

HON. LAUREN KING

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COLUMBIA RIVERKEEPER,	)	
	)	No. 3:20-cv-05981-LK
Plaintiff,	)	
v.	)	[PROPOSED] CONSENT DECREE
	)	
EGT, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**I. STIPULATIONS**

WHEREAS, Plaintiff Columbia Riverkeeper (“Riverkeeper”) filed a complaint on October 2, 2020 against the Port of Longview (Dkt. 1) and filed an amended complaint on December 8, 2020 (Dkt. 8), adding alleged violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, by EGT, LLC (“EGT”) relating to discharges of stormwater and other pollutants from EGT’s facility at the Port of Longview in Longview, Washington (the “facility”) and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

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2 WHEREAS, Riverkeeper and EGT (the “Parties”) agree that settlement of these matters is  
3 in the best interest of the Parties and the public, and that entry of this Consent Decree is the most  
4 appropriate means of resolving this action.

5 WHEREAS, Riverkeeper and EGT stipulate to the entry of this Consent Decree without  
6 trial, adjudication, or admission of any issues of fact or law regarding Riverkeeper’s claims or  
7 allegations set forth in its complaint and its sixty-day notice.

8 DATED this 14th day of June, 2022

9 STOEL RIVES LLP

SMITH & LOWNEY, PLLC

10 By s/Beth Ginsberg  
11 Beth Ginsberg, WSBA #18523  
12 Veronica Keithley, WSBA #52784  
Attorney for Defendant EGT, LLC

By s/Marc Zemel  
Marc Zemel, WSBA #44325  
Attorneys for Plaintiff  
Columbia Riverkeeper

13 EGT, LLC

COLUMBIA RIVERKEEPER

14 By Beverly Garner  
15 Beverly Garner  
Associate General Counsel, Bunge

By Lauren Goldberg  
15 Lauren Goldberg  
Legal and Program Director

16  
17 **II. ORDER AND DECREE**

18 THIS MATTER came before the Court upon the Parties’ Joint Motion for Entry of Consent  
19 Decree and the foregoing Stipulations of the parties. Having considered the Stipulations and the  
20 promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

- 21 1. This Court has jurisdiction over the parties and subject matter of this action.  
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2           2.       Each signatory for the parties certifies for that party that he or she is authorized to  
3 enter into the agreement set forth herein and to legally bind the party or parties, their successors in  
4 interest and assigns of the parties to it.

5           3.       This Consent Decree applies to and binds the parties and their successors and  
6 assigns.

7           4.       This Consent Decree and any injunctive relief ordered within applies to the  
8 operation, oversight, or both by EGT of its Facility at 150 E. Mill Road, Longview, WA (the  
9 “Facility”).

10          5.       This Consent Decree is a full and complete settlement and release of all the  
11 claims in the complaint and the sixty-day notice and all other claims known or unknown  
12 existing as of the date of entry of the Consent Decree that could be asserted under the Clean  
13 Water Act, 33 U.S.C. §§ 1251-1387, arising from operation of the Facility. Upon termination  
14 of this Consent Decree, these claims are released and dismissed with prejudice. EGT’s  
15 payment of attorney’s fees and litigation costs set forth in paragraph 10 of the Consent Decree  
16 will be in full and complete satisfaction of any claims Riverkeeper and Smith & Lowney have  
17 or may have, either legal or equitable, known or unknown, and of any kind or nature  
18 whatsoever, for fees, expenses, and costs incurred in the Litigation. Enforcement of this  
19 Consent Decree is Riverkeeper’s exclusive remedy for any violation of its terms. During the  
20 term of the Consent Decree, Riverkeeper will not support by financial assistance, personnel  
21 time, or otherwise, other lawsuits or potential lawsuits by Riverkeeper’s members or other  
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2 groups or individuals that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-  
3 1387, arising from operation of the Facility

4 6. This Consent Decree is a settlement of disputed facts and law. It is not an admission  
5 or adjudication regarding any allegations by Riverkeeper in this case or of any fact or conclusion  
6 of law related to those allegations, nor evidence of any wrongdoing or misconduct on the part of  
7 EGT. EGT agrees to the terms and conditions identified below in paragraphs 7, 9 and 10 in full and  
8 complete satisfaction of all the claims covered by this Consent Decree:

