  
5 decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup  
6 Program Section Manager within seven (7) days of receipt of Ecology's project coordinator's  
7 written decision.

8                   4.     Ecology's Regional Section Manager shall conduct a review of the  
9 dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30)  
10 days of Defendant's request for review.

11                  5.     If Defendant finds Ecology's Regional Section Manager's decision  
12 unacceptable, Defendant may then request final management review of the decision. This  
13 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)  
14 days of receipt of the Regional Section Manager's decision.

15                  6.     Ecology's Toxics Cleanup Program Manager shall conduct a review of  
16 the dispute and shall endeavor to issue a written decision regarding the dispute within thirty  
17 (30) days of Defendant's request for review of the Regional Section Manager's decision. The  
18 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed  
19 matter.

20                  B.     If Ecology's final written decision is unacceptable to Defendant, Defendant has  
21 the right to submit the dispute to the Court for resolution. The Parties agree that one judge  
22 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising  
23 under this Decree. In the event Defendant presents an issue to the Court for review, the Court  
24 shall review the action or decision of Ecology on the basis of whether such action or decision  
25 was arbitrary and capricious and render a decision based on such standard of review.  
26



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

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

8 **XV. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed  
10 without formally amending this Decree. Minor changes will be documented in writing by  
11 Ecology.

12 Substantial changes to the work to be performed shall require formal amendment of this  
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
14 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
15 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
16 by any party.

17 Defendant shall submit a written request for amendment to Ecology for approval.  
18 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
19 written request for amendment is received. If the amendment to the Decree is a substantial  
20 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
21 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
22 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
23 resolution procedures described in Section XIV (Resolution of Disputes).

24 **XVI. EXTENSION OF SCHEDULE**

25 A. An extension of schedule shall be granted only when a request for an extension  
26 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the

1 deadline for which the extension is requested, and good cause exists for granting the extension.

2 All extensions shall be requested in writing. The request shall specify:

- 3 1. The deadline that is sought to be extended;
- 4 2. The length of the extension sought;
- 5 3. The reason(s) for the extension; and
- 6 4. Any related deadline or schedule that would be affected if the extension  
7 were granted.

8 B. The burden shall be on Defendant to demonstrate to the satisfaction of Ecology  
9 that the request for such extension has been submitted in a timely fashion and that good cause  
10 exists for granting the extension. Good cause may include, but may not be limited to:

- 11 1. Circumstances beyond the reasonable control and despite the due  
12 diligence of Defendant including delays caused by unrelated third parties or Ecology, such as  
13 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents  
14 submitted by Defendant;
- 15 2. Acts of God, including fire, flood, blizzard, extreme temperatures,  
16 storm, or other unavoidable casualty; or
- 17 3. Endangerment as described in Section XVII (Endangerment).

18 However, neither increased costs of performance of the terms of this Decree nor  
19 changed economic circumstances shall be considered circumstances beyond the reasonable  
20 control of Defendant.

21 C. Ecology shall act upon any written request for extension in a timely fashion.  
22 Ecology shall give Defendant written notification of any extensions granted pursuant to this  
23 Decree. A requested extension shall not be effective until approved by Ecology or, if required,  
24 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend  
25 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is  
26 granted.

1 D. An extension shall only be granted for such period of time as Ecology  
2 determines is reasonable under the circumstances. Ecology may grant schedule extensions  
3 exceeding ninety (90) days only as a result of:

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

6 2. Other circumstances deemed exceptional or extraordinary by  
7 Ecology; or

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

9 **XVII. ENDANGERMENT**

10 In the event Ecology determines that any activity being performed at the Pulp/Tissue  
11 Mill RAU under this Decree is creating or has the potential to create a danger to human health  
12 or the environment, Ecology may direct Defendant to cease such activities for such period of  
13 time as it deems necessary to abate the danger. Defendant shall immediately comply with such  
14 direction.

15 In the event Defendant determines that any activity being performed at the Pulp/Tissue  
16 Mill RAU under this Decree is creating or has the potential to create a danger to human health  
17 or the environment, Defendant may cease such activities. Defendant shall notify Ecology's  
18 project coordinator as soon as possible, but no later than twenty-four (24) hours after making  
19 such determination or ceasing such activities. Upon Ecology's direction, Defendant shall  
20 provide Ecology with documentation of the basis for the determination or cessation of such  
21 activities. If Ecology disagrees with Defendant's cessation of activities, it may direct  
22 Defendant to resume such activities.

