

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLUMBIA RIVERKEEPER,

Plaintiff,

v.

PORT OF VANCOUVER U.S.A.; and
METROPOLITAN STEVEDORE COMPANY,

Defendants,

and

VANCOUVER BULK TERMINAL LLC,

Defendant-Intervenor.

Case No. 3:21-cv-05486-BHS

[PROPOSED] CONSENT DECREE
BETWEEN PLAINTIFF COLUMBIA
RIVERKEEPER AND DEFENDANTS
PORT OF VANCOUVER U.S.A. AND
METROPOLITAN STEVEDORE
COMPANY AND DEFENDANT-
INTERVENOR VANCOUVER BULK
TERMINAL LLC

I. STIPULATIONS.

Defendant Port of Vancouver U.S.A. (“Port”) is a Washington State port district that owns approximately four miles of riverfront property along the Columbia River west of downtown Vancouver, Washington that is depicted in Exhibit 1 to this Consent Decree.

The Port discharges stormwater associated with industrial activity from the area depicted as “Port ISGP” on the figure attached hereto as Exhibit 1, which area shall be referred to herein as the “Port Facility”, under a permit issued by the Washington Department of Ecology

1 (“Ecology”) under National Pollutant Discharge Elimination System (“NPDES”) Permit No.
2 WAR000424 (“Port Permit”).

3 The Port leases out certain areas and structures within the Port facility for a dry bulk
4 commodities terminal (“Bulk Terminal”) that is used to receive via rail bulk commodities,
5 including copper ore, to store those commodities, and then to load the commodities onto vessels
6 for export on the Columbia River.

7 Plaintiff Columbia Riverkeeper (“Riverkeeper”) issued a notice of intent to sue letter to
8 the Port dated November 5, 2020, and filed a Complaint on July 7, 2021, under section 505 of
9 the Clean Water Act (“CWA”), 33 U.S.C. § 1365, alleging that the Port is in violation of certain
10 terms and conditions of the Port Permit and that the Port is in violation of section 301(a) of the
11 CWA, 33 U.S.C. § 1311(a), for discharging copper ore and other pollutants from operations at
12 the Bulk Terminal to waters of the United States in a manner not authorized by an NPDES
13 permit.

14 Riverkeeper filed the First Amended Complaint on October 18, 2021, alleging that the
15 Port is in violation of certain terms and conditions of the Port Permit and that the Port is in
16 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharging copper ore and
17 other pollutants from operations at the Bulk Terminal to waters of the United States in a manner
18 not authorized by an NPDES permit.

19 Riverkeeper issued another notice of intent to sue letter to the Port dated October 19,
20 2021 and filed the Second Amended and Supplemental Complaint on December 29, 2021, under
21 section 505 of the CWA, 33 U.S.C. § 1365, alleging that the Port is in violation of certain terms
22 and conditions of the Port Permit and that the Port is in violation of section 301(a) of the CWA,
23 33 U.S.C. § 1311(a), for discharging copper ore and other pollutants from operations at the Bulk
24 Terminal to waters of the United States in a manner not authorized by an NPDES permit.

25 Defendant Metropolitan Stevedore Company (“Metro”) entered a lease agreement and
26 operating agreement with the Port for the Bulk Terminal. Metro began operating the Bulk
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1 Terminal on or about January 1, 2022. Ecology issued Metro NPDES Permit No. WAR310936
2 (“Bulk Terminal Permit”) authorizing discharges of stormwater associated with industrial
3 activity effective December 30, 2021.

4 Riverkeeper issued a notice of intent to sue letter to Metro dated September 23, 2022, and
5 a second notice of intent to sue letter dated December 2, 2022 alleging that Metro is in violation
6 of certain terms and conditions of the Bulk Terminal Permit and that Metro is in violation of
7 section 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharging copper ore and other pollutants
8 from operations at the Bulk Terminal to waters of the United States in a manner not authorized
9 by an NPDES permit.

10 Riverkeeper filed its Third Amended and Supplemental Complaint on April 7, 2023,
11 under section 505 of the CWA, 33 U.S.C. § 1365, alleging that the Port is in violation of certain
12 terms and conditions of the Port Permit, that Metro is in violation of certain terms and conditions
13 of the Bulk Terminal Permit, and that the Port and Metro are in violation of section 301(a) of the
14 CWA, 33 U.S.C. § 1311(a), for discharging copper ore and other pollutants from operations at
15 the Bulk Terminal to waters of the United States in a manner not authorized by an NPDES
16 permit.

17 The lease and operating agreements between Metro and the Port expired and Metro
18 ceased operations at the Bulk Terminal on May 31, 2023.

19 Defendant-Intervenor Vancouver Bulk Terminal LLC (“VBT”) entered into a lease
20 agreement with the Port for the Bulk Terminal (“Lease Agreement”) and VBT began operating
21 the Bulk Terminal on or about June 1, 2023. The Bulk Terminal Permit was transferred to VBT
22 effective June 1, 2023.