9 7 Injunctive Relief:

- 10 a. Within ten (10) business days of the effective date of the Consent Decree, EGT will  
11 apply for coverage under the Industrial Stormwater General Permit (ISGP), and if  
12 coverage is obtained, EGT will comply fully with all conditions of the ISGP and any  
13 successor, modified, or replacement permit authorizing discharges of stormwater  
14 associated with industrial activity from the Facility.
- 15 b. For a period of three (3) years after the entry of this Consent Decree, EGT will, on  
16 a quarterly basis, electronically forward to Riverkeeper copies of all submissions to  
17 and communications to and/or from Ecology related to EGT's ISGP coverage or  
18 stormwater discharges from the Facility.
- 19 c. Within thirty (30) days of the effective date of the Consent Decree, EGT will prepare  
20 a draft Stormwater Pollution Prevention Plan ("SWPPP") with the assistance of a  
21 qualified consultant, which is ISGP-compliant. Within one week of preparing the  
22 draft SWPPP, EGT will provide this draft SWPPP to Riverkeeper for review and  
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2 comment. Within thirty (30) days of Riverkeeper’s receipt of EGT’s draft SWPPP,  
3 Riverkeeper will provide to EGT any comments to the draft SWPPP. Within twenty  
4 one (21) days of EGT’s receipt of Riverkeeper’s comments, EGT must either  
5 incorporate Riverkeeper’s comments into the SWPPP or provide a detailed, written  
6 response to Riverkeeper explaining why any comment was not incorporated into the  
7 SWPPP. EGT must provide a copy of its SWPPP to the Department of Ecology,  
8 along with all of Riverkeeper’s suggestions or comments (if any), and share this  
9 submission with Riverkeeper contemporaneously. Within 14 (fourteen) days of  
10 entry of the Consent Decree and completion of EGT’s required payment procedures,  
11 EGT will provide \$3,000 to Riverkeeper to conduct this review and comment  
12 process with assistance of consultants and attorneys, as directed in paragraph 8 of  
13 this Consent Decree.

- 14 i. The SWPPP must contain a sampling plan designating the emergency  
15 overflow pipe at the north pond and at the south pond as monitoring points.
- 16 ii. The SWPPP will include a Grain Spill Prevention Plan (“GSPP”) for the  
17 Facility and will describe procedures to mitigate grain loss to the Columbia  
18 River and grain/dust contamination of stormwater. In developing the GSPP,  
19 EGT will conduct a thorough inspection of all grain conveyance equipment  
20 and structures on the dock for damage where grain or dust could escape and  
21 make necessary repairs. EGT will train all EGT personnel working on the  
22 dock or involved in grain conveyance to vessels about the requirements of  
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the GSPP.

- d. Promptly after the effective date of the Consent Decree, EGT will route any discharge from the downspout on the barge dock to prevent discharge to the Columbia River. EGT will provide Riverkeeper with notice upon completion
- e. For the first year (12 months) following issuance of ISGP coverage, EGT will monitor the designated monitoring points identified in ¶7.c. of this Consent Decree, monthly and analyze any discharges for the applicable parameters (including for fecal coliform bacteria and E. coli – see ISGP Table 6). EGT will submit discharge monitoring reports to Ecology, as required by the ISGP. For the remainder of the Consent Decree term, EGT will monitor the designated monitoring points quarterly as required by the ISGP.
- f. During the term of the Consent Decree, EGT with assistance of a qualified engineering firm as necessary, will conduct a research and development project, not to exceed \$150,000 in costs, to design actuated gates to be attached to the discharge end of the grain spouts that would close during movement of the spouts from the vessel hold to the “tip box” on the dock, which will include a feasibility analysis before any installation would be undertaken. The purpose of the actuated gates is to reduce the potential for grain or grain dust to be released from the spouts. EGT will provide Riverkeeper with quarterly status updates on the progress of the research and development project. If EGT’s feasibility analysis concludes that these actuated gates are not feasible, EGT

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2 will provide Riverkeeper with a detailed explanation in writing for that  
3 conclusion.