23 If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant's  
24 obligations with respect to the ceased activities shall be suspended until Ecology determines  
25 the danger is abated, and the time for performance of such activities, as well as the time for any  
26 other work dependent upon such activities, shall be extended, in accordance with Section XVI

1 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the  
2 circumstances.

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

5 **XVIII. COVENANT NOT TO SUE**

6 A. Covenant Not to Sue: In consideration of Defendant's compliance with the  
7 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
8 actions against Defendant regarding the release or threatened release of hazardous substances  
9 covered by this Decree.

10 This Decree covers only the Pulp/Tissue Mill RAU specifically identified in the Site  
11 Diagram (Exhibit A) and those hazardous substances that Ecology knows are located at the  
12 Pulp/Tissue Mill RAU as of the date of entry of this Decree. This Decree does not cover the  
13 Chlor-Alkali RAU or any other hazardous substance or area. Ecology retains all of its  
14 authority relative to any substance or area not covered by this Decree.

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

- 16 1. Criminal liability;  
17 2. Liability for damages to natural resources; and  
18 3. Any Ecology action, including cost recovery, against PLPs not a party to  
19 this Decree.

20 If factors not known at the time of entry of this Decree are discovered and present a  
21 previously unknown threat to human health or the environment, the Court shall amend this  
22 Covenant Not to Sue.

23 B. Reopeners: Ecology specifically reserves the right to institute legal or  
24 administrative action against Defendant to require it to perform additional remedial actions at  
25 the Pulp/Tissue Mill RAU and to pursue appropriate cost recovery, pursuant to  
26 RCW 70.105D.050 under the following circumstances:

1           1.     Upon Defendant's failure to meet the requirements of this Decree,  
2 including, but not limited to, failure of the remedial action to meet the cleanup standards  
3 identified in the Cleanup Action Plan (CAP) (Exhibit B);

4           2.     Upon Ecology's determination that remedial action beyond the terms of  
5 this Decree is necessary to abate an imminent and substantial endangerment to human health or  
6 the environment;

7           3.     Upon the availability of new information regarding factors previously  
8 unknown to Ecology, including the nature or quantity of hazardous substances at the  
9 Pulp/Tissue Mill RAU, and Ecology's determination, in light of this information, that further  
10 remedial action is necessary at that RAU to protect human health or the environment; or

11          4.     Upon Ecology's determination that additional remedial actions are  
12 necessary to achieve cleanup standards within the reasonable restoration time frame set forth in  
13 the CAP.

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

17                   **XIX.     CONTRIBUTION PROTECTION**

18           With regard to claims for contribution against Defendant, the Parties agree that  
19 Defendant is entitled to protection against claims for contribution for matters addressed in this  
20 Decree within the Pulp/Tissue Mill RAU as provided by RCW 70.105D.040(4)(d).

21                   **XX.     LAND USE RESTRICTIONS**

22           In consultation with Defendant, Ecology will prepare the Environmental (Restrictive)  
23 Covenant using the Model Environmental (Restrictive) Covenant (Exhibit D) consistent with  
24 WAC 173-340-440 and Chapter 64.70 RCW. After approval by Ecology, Defendant shall  
25 record the Environmental (Restrictive) Covenant with the office of the Whatcom County  
26 Auditor within ten (10) days of completion of all phases of the cleanup action. The

1 Environmental (Restrictive) Covenant shall restrict future activities and uses of the Pulp/Tissue  
2 Mill RAU as agreed to by Ecology and Defendant. Defendant shall provide Ecology with the  
3 original recorded Environmental (Restrictive) Covenant within thirty (30) days of the  
4 recording date.

5 The Contaminated Materials Management Plan (Exhibit E) shall be in effect in order to  
6 address excavation, management, future use and handling of soils at the Pulp/Tissue Mill  
7 RAU. The Contaminated Materials Management Plan shall be referenced in the  
8 Environmental (Restrictive) Covenant as a restriction on future activities on the Pulp/Tissue  
9 Mill RAU.

