FINAL DRAFT FOR PUBLIC COMMENT

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

In the Matter of Remedial Investigation by: KIMBERLY-CLARK CORPORATION (at the former Scott Anacortes Pulp Mill Site)	NO. DE _____ AGREED ORDER

I. JURISDICTION

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

II. DEFINITIONS

1. Site: means the former Scott Paper Company mill pulping operations and associated facilities that were located at 15th Street and Q Avenue on Fidalgo Bay in Anacortes, Washington. The Site also includes associated offshore lands and any area where hazardous and deleterious substances from the mill site have come to be located, including the entire former Scott Paper Company mill site, a portion of which is the Property as defined herein.

2. Property: means generally the southern portion of the former Scott Paper Company mill site and is that portion of the Site owned by MJB Properties, Inc. (MJB), including the associated marine sediments where a release or threatened release of hazardous or deleterious substances from operations on the Site have come to be located. A more detailed description of the Property is attached hereto as Exhibit 1.

3. Port Property: means generally the northern portion of the former Scott Paper Company mill site and is a portion of the Site owned or formally owned by the Port of Anacortes

(Port), including the associated marine sediments where a release or threatened release of hazardous or deleterious substances from operations on the Site have come to be located.

4. Former Scott Paper Company mill site: means the former Scott Paper Company mill pulping operations and associated facilities that were located at 15th Street and Q Avenue on Fidalgo Bay in Anacortes, Washington. The former Scott Paper Company mill site also includes associated offshore lands. In general, the Property and the Port Property as defined above, together with certain offshore property currently owned by Snelson-Anvil, Inc., which is generally located between the Property and Port Property, constitute the former Scott Paper Company mill site.

5. Consent Decree: means the Consent Decree between the State of Washington, Department of Ecology (Ecology) and the Port, entered by the Skagit County Superior Court as No. 03-2-00492-1.

6. Uplands Area: means that portion of the Property that lies at greater elevation than the highest observed water level.

7. Marine Area: means that portion of the Property that lies at lesser elevation than the highest observed water level.

III. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by Kimberly-Clark Corporation ("Kimberly-Clark").

1. Kimberly-Clark is a Delaware corporation.

2. In 1995, Kimberly-Clark acquired Scott Paper Company ("Scott"), including its assets and liabilities.

3. Early uses of the former Scott Paper Company mill site included operation of a sawmill and box factory. The sawmill operated between about 1895 and the 1950's. In 1925, Puget Sound Pulp Company constructed a pulp mill. The pulp mill buildings and process vessels were located on the Property. Ancillary activities were performed on the Port Property. Scott purchased the pulp mill in 1940. The purchase of the real property was recorded in 1947 under

the name of Coos Bay Pulp Company, a Scott subsidiary. The pulp mill operated until 1978 when Scott ceased pulping operations at the Site.

4. In 1978 and 1979, Port purchased a portion of the former Scott Paper Company mill site located north of the Property (the Port Property) from Scott. The remainder of the former Scott Paper Company mill site, with the exception of a small piece of offshore property, was purchased by Snelsen-Anvil at about the same time. MJB purchased the Property in 1990.

5. A portion of the Port Property was used by Scott for a "tailings" pond which was installed to reduce the solids content of the wastewater from the pulp mill. Historical records indicate that the Port Property included two storage sheds, a chip shed, chip bins, fuel bins, a dry kiln, a refuse burner, a boiler room, a smokestack, above-ground storage tanks, and numerous docks and piers. The known discharge points to surface water from the former Scott Paper Company mill site were located on the Property and on other property owned by the Port located approximately a mile to the north along the Guemes Channel.

6. Following the sale by Scott of the former Scott Paper Company mill site, redevelopment activities included demolition of building and wharf structures, and removal of tailings ponds waste. By 1982, some of the accumulated wood debris and geotechnically unsuitable fill materials within the Property were excavated and disposed off-Site and replaced with granular fill materials. Geotechically structurally suitable fill materials were subsequently imported onto the Property and placed within the excavation areas. However, the exact locations of all these excavated wood waste and structurally filled areas are not known. Currently, the Property is primarily unvegetated with several warehouse buildings leased to companies conducting small boat repair, boat construction and modular home fabrication.

