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**STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

POPE RESOURCES, A DELAWARE
LIMITED PARTNERSHIP,
OPG PROPERTIES LLC

Defendants.

NO. _____

CONSENT DECREE

Port Gamble Bay and Mill Site Upland
Area

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	JURISDICTION	4
III.	PARTIES BOUND.....	5
IV.	DEFINITIONS	5
V.	FINDINGS OF FACT	6
VI.	WORK TO BE PERFORMED.....	10
VII.	FINANCIAL ASSURANCE	11
VIII.	LAND USE RESTRICTIONS	14
IX.	PROGRESS REPORTS	13
X.	DESIGNATED PROJECT COORDINATORS.....	14
XI.	PERFORMANCE.....	14
XII.	ACCESS	15
XIII.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY	16
XIV.	RETENTION OF RECORDS	16
XV.	TRANSFER OF INTEREST IN PROPRETY	17
XVI.	RESOLUTION OF DISPUTES	17

1	XVII.	AMENDMENT OF DECREE.....	20
2	XVIII.	EXTENSION OF SCHEDULE.....	20
3	XIX.	ENDANGERMENT	22
4	XX.	COVENANT NOT TO SUE	23
5	XXI.	CONTRIBUTION PROTECTION	24
6	XXII.	IMDEMNIFICATION.....	24
7	XXIII.	COMPLIANCE WITH APPLICABLE LAWS	25
8	XXIV.	REMEDIAL ACTION COSTS	27
9	XXV.	IMPLEMENTATION OF REMEDIAL ACTION.....	27
10	XXVI.	PERIODIC REVIEW	28
11	XXVII.	PUBLIC PARTICIPATION.....	29
12	XXVIII.	DURATION OF DECREE.....	30
13	XXIX.	CLAIMS AGAINST THE STATE	30
14	XXX.	EFFECTIVE DATE.....	31
15	XXXI.	WITHDRAWAL OF CONSENT.....	31
16			
17	EXHIBIT A	Cleanup Action Plan	
18	EXHIBIT B	Site and Property Diagram	
19			
20			
21			
22			
23			
24			
25			
26			

1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), and Pope Resources, A Delaware Limited Partnership (PR) and OPG Properties LLC
4 (OPG) (collectively Defendants) under this Decree is to provide for final remedial action at the
5 Upland Area (defined below) of the Port Gamble Bay and Mill Site (Site), where a release or
6 threatened release of hazardous substances has occurred. The 2013 Consent Decree (defined
7 below) addressed the final remedial actions for the In-Water Area (defined below) of the Site.

8 2. As more specifically described in the attached Cleanup Action Plan, this Decree
9 requires Defendants to perform focused removal of contaminated soils, backfill with clean
10 material, and place clean capping material on identified portions of the Upland Area; implement
11 institutional controls on the Upland Area; and provide for compliance monitoring of the cleanup
12 actions implemented on the Upland Area. The actions outlined in this Decree, together with the
13 actions performed by Defendants under the 2013 Decree, are expected to constitute the final
14 cleanup for the Site.

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

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

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

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

1 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
2 sums expended under this Decree.

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

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

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

10 **II. JURISDICTION**

11 1. This Court has jurisdiction over the subject matter and over the Parties pursuant
12 to the Model Toxics Control Act (MTCA), RCW 70.105D.

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

18 3. Ecology has determined that a release or threatened release of hazardous
19 substances has occurred at the Site.

20 4. Ecology has given notice to Defendants of Ecology's determination that
21 Defendants are PLPs for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

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

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

1 Feasibility Study, all of which are generally located near the eastern terminus of NE View
2 Drive in Port Gamble, Washington.

3 B. Upland Area: Refers to that area of the Site other than the in-water area
4 addressed in the October 2013 Cleanup Action Plan included in the 2013 Consent
5 Decree.

6 C. In-Water Area: Refers to that area of the Site addressed in the October
7 2013 Cleanup Action Plan included in the 2013 Consent Decree.

8 D. Consent Decree or Decree: Unless otherwise indicated, refers to this
9 Consent Decree and each of the exhibits to this Decree. All exhibits are integral and
10 enforceable parts of this Consent Decree.

11 E. 2013 Consent Decree: Refers to the consent decree between Ecology and
12 Defendants that was filed in Kitsap County Superior Court under Case No. 13-2-02720-0.