4 g. EGT will be subject to a stipulated payment in lieu of penalty of \$2,500 (TWO  
5 THOUSAND FIVE HUNDRED DOLLARS) to the organization Seeding  
6 Justice for each unauthorized release from the conveyance system of solid  
7 grain or grain dust to the Columbia River, with notice to Columbia  
8 Riverkeeper during the term of this Consent Decree, with payment to be made  
9 as directed in paragraph 8.

10 8. Release of Future SWPPP Claims: For the life of the Consent Decree,  
11 Riverkeeper covenants not to bring another enforcement action under the Clean Water Act  
12 citizen suit challenging the sufficiency of EGT's SWPPP, including but not limited to the  
13 sampling plan, and specifically, EGT's designation of monitoring points and subsequent  
14 monitoring pursuant to ISGP Condition S3 and S4.

15 9. Payment in Lieu of Penalty: Within fourteen (14) days of entry of this Consent  
16 Decree and completion of EGT's required payment procedures, EGT will pay \$715,000  
17 (SEVEN HUNDRED AND FIFTEEN THOUSAND DOLLARS) to Seeding Justice for  
18 projects that benefit water quality in the Columbia River basin, as described in Exhibit 1 to this  
19 Consent Decree. The checks will be made to the order of Seeding Justice and delivered by check  
20 made payable and mailed to: Seeding Justice, P.O. Box 12489, Portland, OR 97212. Payment  
21 will include the following reference in a cover letter or on the check: "Consent Decree,  
22 Riverkeeper v. EGT, LLC, W.D. Wash. No. 3:20-cv-05981-LK." Simultaneously, EGT will  
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2 send a copy of the checks and cover letters, if any, to Columbia Riverkeeper and its counsel.

3 10. Within fourteen (14) days of entry of this Consent Decree by the Court and  
4 completion of EGT's required payment procedures, EGT will pay \$220,000 (TWO HUNDRED  
5 AND TWENTY THOUSAND DOLLARS) to Riverkeeper to cover Riverkeeper's litigation  
6 fees, expenses, and costs (including reasonable attorneys and expert witness fees) by check  
7 payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn:  
8 Marc Zemel. This figure does not include the \$3,000 payment under para. 7.c of this Consent  
9 Decree.

10 11. A force majeure event is any event outside the reasonable control of EGT that  
11 causes a delay in performing tasks required by this Consent Decree that cannot be cured by due  
12 diligence. Delay in performance of a task required by this Consent Decree caused by a force  
13 majeure event is not a failure to comply with the terms of this Consent Decree, provided that  
14 EGT timely notifies Riverkeeper of the event, the steps that EGT will take to perform the task,  
15 the projected time that will be needed to complete the task, and the measures that have been  
16 taken or will be taken to prevent or minimize any impacts to stormwater quality resulting from  
17 delay in completing the task.

18 12. EGT will notify Riverkeeper of the occurrence of a force majeure event as soon as  
19 reasonably possible but, in any case, no later than fifteen (15) days after EGT becomes aware of  
20 the event. In such event, the time for performance of the task will be extended for a reasonable  
21 period of time following the force majeure event.



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2 By way of example and not limitation, force majeure events include

- 3 a. Acts of God, war, insurrection, or civil disturbance;  
4 b. Earthquakes, landslides, fire, floods;  
5 c. Actions or inactions of third parties over which EGT has no control;  
6 d. Unusually adverse weather conditions;  
7 e. Restraint by court order or order of public authority;  
8 f. Strikes;  
9 g. Any permit or other approval sought by EGT from a government  
10 authority to implement any of the actions required by this Consent  
11 Decree where such approval is not granted or is delayed, and where EGT  
12 has timely and in good faith sought the permit or approval;  
13 h. Litigation, arbitration, or mediation that causes delay;  
14 i. Epidemics and pandemics, including but not limited to COVID-19  
15 related delays;  
16 j. Supply chain issues and delays.