23 The Lease Agreement has a term of thirty years, from June 1, 2023 through May 31,
24 2053, with two options to extend the term for ten years each. Section 15.B of the Lease
25 Agreement provides that VBT is to complete and have operational a rotainer system for handling
26 copper at the Bulk Terminal no later than December 31, 2027, unless the Port and VBT agree on
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1 an alternative system that provides comparable or greater benefits, including environmental
2 benefits, or copper operations at the Bulk Terminal shall be terminated. The rotainer system is
3 expected to cost approximately \$25.5 million and it is expected to substantially reduce
4 opportunities for copper ore handled at the Bulk Terminal to contaminate stormwater or
5 discharge to the Columbia River.

6 Riverkeeper issued a notice of intent to sue letter to VBT dated July 5, 2023 alleging that
7 VBT is in violation of certain terms and conditions of the Bulk Terminal Permit and that VBT is
8 in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharging copper ore and
9 other pollutants from operations at the Bulk Terminal to waters of the United States in a manner
10 not authorized by an NPDES permit.

11 Riverkeeper's Third Amended and Supplemental Complaint seeks declaratory and
12 injunctive relief, the imposition of civil penalties, and an award of litigation expenses, including
13 attorney and expert fees, against the Port and Metro.

14 The Port, Metro, and VBT do not admit and expressly deny liability for all of
15 Riverkeeper's claims alleged in the notice of intent to sue letters and in the Complaint, the First
16 Amended Complaint, the Second Amended and Supplemental Complaint, and the Third
17 Amended and Supplemental Complaint (collectively, the "Complaints").

18 Solely for the purposes of this Consent Decree, the Port, Metro, VBT, and Riverkeeper
19 (collectively, the "Parties") stipulate that the Court has jurisdiction over the Parties and the
20 subject matter of this action under section 505(a) of the CWA, 33 U.S.C. § 1365(a).

21 The Parties agree that settlement of this matter is in the best interest of the Parties and the
22 public and that entry of this Consent Decree without additional litigation is the most appropriate
23 means of resolving this action. The Parties agree that this Consent Decree is fair, reasonable,
24 equitable, does not violate the law or public policy, comes within the scope of the pleadings, and
25 furthers the broad objectives upon which Riverkeeper based the Complaints. *See Sierra Club,*
26 *Inc. v. Elec. Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990).

1 The Parties stipulate to the entry of this Consent Decree without trial, adjudication, or
2 admission of any issues of fact or law regarding the claims and allegations set forth in
3 Riverkeeper's notice of intent to sue letters and Complaints.

4 The signatories for the Parties certify that they are authorized by the party they represent
5 to enter into these Stipulations and Consent Decree.
6

7 COLUMBIA RIVERKEEPER

KAMPMEIER & KNUTSEN, PLLC

8
9 By: _____
Lauren Goldberg, Executive Director

By: _____
Brian A. Knutsen, WSBA No. 38806
Attorneys for Riverkeeper

11 PORT OF VANCOUVER U.S.A.

SCHWABE, WILLIAMSON & WYATT, PC

13
14 By: _____
Julianna Marler, Chief Executive Officer

By: _____
Connie Sue Martin, WSBA No. 26525
Attorneys for the Port

16 METROPOLITAN STEVEDORE COMPANY

WILLAMS, KASTNER & GIBBS, PLLC

18
19 By: _____
Brian Johnson, Chief Commercial Officer

By: _____
Mark Myers, WSBA No. 15362
Attorneys for the Metro

20 VANCOUVER BULK TERMINAL LLC

MILLER NASH LLP

22
23 By: _____
Stephanie Goetz, General Manager

By: _____
Steven Hill, WSBA No. 23694
Attorneys for VBT

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II. ORDER AND DECREE.

THIS MATTER came before the Court upon the foregoing Stipulations of the Parties and joint motion for entry of Consent Decree. Having considered the Stipulations and the terms and conditions set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a).

2. This Consent Decree shall inure to the benefit of, and be binding upon, the Parties and their successors, assigns, officials, agents, representatives, officers, directors, and employees. Changes in the organizational form or status of a party shall have no effect on the binding nature of this Consent Decree or its applicability.

3. This Consent Decree and any injunctive relief ordered within applies solely to the Port's operation and oversight of the Port Facility, which is subject to the Port Permit.

4. This Consent Decree is a full and complete settlement and release of all claims alleged against the Port, Metro, and VBT in Riverkeeper's notice of intent to sue letters and Complaints, and all other claims known or unknown existing as of the date of entry of this Consent Decree related to alleged violations of the Port Permit and the Bulk Terminal Permit that could be asserted under the CWA against the Port, Metro, or VBT. These claims are released and dismissed with prejudice. Further, Riverkeeper hereby releases and covenants not to sue the Port, Metro, and VBT for alleged violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a), resulting from discharges of copper ore, other bulk commodities, and/or other pollutants from operations at the Bulk Terminal that occur through December 31, 2027.