13 F. Study Area: Refers to the area investigated in the May 2019 Supplemental
14 Remedial Investigation and Feasibility Study. The Study Area is more specifically
15 identified in Exhibit B.

16 G. Cleanup Action Plan or CAP: Unless otherwise indicated, refers to the
17 Cleanup Action Plan (CAP) (Exhibit A) issued by Ecology for the Upland and all
18 attachments to the CAP.

19 H. Defendants: Refers to PR and OPG.

20 I. Parties: Refers to the State of Washington, Department of Ecology and
21 Defendants.

22 V. FINDINGS OF FACT

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

25 A. Based upon factors currently known to Ecology, the Upland Area is
26 generally located at the eastern terminus of NE View Drive in Port Gamble, Washington

1 as shown in the Site Location Diagram (Exhibit B). While the supplemental Remedial
2 Investigation and Feasibility Study evaluated a larger Study Area, surficial chlorinated
3 dibenzo-p-dioxins and chlorinated dibenzofurans (dioxin/furan) soil contamination
4 above unrestricted land use concentrations were identified within the Upland Area
5 delineated in Exhibit B, specifically within portions of the northern, and eastern wharf
6 areas, and along the southern shoreline. In the northern and eastern wharf areas, elevated
7 dioxin/furan contamination extends to a depth of 15 feet, and to 11 feet in the southern
8 shoreline. Also in the eastern wharf area, two surficial lead samples and one surficial
9 carcinogenic polynuclear aromatic hydrocarbons (cPAHs) sample exceeded MTCA
10 Method B cleanup levels. One groundwater sample in the southern area of the Upland
11 Area exceeded MTCA Method B groundwater cleanup levels for arsenic. The locations
12 of exceedances are shown in the CAP (Exhibit A).

13 B. In 1853, the corporate predecessor to Pope & Talbot, Inc. (P&T)
14 established one of the first sawmills on Puget Sound on a sand spit projecting east from
15 the base of a bluff that forms the western boundary to the mouth of Port Gamble Bay.
16 A forest products manufacturing facility was operated at this location for approximately
17 142 years (1853 to 1995). The facility underwent several changes over that period
18 including filling activities that expanded the spit on which the facility was located,
19 relocating buildings, and changing building and structure uses. Between 1853 and 1995,
20 operations included a succession of sawmill buildings, two chip loading facilities, a log
21 transfer facility, log rafting and storage areas, wood treatment and a “hog fuel” boiler.

22 C. In 1985, P&T spun off its timberland, development branch, and its real
23 estate, including the sawmill, uplands and adjacent tidelands to PR. P&T continued wood
24 products manufacturing at the Site until 1995 under a lease with PR. OPG was formed in
25 1998 to manage PR’s real estate in Kitsap County and presently manages portions of the
26

1 Site including areas that it leases and that contain property improvements. In November
2 2007, P&T filed for bankruptcy in Delaware, Case No. 07-11738 (CSS).

3 D. Mill operations ceased in 1995 and the sawmill facility was dismantled
4 and removed in 1997. Since 1997, portions of the Upland Area have been leased to a
5 variety of parties for use as a log sort and wood chipping yard, material handling activities
6 and a marine laboratory.

7 E. In January 1997, Ecology conducted an initial investigation of the former
8 mill area, which consisted of sampling sediment in four catch basins. The results of that
9 investigation indicated that concentrations of petroleum hydrocarbons and metals were
10 present at levels above applicable MTCA chemical criteria for these compounds.
11 Subsequently, a contractor removed accumulated materials from catch basins, vaults, and
12 sumps in 1997. In July 1998, Ecology notified P&T of the potential listing of the former
13 sawmill site on Ecology's Confirmed and Suspected Contaminated Site List. Thereafter,
14 detailed environmental investigations were conducted by P&T and its corporate
15 predecessors to characterize soil, groundwater, surface water, and sediment quality
16 conditions at the former mill area. The Site characterization data confirmed the presence
17 of hazardous substances in soil and groundwater in the Upland Area. Based on these data,
18 Ecology added the Site to the hazardous sites list in 2001.

19 F. Between 2002 and 2005, approximately 26,310 tons of contaminated soils
20 were excavated from the former mill area uplands as interim remedial actions.