17 13. This Court retains jurisdiction over this matter, while this Consent Decree remains  
18 in force. While this Consent Decree remains in force, this case may be reopened without filing fees  
19 so that the Parties may apply to the Court for any further order that may be necessary to enforce  
20 compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of  
21 this Consent Decree. In the event of a dispute regarding implementation of, or compliance with,  
22 this Consent Decree, the Parties must first attempt to resolve the dispute by meeting to discuss the  
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2 dispute and any suggested measures for resolving the dispute. Such a meeting should be held as  
3 soon as practical but must be held within thirty (30) days after notice of a request for such a meeting  
4 to the other Party and its counsel of record. If no resolution is reached at that meeting or within  
5 thirty (30) days of the Notice, either Party may file a motion with this Court to resolve the dispute.  
6 The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of  
7 costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or  
8 substantially prevailing party, will apply to any proceedings seeking to enforce the terms and  
9 conditions of this Consent Decree.

10 14. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment  
11 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five  
12 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney  
13 General and the Administrator of the U.S. Environmental Protection Agency (“EPA”). Therefore,  
14 upon the filing of this Consent Decree by the parties, Columbia Riverkeeper will serve copies of it  
15 upon the Administrator of the U.S. EPA and the U.S. Attorney General.

16 15. This Consent Decree will take effect upon entry by this Court. The Consent Decree  
17 terminates three years after that date.

18 16. Both parties have participated in drafting this Consent Decree.

19 17. This Consent Decree constitutes the entire agreement between the Parties. There are  
20 no other or further agreements, either written or verbal. This Consent Decree may be modified only  
21 upon a writing signed by both Parties and the approval of the Court.  
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2 18. If for any reason the Court should decline to approve this Consent Decree in the  
3 form presented, this Consent Decree is voidable at the discretion of either Party. The Parties agree  
4 to continue negotiations in good faith to cure any objection raised by the Court to entry of this  
5 Consent Decree.

6 19. Notifications required by this Consent Decree must be in writing. The sending Party  
7 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified  
8 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized  
9 overnight courier, with all fees prepaid; or (4) email. For a notice or other communication regarding  
10 this Consent Decree to be valid, it must be delivered to the receiving Party at the one or more  
11 addresses listed below or to any other address designated by the receiving Party in a notice in  
12 accordance with this paragraph.

13 **If to Columbia Riverkeeper:**

14 Simone Anter  
15 Columbia Riverkeeper  
16 1125 SE Madison St. Suite 103A  
17 Portland, OR 97214  
18 Email: simone@columbiariverkeeper.org

19 **And to:**

20 Marc Zemel  
21 Smith & Lowney PLLC  
22 2317 East John St.  
23 Seattle, WA 98112  
email: marc@smithandlowney.com

**If to EGT:**

Matthew Kerrigan  
EGT, LLC150 East Mill Road

1  
2 Longview, WA 98632  
Email: matthew.kerrigan@egt-llc.com

3 **And to:**

4 Beverly Garner  
5 Associate General Counsel  
6 Bunge North America, Inc.  
7 1391 Timberlake Manor Parkway  
Chesterfield, MO 63017  
Email: beverly.garner@bunge.com

8 Beth Ginsberg  
9 Veronica Keithley  
10 Stoel Rives LLP  
11 600 University Street, Suite 3600  
Seattle, WA 98101  
Email: [beth.ginsberg@stoel.com](mailto:beth.ginsberg@stoel.com)  
veronica.keithley@stoel.com

12 A notice or other communication regarding this Consent Decree will be effective when  
13 received unless the notice or other communication is received after 5:00 p.m. on a business day, or  
14 on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next  
15 business day. A notice or other communication will be deemed to have been received: (a) if it is  
16 delivered in person or sent by registered or certified mail or by nationally recognized overnight  
17 courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party  
18 rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address  
19 for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for  
20 notice provided by e-mail, upon receipt of a response by the party providing notice or other  
21 communication regarding this Consent Decree.