7. In 1980, Roger Lowe Associates, Inc. found wood waste/debris and sulfur waste in boring and test pits on the Property.

8. Waste effluent from the pulp mill was discharged to Fidalgo Bay prior to 1951. A pipeline was constructed through the City of Anacortes in 1951 to carry effluents to the Guemes Channel and a 20,000 gallon surge pond was built on the Property to hold effluent before

entering the pipe. Pulp bleaching facilities using chlorine and hypochlorite processes were added in 1955.

9. In 2000, U.S. Environmental Protection Agency conducted an investigation of the Property and found arsenic, cadmium, lead, mercury, thallium, total petroleum hydrocarbons (TPH), carcinogenic polynuclear aromatic hydrocarbons (cPAH) levels were in exceedance of the State of Washington's Model Toxics Control Act (MTCA) contamination limits in soil. Also, the EPA found MTCA exceedances of antimony, arsenic, barium, beryllium, cadmium, chromium, copper, lead, manganese, mercury, thallium, vanadium, cPAH, and polychlorinated biphenyl's (PCB's) in groundwater collected from undeveloped borings. Furthermore, the EPA found that sediment levels exceed MTCA Sediment Management Standards (SMS) for PCB's.

10. In 2000, the EPA found fill material in borings at the Property included rock fragments, wood, red brick fragments, glass, petroleum staining and/or odor, wood pulp, and sulfur fragments.

11. In 1999, petroleum-containing wood debris and soils was excavated from two areas within the Port Property. Work also included the installation of a sheet pile wall along the shoreline. Excavation areas were then backfilled with structural fill. A campus/office park was subsequently developed on the Port Property. Surface water runoff is collected and discharged to Fidalgo Bay through the City of Anacortes and other storm drain lines.

12. The former Scott Paper Company mill site, which is a portion of the Site, will be addressed through this Order and a separate Consent Decree (No. 03-2-00492-1) with the Port (hereinafter referred to as the "Decree") that covers the Port Property. Taken together the provisions of this Order and the Decree will address the entire former Scott Paper Company mill site, including certain offshore property currently owned by Snelson-Anvil, Inc. The Order and the Decree do not, however, address the entire Site.

IV. ECOLOGY DETERMINATIONS

1. Kimberly-Clark is a former owner and operator of the Site and as such is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

2. The facility is known as the Former Scott Paper Mill Site ("Site") and is located in Anacortes, Washington.

3. Certain substances found at the facility are "hazardous substances" as defined at RCW 70.105D.020(7).

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

5. By letter dated March 6, 2001, Ecology notified Kimberly-Clark of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment. The Port, Shared Healthcare Systems, and MJB were similarly designated potentially liable persons.

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

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

V. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Kimberly-Clark take the following actions, which are described in more detail in the Scope of Work (attached as Exhibit 2), and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Prepare the following:

a. A Remedial Investigation/Feasibility Study (RI/FS) Work Plan for the uplands and marine areas of the Property in accordance with WAC 173-340-350 and WAC 173-340-357, for Ecology review and approval;

b. An RI/FS in accordance with the RI/FS Work Plan to be approved by Ecology; and

c. Monthly progress reports summarizing the work completed, the work planned for the next quarter and significant findings.

2. The schedule for performance and/or deliverables is included as part of the Scope of Work (Exhibit 2).

3. All exhibits are incorporated by reference and the exhibits are integral and enforceable parts of the Order.

4. Within sixty (60) days after submittal of the RI/FS Report required by this Order, or upon the submittal of the Port's Uplands Area RI/FS Report under the Decree, whichever is later, Kimberly-Clark will review all the uplands area remedial investigations described in those Reports to identify whether any site-wide issues have not been evaluated. Upon completion of that review, Kimberly-Clark will submit to Ecology either (a) a work plan to address any such issues that have been identified; or (b) a statement describing the review and evaluation and the conclusion that no such issues have been identified or, if such issues have been identified and will not be undertaken by Kimberly-Clark, a statement that such issues are being addressed by the Port under its Decree. If a work plan for further RI/FS work is required to address such site-wide issues, the work plan shall describe the issues and the actions to be taken to address the issues. The work plan shall include a schedule to complete the work. Upon Ecology's determination that any site-wide issues have been identified and Ecology's approval of the work plan for further RI/FS work, Kimberly-Clark will implement the work plan.