21 G. In May 2008, Ecology and the Defendants entered into Agreed Order
22 No. DE 5631, pursuant to which two focused Remedial Investigation and
23 Feasibility Study (RI/FS) Reports for portions of the Site including the former mill area
24 and in-water areas were completed, submitted, and released for public comment in
25 February and March 2011. In December 2012 based on public comment, the reports were
26 revised and combined into a Partial RI/FS (PRI/FS) that summarized existing remedial

1 investigation results for the former mill area and Port Gamble Bay, and evaluated
2 remedial alternatives for the In-Water Area.

3 H. In December 2013, based on the conclusions of the PRI/FS, Ecology and
4 the Defendants entered into the 2013 Consent Decree to design, permit, and implement
5 a sediment cleanup action for the In-Water Area. In-water construction actions began in
6 September 2015 and were completed in January 2017. In total 8,592 pilings were
7 removed, 77,297 cubic yards of contaminated marine sediments were dredged, and
8 33,240 cubic yards of contaminated intertidal material was excavated. The resulting
9 excavated and dredged materials, consisting primarily of mixed sediment and wood
10 debris, were temporarily stored in stockpiles on the upland former mill area. They were
11 subsequently rinsed with water to reduce salinity and ammonia to acceptable levels for
12 off-site disposal. The stockpiles were removed from the former mill area between July
13 and September 2017.

14 I. In February 2018, Ecology and the Defendants entered into Agreed Order
15 No. DE 15448 to complete a supplemental RI/FS that compiled and summarized existing
16 data regarding previous investigations and remedial actions in the Upland Area,
17 developed a conceptual site model, identified and investigated data gaps related to the
18 lateral and vertical extent of dioxin and furan contamination, and evaluated cleanup
19 action alternatives. Release(s) and/or potential release(s) of hazardous substances
20 occurred at the Upland Area. The following hazardous substances at the Upland Area
21 have been detected at concentrations above MTCA cleanup levels: dioxin/furan, cPAHs
22 and lead in soils, and arsenic in groundwater. These hazardous substances have been, and
23 may continue to be, released at the Site into the environment including soils and
24 groundwater.

25 J. Ecology has assigned the Site an overall priority ranking of 2 pursuant to
26 MTCA.

1 **VII. FINANCIAL ASSURANCE**

2 1. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and
3 adequate financial assurance mechanisms to cover all costs associated with the operation and
4 maintenance of the remedial action in the Upland Area, including institutional controls,
5 compliance monitoring, and corrective measures.

6 A. Within sixty (60) days of the effective date of this Decree, Defendants
7 shall submit to Ecology for review and approval an estimate of the costs associated with
8 the operation and maintenance of the remedial action in the Upland Area that it will incur
9 in carrying out the terms of this Decree. Within sixty (60) days after Ecology approves
10 the aforementioned cost estimate, Defendants shall provide proof of financial assurances
11 sufficient to cover those costs in a form acceptable to Ecology as provided for in
12 WAC 173-340-440(11).

13 B. Defendants shall adjust the financial assurance coverage and provide
14 Ecology’s project coordinator with documentation of the updated financial assurance for:

15 i. Inflation, annually, within thirty (30) days of the anniversary date
16 of the entry of this Decree; or if applicable, the modified anniversary date
17 established in accordance with this section, or if applicable, ninety (90) days after
18 the close of Defendant’s fiscal year if the financial test or corporate guarantee is
19 used.

20 ii. Changes in cost estimates, within thirty (30) days of issuance of
21 Ecology’s approval of a modification or revision to the CAP that result in
22 increases to the cost or expected duration of remedial actions. Any adjustments
23 for inflation since the most recent preceding anniversary date shall be made
24 concurrent with adjustments for changes in cost estimates. The issuance of
25 Ecology’s approval of a revised or modified CAP will revise the anniversary date
26

1 established under this section to become the date of issuance of such revised or
2 modified CAP.

3 2. After initially providing financial assurances in a form acceptable to Ecology,
4 Defendants may propose at any time to change financial assurance mechanisms by providing
5 proof of the new financial assurance mechanisms sufficient to cover all costs associated with the
6 operation and maintenance of the remedial action in the Upland Area, including institutional
7 controls, compliance monitoring, and corrective measures, in a form acceptable to Ecology.
8 Once Ecology has approved the new financial assurance mechanism, Defendants may utilize it.
9 Ecology shall provide the Defendants with a written release of the superseded financial assurance
10 mechanism.