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DATED this day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
HON. LAUREN KING  
UNITED STATES DISTRICT JUDGE

Presented by:

STOEL RIVES LLP

SMITH & LONEY PLLC

By s/Beth Ginsberg  
Beth Ginsberg, WSBA #18523  
Veronica Keithley, WSBA #52784  
*Attorney for Defendant EGT, LLC*

By s/Marc Zemel  
Marc Zemel, WSBA #4425  
Alyssa Koepfgen, WSBA #46773  
Attorneys for Plaintiff  
Columbia Riverkeeper



EXHIBIT 1

June 14, 2022

Peter McVeigh, Citizen Suit Coordinator  
United States Department of Justice  
Environmental & Natural Resources Division  
Law & Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, D.C. 20044-7415

**Re: *Columbia Riverkeeper v. EGT, LLC, et al.*; 3:20-cv-05981-LK**

Dear Mr. McVeigh,

This letter is intended to provide assurances that I have received and reviewed the proposed Consent Decree between Columbia Riverkeeper and EGT, LLC, and that I am authorized by my Board of Directors to make the following binding commitments on behalf of Seeding Justice, formerly known as MRG Foundation.

1. Seeding Justice has read the proposed consent judgment/agreement;
2. Seeding Justice will spend any monies it receives under the proposed judgment/agreement for the purposes specified in the judgment/agreement;
3. Seeding Justice will not use any monies received under the proposed consent judgment/agreement for political lobbying activities; and
4. Seeding Justice will submit to the Court, the United States, and the parties a letter describing how the SEP funds were spent.

**Seeding Justice for Communities and the Environment**

Seeding Justice is a 501(c)(3) public charity (Tax ID No. 93-0691187). Its mission is to inspire people to work together for justice and mobilize resources for Oregon communities as they build collective power to change the world. To fulfill this mission, Seeding Justice conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. Seeding Justice does not support lobbying activities that are prohibited by Section 501(c)(3) of the IRS Code, and no portion of the EGT, LLC settlement funds shall be used to support any political lobbying activities whatsoever.
- Facilitate grantmaking for community-led funds (such as the Columbia River Restoration Fund), and provide resources for community-based projects and immediate aid during and after climate related emergencies (such as wildfires) and the COVID-19 pandemic.
- Leverage relationships and network connections in the philanthropic sector to fund progressive social change movements and community-based groups.

Specifically, Seeding Justice will use money received under the proposed judgment/agreement to provide grants under Seeding Justice's Columbia River Restoration Fund for proposed projects that will benefit water quality of the Columbia River and its tributaries.

Seeding Justice is governed by a Board of Directors. Grant applicants to the Columbia River Fund are required to submit written proposals, which must include at a minimum specific information about the goals, activities and project outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request.

Applications are first screened by Seeding Justice staff, then evaluated by a grantmaking committee composed of environmental justice activists and organizers. After we receive applications, we may require additional information in order to fully evaluate them.

The Board of Directors has final approval of the grant slate and Seeding Justice requires all projects to submit final reports within one year of receipt of the grant award. Reports describe the work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by a certified public accounting firm are posted on Seeding Justice's website: [seedingjustice.org](https://seedingjustice.org).

I hope this provides the information you require. Please do not hesitate to contact me or our Director of Programs, Violeta Rubiani ([violeta@seedingjustice.org](mailto:violeta@seedingjustice.org)), with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Seahdom Edmo". The signature is fluid and cursive, with the first name being more prominent.

Se-ah-dom Edmo  
*Shoshone-Bannock, Nez Perce, Yakama*  
Executive Director  
[seahdom@seedingjustice.org](mailto:seahdom@seedingjustice.org)



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<b>TITLE</b>	EGT Assurance Letter - UPDATED AGAIN
<b>FILE NAME</b>	2022.06.14 Assura...er - EGT.docx.pdf
<b>DOCUMENT ID</b>	44e665cba267a5f59f7e7a63e9daa1f71a76bec0
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

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## Document History



SENT

**06 / 14 / 2022**

10:48:05 UTC-7

Sent for signature to Se-ah-dom Edmo

(seahdom@seedingjustice.org) from violeta@seedingjustice.org

IP: 67.168.240.186



VIEWED

**06 / 14 / 2022**

12:04:56 UTC-7

Viewed by Se-ah-dom Edmo (seahdom@seedingjustice.org)

IP: 73.11.111.204



SIGNED

**06 / 14 / 2022**

12:05:18 UTC-7

Signed by Se-ah-dom Edmo (seahdom@seedingjustice.org)

IP: 73.11.111.204



COMPLETED

**06 / 14 / 2022**

12:05:18 UTC-7

The document has been completed.