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**STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF BELLINGHAM, a Washington
municipal corporation; WASHINGTON
STATE DEPARTMENT OF NATURAL
RESOURCES; MERIDIAN-PACIFIC
HWY, L.L.C., a Washington limited
liability company; AND THE CITY OF
BELLINGHAM, a Washington municipal
corporation,

Defendants.

NO.

CONSENT DECREE
RE: WHATCOM WATERWAY SITE

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13			

I. INTRODUCTION

A. The mutual objective of Plaintiff, the State of Washington, Department of Ecology (Ecology) and Defendants, the Port of Bellingham, the Washington State Department of Natural Resources (DNR), Meridian-Pacific Hwy, L.L.C., and the City of Bellingham under this Decree is to provide for remedial action at a facility (Site) where there has been a release or threatened release of hazardous substances. This Decree requires the Defendants to conduct a final cleanup of the Site that is the subject of this Decree, by implementing the Cleanup Action Plan (CAP) attached as Exhibit B to this Decree, according to the schedule and other requirements identified in this Decree and all exhibits thereto. Ecology has determined that these actions are necessary to protect human health and the environment.

B. The complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's complaint.

1 In addition, the Parties agree that settlement of these matters without litigation is reasonable
2 and in the public interest, and that entry of this Decree is the most appropriate means of
3 resolving these matters.

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

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

10 E. This Decree shall not be construed as proof of liability or responsibility for any
11 releases of hazardous substances or cost for remedial action nor an admission of any facts;
12 provided, however, that Defendants shall not challenge the authority of the Washington State
13 Attorney General (Attorney General) and Ecology to enforce this Decree.

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

16 Now, therefore, it is **HEREBY ORDERED, ADJUDGED, AND DECREED** as
17 follows:

18 II. JURISDICTION

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

21 B. Authority is conferred upon the Attorney General by RCW 70.105D.040(4)(a)
22 to agree to a settlement with any potentially liable person (PLP) if, after public notice and any
23 required hearing, Ecology finds that the proposed settlement would lead to a more expeditious
24 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be
25 entered as a consent decree issued by a court of competent jurisdiction.
26

1 C. Ecology has determined that a release or threatened release of hazardous
2 substances has occurred at the Site that is the subject of this Decree.

3 D. Ecology has given notice to Defendants of Ecology's determination that each
4 Defendant is a PLP for the Site, as required by RCW 70.105D.020(16) and WAC 173-340-500.
5 All Defendants have accepted their PLP status for the purpose of entering into this Decree;
6 however, DNR has noted that any obligation it is assuming under this Decree, to the extent
7 such obligation requires DNR to expend funds in cleanup, will require legislative appropriation
8 of funds necessary to undertake the work; DNR nevertheless commits to request, and pursue in
9 good faith, funding by the legislature to the extent necessary to fulfill its obligations under this
10 Decree.

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

13 F. This Decree has been subject to public notice and comment. In addition, a
14 public hearing was held on August 8, 2007, in Bellingham, Washington.

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

18 H. Defendants have agreed to undertake the actions specified in this Decree and
19 consent to the entry of this Decree under MTCA.

20 III. PARTIES BOUND

21 This Decree shall apply to and be binding upon the Parties to this Decree, their
22 successors, and assigns. The undersigned representative of each party hereby certifies that he
23 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
24 comply with this Decree. Defendants agree to undertake all actions required by the terms and
25 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
26 respective responsibilities under this Decree. Defendants shall provide a copy of this Decree

1 to all agents, contractors, and subcontractors retained to perform work required by this Decree,
2 and shall ensure that all work undertaken by such agents, contractors, and subcontractors
3 complies with this Decree.

4 IV. DEFINITIONS

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

7 A. Site: The Site is referred to as the Whatcom Waterway Site and is generally
8 located southwest of Roeder Avenue in Bellingham, Washington. The Site is more particularly
9 described in the Site Diagram (Exhibit A) attached hereto. The Site constitutes a “facility”
10 under RCW 70.105D.020(4). The Site includes the Aerated Stabilization Basin (ASB), which
11 was listed separately on the Hazardous Sites List as the “Georgia-Pacific Biotreatment
12 Lagoon” while still in active use, but which is no longer in use and which contains
13 contamination from the same past property operations, and which will therefore be addressed
14 as part of the same Site.

15 B. Defendants: Refers to the Port of Bellingham (the Port), the Washington State
16 Department of Natural Resources (DNR), Meridian-Pacific Hwy, L.L.C. (Meridian-Pacific),
17 and the City of Bellingham (the City).

18 C. Parties: Refers to Plaintiff, State of Washington, Department of Ecology
19 (Ecology), and Defendants, the Port, DNR, Meridian-Pacific, and the City.

20 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
21 exhibits to this Decree. All exhibits are integral and enforceable parts of this Decree. The
22 terms “Consent Decree” or “Decree” shall include all exhibits to this Decree.