5. Within sixty (60) days after submittal of the RI/FS Report or the submittal of the Port's Marine Area RI/FS Report under the Decree, whichever is later, Kimberly-Clark will review the marine area remedial investigations described in those Reports to identify whether any site-wide issues have not been evaluated. Upon completion of that review, Kimberly-Clark

will submit to Ecology either (a) a work plan to address any such issues that have been identified; or (b) a statement describing the review and evaluation and the conclusion that no such issues have been identified or, if such issues have been identified and will not be undertaken by Kimberly-Clark, a statement that any such issues are being addressed by the Port under its Decree. If a work plan for further RI/FS work is required to address such site-wide issues, the work plan shall describe the issues and the actions to be taken to address the issues. The work plan shall include a schedule to complete the work. Upon Ecology's determination that any site-wide issues have been identified and Ecology's approval of the work plan for further RI/FS work, Kimberly-Clark will implement the work plan.

VI. INTERIM REMEDIAL ACTIONS

1. During the term of this Order, Kimberly-Clark may propose to implement interim remedial actions intended to minimize or prevent the spread of contaminants while the long-term, Property-wide cleanup action plan is being developed. Interim remedial actions may be undertaken prior to issuance of the Cleanup Action Plan (CAP) for the former Scott Paper Company mill site. Any interim remedial actions shall be undertaken pursuant to WAC 173-340-430.

2. To undertake an interim remedial action, Kimberly-Clark may submit to Ecology a request to implement interim remedial actions. The request shall include an assessment of the opportunity for interim remedial actions and a description of the proposed actions. If approved by Ecology, Kimberly-Clark shall, within sixty (60) days of Ecology approval, submit to Ecology an Interim Remedial Action Work Plan which shall describe in detail the implementation of the proposed interim actions and a schedule. Upon approval of the Work Plan by Ecology, Kimberly-Clark shall implement the interim remedial actions on the schedule agreed to in the Work Plan.

3. Any approved Work Plan and associated interim remedial action shall be conducted pursuant to this Order and shall be attached as exhibits to this Order. All exhibits to this Order are integral and enforceable parts thereof.

VII. TERMS AND CONDITIONS OF ORDER

1. Public Notices

WAC 173-340-600 (11)(c) requires a 30-day public comment period for this Order. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect. If Ecology does modify or withdraw any provisions of this Order, Kimberly-Clark is not bound by the provisions of this Order.

2. Remedial Action Costs

Kimberly-Clark shall pay to Ecology costs incurred by Ecology reasonably attributable to this Order. These costs shall include work performed by Ecology or its contractors in connection with this Order, including order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Kimberly-Clark shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided along with the itemized statement. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

3. Designated Project Coordinators

The project coordinator for Ecology is:

Ron Timm Toxics Cleanup Program Northwest Regional Office 3190-160th Ave., S.E. Bellevue, WA 98008-5452	Telephone: (425) 649-7185 Facsimile: (425) 649-7098 E-mail: rtim461@ecy.wa.gov

The project coordinator for Kimberly-Clark is:

Cynthia L. Jernigan
Manager, Environmental Programs
Kimberly-Clark Corporation
1400 Holcomb Bridge Road
Roswell, Georgia 30076

Telephone: (770) 587-7014
Facsimile: (770) 587-7093
E-mail: cjerniga@kcc.com

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

4. Performance

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

Except where necessary to abate an emergency situation, Kimberly-Clark shall not perform any remedial actions at the Property outside of those required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