10 **XXI. INDEMNIFICATION**

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

20 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

21 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
22 accordance with all applicable federal, state, and local requirements, including requirements to  
23 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
24 federal, state, or local requirements that the agency has determined are applicable and that are  
25 known at the time of entry of this Decree have been identified in Exhibit F.  
26

1 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural  
2 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws  
3 requiring or authorizing local government permits or approvals. However, Defendant shall  
4 comply with the substantive requirements of such permits or approvals. The exempt permits or  
5 approvals and the applicable substantive requirements of those permits or approvals, as they  
6 are known at the time of entry of this Decree, have been identified in Exhibit G.

7 Defendant has a continuing obligation to determine whether additional permits or  
8 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
9 action under this Decree. In the event either Ecology or Defendant determines that additional  
10 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
11 remedial action under this Decree, it shall promptly notify the other party of this determination.  
12 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
13 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly  
14 consult with the appropriate state and/or local agencies and provide Ecology with written  
15 documentation from those agencies of the substantive requirements those agencies believe are  
16 applicable to the remedial action. Ecology shall make the final determination on the additional  
17 substantive requirements that must be met by Defendant and on how Defendant must meet  
18 those requirements. Ecology shall inform Defendant in writing of these requirements. Once  
19 established by Ecology, the additional requirements shall be enforceable requirements of this  
20 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
21 additional requirements until Ecology makes its final determination.

22 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
23 exemption from complying with the procedural requirements of the laws referenced in  
24 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is  
25 necessary for the state to administer any federal law, the exemption shall not apply and  
26

1 Defendant shall comply with both the procedural and substantive requirements of the laws  
2 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

3 **XXIII. REMEDIAL ACTION COSTS**

4 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
5 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
6 or its contractors for, or on, the Pulp/Tissue Mill RAU under Chapter 70.105D RCW, including  
7 remedial actions and Decree preparation, negotiation, oversight, and administration. These  
8 costs shall include work performed both prior to and subsequent to the entry of this Decree.  
9 Ecology's costs shall include costs of direct activities and support costs of direct activities as  
10 defined in WAC 173-340-550(2). Defendant shall pay the required amount within thirty (30)  
11 days of receiving from Ecology an itemized statement of costs that includes a summary of  
12 costs incurred, an identification of involved staff, and the amount of time spent by involved  
13 staff members on the project. A general statement of work performed will be provided upon  
14 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),  
15 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of  
16 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded  
17 monthly.

18 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
19 authority to recover unreimbursed remedial action costs by filing a lien against real property  
20 subject to the remedial actions.

21 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

22 If Ecology determines that Defendant has failed without good cause to implement the  
23 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all  
24 portions of the remedial action that remain incomplete. If Ecology performs all or portions of  
25 the remedial action because of Defendant's failure to comply with its obligations under this  
26 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance



1 with Section XXII (Remedial Action Costs), provided that Defendant is not obligated under  
2 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
3 scope of this Decree.

4 Except where necessary to abate an emergency situation, Defendant shall not perform  
5 any remedial actions at the Pulp/Tissue Mill RAU outside those remedial actions required by  
6 this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant  
7 to Section XV (Amendment of Decree).

8 **XXV. PERIODIC REVIEW**

9 As remedial action, including groundwater monitoring, continues at the Pulp/Tissue  
10 Mill RAU, the Parties agree to review the progress of remedial action at the Pulp/Tissue Mill  
11 RAU, and to review the data accumulated as a result of monitoring the RAU as often as is  
12 necessary and appropriate under the circumstances. At least every five (5) years after the  
13 initiation of cleanup action at the Pulp/Tissue Mill RAU the Parties shall meet to discuss the  
14 status of that RAU and the need, if any, for further remedial action at the Pulp/Tissue Mill  
15 Pulp/Tissue Mill RAU. At least ninety (90) days prior to each periodic review, Defendant  
16 shall submit a report to Ecology that documents whether human health and the environment are  
17 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the  
18 right to require further remedial action at the Pulp/Tissue Mill RAU under appropriate  
19 circumstances. This provision shall remain in effect for the duration of this Decree.