23 V. FINDINGS OF FACTS

24 Ecology makes the following findings of fact without any express or implied
25 admissions of such facts by Defendants.
26

1 A. The Site is located within and around the Whatcom Waterway federal channel
2 within Bellingham Bay, and is comprised of land that has been impacted by contaminants
3 historically released from industrial waterfront activities, including mercury discharges from
4 the Georgia-Pacific Corporation's (GP) former chlor-alkali plant, wood waste and degradation
5 products from historic log rafting activities, phenolic compounds from pulp mill wastewater
6 discharges, as well as other industrial releases. Surface sediment contamination from other
7 historic industrial activities, which comprise part of separate cleanup sites (the Central
8 Waterfront Site, I&J Waterway Site, Cornwall Avenue Site, and R.G. Haley Site), overlays the
9 subsurface mercury contamination from this Site in four areas of the waterfront.

10 B. The property in the vicinity of the Site and within the Site has been used for
11 industrial activities since the late 1800s. Industrial operations on property in the vicinity of and
12 within the Site have included and/or do include:

13 Coal Shipping	Fish Processing and Cannery Operations
14 Log Handling & Rafting	Bulk Petroleum Operations
15 Pulp and Paper Mill Operations	Boatyards
16 Chemical Manufacturing	Handling of Sand and Gravel
17 Cargo Terminal Operations	Lumber Mills and Wood Product Operations
18 Grain Shipping	Fish Processing

19 C. The Port has operated a shipping terminal known as the "Bellingham Shipping
20 Terminal" on property owned by the Port and the State of Washington adjacent to and within
21 the Site since the 1920s.

22 D. DNR, as the manager of state-owned lands, previously issued leases for various
23 industrial and commercial activities occurring in the vicinity of, or within, the Site. DNR
24 issued harbor area leases that included leases for a portion of the ASB, a portion of the
25 Whatcom Waterway where a pipeline connected GP's mill operations to the ASB, a portion of
26 the aquatic lands underlying the Bellingham Shipping Terminal and near Pine Street.

27 E. The City operated a log handling and rafting operation on the Site near the foot
28 of Pine Street from 1910 through 1920.

1 F. In the early 1900s, pulp and tissue mills were constructed on property adjacent
2 to and within the Site. These mills were acquired by GP in the 1960s. Seven GP outfalls
3 discharged plant pulp waste into the Whatcom Waterway. The pulp mill closed in 2000, but
4 the tissue mill is still in operation.

5 G. In 1965, GP constructed a chlor-alkali plant adjacent to an area of the Site
6 known as the "Log Pond" (an industrially-constructed pond open to the Whatcom Waterway)
7 on private tidelands abutting the Whatcom Waterway federal channel. The chlor-alkali plant
8 operated between 1965 and 1999, using a mercury cell process to produce chlorine, sodium
9 hydroxide, and hydrogen. Between 1965 and 1971, the chlor-alkali plant released mercury
10 into the Log Pond portion of the Site, which then migrated from tidal action throughout the
11 Site. Between 1971 and 1979, pretreatment measures were installed to reduce, but not
12 eliminate, mercury discharges.

13 H. The United States District Court, Western District of Washington, by order
14 dated October 5, 1977 (No. C77-292M), ordered GP to construct a waste treatment system for
15 the discharge of water from its pulp and tissue mills.

16 I. In 1978, GP constructed the ASB according to a design approved by Ecology
17 and permitted by the U.S. Army Corps of Engineers (the Corps) and the City. The ASB was
18 completed in 1979, along with a pipeline that ran across the Whatcom Waterway to connect
19 the ASB to the mill. GP's industrial and storm wastewater was subsequently piped into the
20 ASB and then discharged into Bellingham Bay. As a result of that process, wastewater sludges
21 containing organic material, mercury, and other metals have accumulated in the ASB.

22 J. Ecology named GP as a PLP for the Whatcom Waterway Site in 1995.

23 K. A formal environmental investigation of the Site then began in 1996 under
24 Ecology direction, when GP undertook a remedial investigation and feasibility study (RI/FS)
25 for the Site under Agreed Order DE 95TC-N399 (the RI/FS Agreed Order). The study
26

1 included detailed sampling and analysis in 1996 and 1998. Subsequent sampling activities
2 were conducted by GP in 2002, 2003, and 2004.

3 L. In late 2000 and early 2001, GP performed an interim action to address
4 contamination at one area of the Site, the Log Pond, under Agreed Order DE 00TCPNR-1418
5 (the Log Pond Agreed Order). This interim action was permitted by the Corps under Clean
6 Water Act Permit No. 2000-2-00424. The interim action involved the capping of the Log
7 Pond with approximately 43,000 cubic yards of clean material dredged from the Swinomish
8 Navigation Channel and from the Squalicum Waterway. GP also voluntarily implemented
9 habitat restoration measures in the Log Pond.