11 **VIII. LAND USE RESTRICTIONS**

12 1. As detailed in the CAP, institutional controls are required in the Upland Area.
13 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

14 A. In consultation with Defendants, Ecology will prepare the Environmental
15 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70. The
16 Environmental (Restrictive) Covenants shall restrict future activities and uses of the
17 Upland Area as agreed to by Ecology and Defendants.

18 B. After approval by Ecology, Defendants shall record the Environmental
19 (Restrictive) Covenant for affected properties it owns with the office of the Kitsap
20 County Auditor as generally described in the CAP (Exhibit A). Defendants shall provide
21 Ecology with the original recorded Environmental (Restrictive) Covenants within
22 thirty (30) days of the recording date.

23 **IX. PROGRESS REPORTS**

24 1. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
25 written monthly Progress Reports that describe the design, permitting, and construction actions
26 taken during the previous month to implement the requirements of this Decree. All Progress

1 Reports shall be submitted by the tenth (10th) day of the month in which they are due after the
2 effective date of this Decree. Unless otherwise specified in writing by Ecology, Progress Reports
3 and any other documents submitted pursuant to this Decree shall be sent electronically to
4 Ecology's project coordinator. The Progress Reports shall include the following:

5 A. A list of on-site activities that have taken place during the month.

6 B. Description of any sample results that deviate from the norm.

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

9 D. Description of all deviations from the Milestones and Schedule (CAP
10 Appendix C) during the current month and any planned deviations in the upcoming
11 month.

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

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

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

18 **X. DESIGNATED PROJECT COORDINATORS**

19 1. The project coordinator for Ecology is:

20 John Evered
21 Toxics Cleanup Program
22 PO Box 47600
Olympia, WA 98504-7600

23 2. The project coordinator for Defendants is:

24 Clay Patmont
25 Anchor QEA, LLC
1201 3rd Avenue, Suite 2600
26 Seattle, WA 98101

1 specifying the records withheld and the applicable privilege. No Upland Area-related data
2 collected pursuant to this Decree shall be considered privileged.

3 **XV. TRANSFER OF INTEREST IN PROPERTY**

4 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
5 interest in any portion of the Upland Area shall be consummated by Defendants without
6 provision for continued operation and maintenance of any containment system, treatment
7 system, and/or monitoring system installed or implemented pursuant to this Decree.

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

15 **XVI. RESOLUTION OF DISPUTES**

16 1. In the event that Defendants elect to invoke dispute resolution, Defendants must
17 utilize the procedure set forth below.

18 A. Upon the triggering event (receipt of Ecology's project coordinator's
19 written decision or an itemized billing statement), Defendants have fourteen (14)
20 calendar days within which to notify Ecology's project coordinator in writing of its
21 dispute (Informal Dispute Notice).

22 B. The Parties' project coordinators shall then confer in an effort to resolve
23 the dispute informally. The parties shall informally confer for up to fourteen (14)
24 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
25 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
26 days (i.e., within twenty-one (21) calendar days from receipt of the Informal Dispute

1 Notice), Ecology's project coordinator shall issue a written decision (Informal Dispute
2 Decision) stating: the nature of the dispute; the Defendants' position with regards to the
3 dispute; Ecology's position with regards to the dispute; and the extent of resolution
4 reached by informal discussion.

5 C. Defendants may then request regional management review of the dispute.
6 This request (Formal Dispute Notice) must be submitted in writing to the Toxics Cleanup
7 Program (TCP) Headquarters Cleanup Section Manager within seven (7) calendar days
8 of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall
9 include a written statement of dispute setting forth: the nature of the dispute; the disputing
10 Party's position with respect to the dispute; and the information relied upon to support
11 its position.

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

15 E. If Defendants find Ecology's TCP Headquarters Cleanup Section
16 Manager's decision unacceptable, Defendants may then request final management
17 review of the decision. This request (Final Review Request) shall be submitted in writing
18 to the Toxics Cleanup Program Manager within seven (7) calendar days of Defendants'
19 receipt of the Decision on Dispute. The Final Review Request shall include a written
20 statement of dispute setting forth: the nature of the dispute; the disputing Party's position
21 with respect to the dispute; and the information relied upon to support its position.