5. Access

Kimberly-Clark has an access agreement ("Access Agreement") with MJB, the owner of the Property, for access to the Property for the purposes of implementing this Order. With regard to the offshore property currently owned by Snelson-Anvil, Inc., Kimberly Clark shall make all reasonable efforts to secure access rights where remedial activities or investigations will be performed pursuant to this Order. RCW 70.105D.030(1) authorizes, and the Access Agreement provides for, access to Ecology or any Ecology authorized representative to enter and freely move about the Property at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Kimberly-Clark. By signing this Order, Kimberly-Clark agrees to provide access to Ecology or any Ecology authorized representatives to the Property consistent with RCW 70.105D.030(1) and the terms of its Access Agreement at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Kimberly-Clark during an inspection and shall provide seven (7) days notice before any sampling activity. Kimberly-Clark shall allow split or replicate samples to be taken by Ecology and shall provide fourteen (14) days notice before any sampling activity. In addition, consistent with the terms of the Access Agreement, Kimberly-Clark will provide reasonable access to the Port for work under its Decree, provided that the Port provides advance written notice to Kimberly-Clark requesting access and includes an Ecology-approved work plan which describes the work to be performed on the Property.

6. Public Participation

Kimberly-Clark shall prepare and/or update a public participation plan for this Order. Ecology shall review, comment on, and approve a public participation plan prepared by Kimberly-Clark. Ecology maintains responsibility for public participation for this Order and all public outreach for the Property shall be coordinated with Ecology.

At the request of Ecology, Kimberly-Clark shall provide assistance to Ecology toward coordination and implementation of the public participation process for the work required by the Order.

7. Retention of Records

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

8. Dispute Resolution

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

9. Reservation of Rights/No Settlement

Except as provided in this paragraph, this Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority.

Ecology reserves the right, however, to require additional remedial actions at the Property should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Property.

In the event Ecology determines that conditions at the Property are creating or have the potential to create a danger to the health or welfare of the people on the Property or in the

surrounding area or to the environment, Ecology may order Kimberly-Clark to stop further implementation of this Order for such period of time as needed to abate the danger.

10. Transference of Property

Kimberly-Clark is not the owner of the Property and therefore has no control over the transference of the Property. MJB, as the Property owner, has agreed to provide Ecology with notice of a transfer and to ensure that any transfer maintains access to the Property to perform the work required by this Order. MJB's letter agreement is attached hereto as Exhibit 3. Notwithstanding the provisions of this paragraph, the failure of MJB to fulfill these obligations will not be considered a violation of the terms of this Order.

11. Compliance With Applicable Laws

A. All actions carried out by Kimberly-Clark pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the work to be performed under this Order is exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial investigation. However, the work to be performed must comply with the substantive requirements of those state and local laws. The state and local laws known to be applicable at the time of issuance of the Order shall be identified in the Work Plan and are binding and enforceable requirements of the Order.

Kimberly-Clark has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial investigation under this Order. In the event Kimberly-Clark determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial investigation under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Kimberly-Clark shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Kimberly-Clark shall promptly

consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial investigation. Ecology shall make the final determination on the additional substantive requirements that must be met by Kimberly-Clark and on how Kimberly-Clark must meet those requirements. Ecology shall inform Kimberly-Clark in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Kimberly-Clark shall not begin or continue the remedial investigation potentially subject to the additional requirements until Ecology makes its final determination.

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

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

VIII. SATISFACTION OF THIS ORDER

Kimberly-Clark shall submit a written certification to Ecology, upon completion of its obligations under this Order, that it has completed the remedial investigation required by this Order and all provisions of this Order have been complied with. Upon Ecology's review and approval of the written certification, Ecology shall send Kimberly-Clark a written notification that the provisions of this Order, including all exhibits and modifications hereto, have been satisfied and complied with.

IX. ENFORCEMENT

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

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

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

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

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

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

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

Effective date of this Order:_____

KIMBERLY-CLARK CORPORATION

By: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By:_____