20 **XXVI. PUBLIC PARTICIPATION**

21 A Public Participation Plan is required for this Pulp/Tissue Mill RAU. Ecology shall  
22 review any existing Public Participation Plan to determine its continued appropriateness and  
23 whether it requires amendment, or if no plan exists, Ecology shall develop a Public  
24 Participation Plan alone or in conjunction with Defendant.

25 Ecology shall maintain the responsibility for public participation at the Pulp/Tissue  
26 Mill RAU. However, Defendant shall cooperate with Ecology, and shall:

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

6           B.     Notify Ecology's project coordinator prior to the preparation of all press  
7 releases and fact sheets, and before major meetings with the interested public and local  
8 governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press  
9 releases and fact sheets, and before major meetings with the interested public and local  
10 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
11 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its  
12 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored  
13 or endorsed by Ecology.

14           C.     When requested by Ecology, participate in public presentations on the progress  
15 of the remedial action at the Pulp/Tissue Mill RAU. Participation may be through attendance  
16 at public meetings to assist in answering questions, or as a presenter.

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

- 19           1.     Bellingham Public Library  
20                   210 Central Avenue  
                  Bellingham, Washington 98225
- 21           2.     Ecology's Northwest Regional Office  
22                   3190 160<sup>th</sup> Avenue SE  
                  Bellevue, Washington 98008-5452
- 23           3.     Ecology's Bellingham Field Office  
24                   1440 10<sup>th</sup> Street, Suite 102  
                  Bellingham, Washington 98225

25           At a minimum, copies of all public notices, fact sheets, and documents relating to  
26 public comment periods shall be promptly placed in these repositories. A copy of all

1 documents related to this Pulp/Tissue Mill RAU shall be maintained in the repository at  
2 Ecology's Northwest Regional Office in Bellevue, Washington.

3 **XXVII. DURATION OF DECREE**

4 The remedial program required pursuant to this Decree shall be maintained and  
5 continued until Defendant has received written notification from Ecology that the requirements  
6 of this Decree have been satisfactorily completed. This Decree shall remain in effect until  
7 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and  
8 Section XIX (Contribution Protection) shall survive.

9 **XXVIII. CLAIMS AGAINST THE STATE**

10 Defendant hereby agrees that it will not seek to recover any costs accrued in  
11 implementing the remedial action required by this Decree from the State of Washington or any  
12 of its agencies; and further, that Defendant will make no claim against the State Toxics Control  
13 Account or any local Toxics Control Account for any costs incurred in implementing this  
14 Decree. Except as provided above, however, Defendant expressly reserves its right to seek to  
15 recover any costs incurred in implementing this Decree from any other PLP. This section does  
16 not limit or address funding that may be provided under Chapter 173-322 WAC.

17 **XXIX. EFFECTIVE DATE**

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

19 **XXX. WITHDRAWAL OF CONSENT**

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

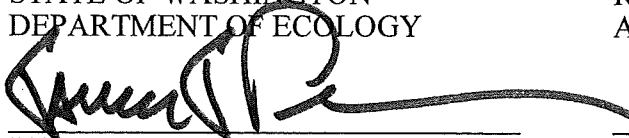
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1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

3   
4 JAMES PENDOWSKI  
5 Program Manager  
6 Toxics Cleanup Program  
7 360-407-7177

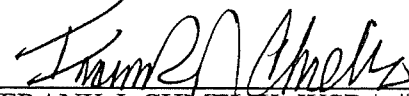
  
ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
360-586-4607

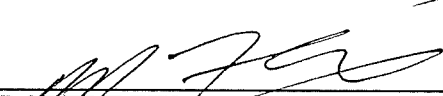
8 Date: 12/15/14

Date: 12/17/14

9 CHMELIK SITKIN & DAVIS P.S.

PORT OF BELLINGHAM

10   
11 FRANK J. CHMELIK, WSBA #13969  
12 HOLLY M. STAFFORD, WSBA #40674  
13 Attorney for Defendant  
14 Port of Bellingham  
15 (360) 306-3012

  
ROBERT FIX  
Executive Director  
(360) 676-2500

16 Date: Nov 21, 2014

Date: 11/24/14

17 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ DEC 22 2014  
18 \_\_\_\_\_ 20\_\_\_\_\_.

19 Leon F. Henley  
20 JUDGE  
21 Whatcom County Superior Court  
22  
23  
24  
25  
26