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

1 C. Endangerment as described in Section XIX (Endangerment).

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

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

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

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

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

17 C. Endangerment as described in Section XIX (Endangerment).

18 **XIX. ENDANGERMENT**

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

24 2. In the event Defendants determine that any activity being performed in the
25 Upland Area under this Decree is creating or has the potential to create a danger to human health
26 or the environment, Defendants may cease such activities. Defendants shall notify Ecology's

1 project coordinator as soon as possible, but no later than twenty-four (24) hours after making
2 such determination or ceasing such activities. Upon Ecology's direction, Defendants shall
3 provide Ecology with documentation of the basis for the determination or cessation of such
4 activities. If Ecology disagrees with Defendants' cessation of activities, it may direct Defendants
5 to resume such activities.

6 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
7 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology
8 determines the danger is abated, and the time for performance of such activities, as well as the
9 time for any other work dependent upon such activities, shall be extended, in accordance with
10 Section XVIII (Extension of Schedule), for such period of time as Ecology determines is
11 reasonable under the circumstances.

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

14 **XX. COVENANT NOT TO SUE**

15 1. Covenant Not to Sue: In consideration of Defendants' compliance with the terms
16 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
17 against Defendants regarding the release or threatened release of hazardous substances addressed
18 in this Decree. This Covenant Not to Sue does not cover any other hazardous substance(s) or
19 area. Ecology retains all of its authority relative to any hazardous substance(s) or area not
20 covered by this Decree.

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

- 22 A. Criminal liability.
 - 23 B. Liability for damages to natural resources.
 - 24 C. Any Ecology action, including cost recovery, against PLPs not a party to
25 this Decree.
- 26

1 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not
2 to Sue if factors not known at the time of entry of this Decree are discovered and present a
3 previously unknown threat to human health or the environment.

4 3. Reopeners: Ecology specifically reserves the right to institute legal or
5 administrative action against Defendants to require them to perform additional remedial actions
6 in the Upland Area and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050,
7 under any of the following circumstances:

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

9 B. Failure of the remedial action to meet the cleanup standards identified in
10 the CAP (Exhibit A).

11 C. Upon Ecology's determination that remedial action beyond the terms of
12 this Decree is necessary to abate an imminent and substantial endangerment to human
13 health or the environment.

14 D. Upon the availability of information previously unknown to Ecology
15 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
16 hazardous substances, and Ecology's determination, in light of this information, that
17 further remedial action is necessary to protect human health or the environment.

18 E. Upon Ecology's determination that additional remedial actions are
19 necessary to achieve cleanup standards within the reasonable restoration time frame set
20 forth in the CAP.

21 4. Except in the case of an emergency, prior to instituting legal or administrative
22 action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen
23 (15) calendar days' notice of such action.

1 **XXI. CONTRIBUTION PROTECTION**

2 1. With regard to claims for contribution against Defendants, the Parties agree that
3 Defendants are entitled to protection against claims for contribution for matters addressed in this
4 Decree as provided by RCW 70.105D.040(4)(d).

5 **XXII. INDEMNIFICATION**

6 1. Defendants agree to indemnify and save and hold the State of Washington, its
7 employees, and agents harmless from any and all claims or causes of action (1) for death or
8 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
9 of acts or omissions of Defendants, their officers, employees, agents, or contractors in entering
10 into and implementing this Decree. However, Defendants shall not indemnify the State of
11 Washington nor save nor hold its employees and agents harmless from any claims or causes of
12 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
13 the employees or agents of the State, in entering into or implementing this Decree.

14 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

15 1. Applicable Law. All actions carried out by Defendants pursuant to this Decree
16 shall be done in accordance with all applicable federal, state, and local requirements, including
17 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits
18 or specific federal, state, or local requirements that the agency has determined are applicable and
19 that are known at the time of the execution of this Decree have been identified in the CAP.
20 Defendants have a continuing obligation to identify additional applicable federal, state, and local
21 requirements which apply to actions carried out pursuant to this Decree, and to comply with
22 those requirements. As additional federal, state, and local requirements are identified by Ecology
23 or the Defendants, Ecology will document in writing if they are applicable to actions carried out
24 pursuant to this Decree, and the Defendants must implement those requirements.