10 M. During 1999 and 2000, GP closed its chlor-alkali plant, its chemical plant, and
11 its pulp mill. However, as of the date of entry of this Decree, GP continues to operate its tissue
12 mill.

13 N. In 2000, GP completed an RI/FS for the Site which, at that time did not include
14 the ASB as part of the Site. Ecology approved the RI/FS as final after public review and
15 comment.

16 O. Pursuant to closure of its pulp mill in 2001, GP proposed a new remedial
17 alternative that had not been evaluated in the 2000 RI/FS. GP proposed to use a portion of
18 the ASB as a disposal site for contaminated material dredged from the Waterway, as well
19 as for final disposition of the ASB wastewater sludges. In 2002, GP completed, under Ecology
20 direction, a Supplemental FS (2002 Supplemental FS) evaluating this new remedial alternative
21 for the Site.

22 P. Also in 2002, GP entered into Agreed Order No. 02TCPHQ-3966 with
23 Ecology, to conduct a pre-remedial design evaluation (PRDE) of the preferred alternative
24 identified in the 2002 Supplemental FS, in order to inform subsequent remedial design efforts.

25 Q. In 2004, the Port and GP began discussions concerning the acquisition of the
26 ASB by the Port for use as a public marina, which would necessitate breaching the ASB

1 and opening it to Bellingham Bay. In 2003 and 2004, GP conducted additional studies of
2 environmental conditions within the ASB to supplement the RI work previously done at
3 the Site.

4 R. In January of 2005, the Port purchased all of GP's property in the vicinity of
5 and within the Site, including the Log Pond and the ASB.

6 S. Subsequent to the Port's purchase of GP's property in the vicinity of and within
7 the Site, Ecology named the Port as a PLP for the Site.

8 T. In May of 2005, both the RI/FS Agreed Order and the Log Pond Agreed Order
9 were amended to add the Port as a signatory PLP along with GP.

10 U. In early 2006, the Port purchased a waterfront parcel from ChevronTexaco
11 Corp. (f/k/a Chevron Products Company), which includes some aquatic lands within the Site.

12 V. In early 2006, the City purchased a waterfront parcel from Colony Wharf Inc.
13 (f/k/a BC Investment Corporation), which includes some aquatic lands within the Site.

14 W. The City owns several vacated street ends occupied by the GP plant and a small
15 parcel of aquatic lands within the Site that is located on the northeast side of the Whatcom
16 Waterway adjacent to the Meridian-Pacific property.

17 X. The City also has several storm water outfalls discharging to the Site.

18 Y. In early 2006, Meridian-Pacific purchased a waterfront parcel on the northeast
19 side of the Whatcom Waterway federal channel, which includes some aquatic lands within
20 the Site.

21 Z. In October of 2006, the Port and GP completed a Draft Supplemental RI/FS for
22 the Site under the RI/FS Agreed Order. The Draft Supplemental RI/FS incorporated the results
23 of the environmental investigations of the Site conducted since the 2000 RI/FS. In addition,
24 and based on the Port's planned conversion of the ASB into a marina that would be open to
25 Bellingham Bay, the Draft Supplemental RI/FS evaluated new remedial alternatives that would
26

1 meet cleanup requirements and otherwise be protective of human health and the environment
2 for this planned land use.

3 AA. Ecology published the Draft Supplemental RI/FS for public review and
4 comment, concurrent with a Draft Supplemental EIS that Ecology issued for the Site. Public
5 meetings were held on October 25, 2006, and November 30, 2006, in Bellingham, Washington.
6 A public hearing was held on December 11, 2006, in Bellingham, Washington. Public
7 comment was received until December 18, 2006.

8 BB. Ecology named Meridian-Pacific, the City, and DNR as PLPs for the Site in
9 May 2007.

10 CC. After developing a Responsiveness Summary addressing all public comments
11 received on the Draft Supplemental RI/FS and Draft Supplemental EIS, Ecology approved the
12 Draft Supplemental RI/FS on June 29, 2007, making it a final document (RI/FS).

13 DD. The environmental investigations conducted at the Site indicate that the Site
14 sediments contain mercury and phenolic compounds at concentrations above applicable
15 standards as set forth in MTCA regulations and Ecology's Sediment Management Standards
16 (SMS), Chapter 173-204 WAC. Given the planned aquatic reuse of the ASB as a marina, the
17 contaminated material in the ASB also exceeds applicable MTCA and SMS standards.
18 (As part of the Port's marina construction the ASB will be opened to Bellingham Bay; SMS
19 standards will therefore be applied to the ASB).

20 EE. The Port plans to develop a marina within the ASB area of the Site and to
21 convert the inner waterway area of the Site from an industrial waterway to a multi-purpose
22 waterway.

23 VI. WORK TO BE PERFORMED

24 This Decree contains a program designed to protect human health and the environment
25 from the known release of hazardous substances or contamination at, on or from the Site.
26