25 2. Relevant and Appropriate Requirements. All actions carried out by Defendants
26 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements

1 identified by Ecology. The relevant and appropriate requirements that Ecology has determined
2 apply have been identified in the CAP. If additional relevant and appropriate requirements are
3 identified by Ecology or the Defendants, Ecology will document in writing if they are applicable
4 to actions carried out pursuant to this Decree and the Defendants must implement those
5 requirements.

6 3. Pursuant to RCW 70.105D.090(1), Defendants may be exempt from the
7 procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws
8 requiring or authorizing local government permits or approvals. However, Defendants shall
9 comply with the substantive requirements of such permits or approvals. For permits and
10 approvals covered under RCW 70.105D.090(1) that have been issued by local government, the
11 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
12 government permits and/or approvals. The exempt permits or approvals and the applicable
13 substantive requirements of those permits or approvals, as they are known at the time of the
14 execution of this Decree, have been identified in the CAP.

15 4. Defendants have a continuing obligation to determine whether additional permits
16 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
17 action under this Decree. In the event either Ecology or a Defendant determines that additional
18 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
19 remedial action under this Decree, it shall promptly notify the other party of its determination.
20 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
21 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
22 with the appropriate state and/or local agencies and provide Ecology with written documentation
23 from those agencies of the substantive requirements those agencies believe are applicable to the
24 remedial action. Ecology shall make the final determination on the additional substantive
25 requirements that must be met by Defendants and on how Defendants must meet those
26 requirements. Ecology shall inform Defendants in writing of these requirements. Once

1 established by Ecology, the additional requirements shall be enforceable requirements of this
2 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
3 additional requirements until Ecology makes its final determination.

4 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
5 exemption from complying with the procedural requirements of the laws referenced in
6 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary
7 for the state to administer any federal law, the exemption shall not apply and Defendants shall
8 comply with both the procedural and substantive requirements of the laws referenced in
9 RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

10 **XXIV. REMEDIAL ACTION COSTS**

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

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

7 **XXVII. PUBLIC PARTICIPATION**

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

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

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

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

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

6 i. Poulsbo Public Library
7 700 NE Lincoln Road
8 Poulsbo, Washington 98370

9 ii. Department of Ecology
10 Toxics Cleanup Program
11 Headquarters Office
12 300 Desmond Drive SE
13 Lacey, Washington 98503

14 At a minimum, copies of all public notices, fact sheets, and documents relating to public
15 comment periods shall be promptly placed in these repositories. A copy of all documents related
16 to the Upland Area shall be maintained in the repository at Ecology's Headquarters in Lacey,
17 Washington.

18 **XXVIII. DURATION OF DECREE**

19 1. The remedial program required pursuant to this Decree shall be maintained and
20 continued until Defendants have received written notification from Ecology that the
21 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
22 effect until dismissed by the Court. When dismissed, Section XIV (Retention of Records),
23 Section XXI (Contribution Protection), and Section XX (Covenant Not to Sue) shall survive.

24 **XXIX. CLAIMS AGAINST THE STATE**

25 1. Defendants hereby agrees that it will not seek to recover any costs accrued in
26 implementing the remedial action required by this Decree from the State of Washington or any
of its agencies; and further, that Defendants will make no claim against the State Toxics Control
Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.

1 Except as provided above, however, Defendants expressly reserve their right to seek to recover
2 any costs incurred in implementing this Decree from any other PLP. This section does not limit
3 or address funding that may be provided under WAC 173-322A.

4 **XXX. EFFECTIVE DATE**

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

6 **XXXI. WITHDRAWAL OF CONSENT**

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

11 STATE OF WASHINGTON
12 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

13
14 _____
15 JAMES J. PENDOWSKI
16 Program Manager
17 Toxics Cleanup Program
18 360-407-7177

JONATHAN THOMPSON, WSBA #26375
Assistant Attorney General
360-407-6740

19 Date: _____

Date: _____

20
21 POPE RESOURCES, A DELAWARE
22 LIMITED PARTNERHIP

23 _____
24 THOMAS RINGO
25 President and Chief Executive Officer
26 360-697-6626

Date: _____

OPG PROPERTIES LLC

1 JON ROSE
President
2 360-509-0631

3 Date: _____
4

5
6 ENTERED this _____ day of _____ 20____.
7

8 _____
9 JUDGE
Kitsap County Superior Court
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