5. This Consent Decree is a settlement of disputed facts and law. It is not an admission or adjudication regarding any allegations by Riverkeeper in this case or of any fact or conclusion of law related to those allegations, nor evidence of any wrongdoing or misconduct on the part of the Port, Metro, and/or VBT.

1 6. The Port agrees to the following terms and conditions in full and complete
2 satisfaction of all the claims covered by this Consent Decree:

3 A. The Port shall fully comply with the terms and conditions of the Port
4 Permit, or any successor NPDES permit authorizing discharges of stormwater associated with
5 industrial activity from the Port Facility. Nothing in this sub-paragraph affects the Port’s ability
6 to request that Ecology terminate NPDES permit coverage for the Port Facility as permitted
7 under the terms and conditions of the Port Permit or as otherwise authorized by law.

8 B. The Port shall not modify or otherwise revise Section 15.B of the Lease
9 Agreement and if copper continues to be handled at the Bulk Terminal, the Port shall otherwise
10 take whatever actions are reasonably necessary to ensure that, no later than December 31, 2027,
11 VBT (or any successor operator of the Bulk Terminal) has completed construction and began
12 operations of a rotainer system at the Bulk Terminal or an alternative system that provides
13 comparable or greater environmental benefits for handling copper.

14 C. The Port shall, within 180 days of the entry of this Consent Decree,
15 develop and implement an operations and maintenance plan for the bioretention treatment system
16 at Terminal 2 of the Port Facility (“T2 O&M Plan”), as depicted in Exhibit 1 to this Consent
17 Decree.

18 i. The T2 O&M Plan shall include a program to track contaminant
19 accumulation in the bioretention treatment system media and for renovating the system before
20 performance deteriorates.

21 ii. The T2 O&M Plan shall provide for annual coring after each wet
22 season of the full depth of the media at a minimum of three locations evenly spaced over the
23 surface and for analysis of a minimum of three core segments for copper and zinc.

24 iii. The T2 O&M Plan shall include a protocol to use the data, in
25 conjunction with discharge monitoring results, to prescribe criteria for scheduling renovation.
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1 D. The Port shall, within 180 days of entry of this Consent Decree by the
2 Court, install a berm to prevent the laydown area between Berth 9 and Berth 10, as depicted in
3 Exhibit 1 to this Consent Decree, from draining to the Columbia River at locations where
4 elevation readings show a path to the Columbia River.

5 E. The Port shall, within one hundred and eighty days of entry of this
6 Consent Decree by the Court, relocate metal stored in the boneyard near the maintenance shop,
7 as depicted in Exhibit 1 to this Consent Decree, to a location where it will not generate or come
8 into contact with stormwater runoff.

9 F. The Port shall develop and implement a study (“T4 Study”) to identify: (1)
10 the locations most responsible for exceedances of the Port Permit’s benchmark for total copper at
11 Sample Point T4M, as depicted in Exhibit 1 to this Consent Decree; (2) the most effective catch
12 basin inserts to capture copper; (3) the most effective locations for installation; and (4) the
13 replacement schedule to sustain performance needed to achieve the copper benchmark at T4M.
14 The T4 Study should provide for the following:

15 i. An investigation of alternatives to be tried if the currently-used
16 Stormwater Biochar drain insert does not yield adequate performance;

17 ii. Particular emphasis on drains in the vicinity of the gutters
18 registering the highest copper concentrations (> 30,000 mg/kg) on the map titled 2018 Gutter
19 Samples, Copper Concentrations (These drains extend from approximately the southwest corner
20 of Building 2835 in the west to the northeast corner of Building 2565 in the east and Building
21 2805 in the south to a drain east of the southeast corner of Building 2845 in the north.);

22 iii. Inclusion of some drains registering the second highest copper
23 concentrations (10,000-30,000 mg/kg) located within the area having the highest concentrations
24 and to the east, west, and north of this area;

25 iv. Conducting a series of tests with the currently-used Stormwater
26 Biochar drain insert in at least 25 percent of each set of drains;

1 v. Sampling influent runoff and insert discharge in each drain during
2 at least 6 precipitation events during October-March and at least 2 events during April-
3 September following entry of this Consent Decree by the Court;

4 vi. Analysis of the data as they become available to judge if the
5 Stormwater Biochar performance is decreasing over time and replacing any installation that
6 experiences a decrease in concentration reduction of 20 percent or more over the course of the
7 test, unless the influent concentrations are 100 ppb or less;

8 vii. Analysis of the data, in conjunction with T4M discharge
9 monitoring results, to determine if the Stormwater Biochar inserts can likely aid in meeting the
10 copper benchmark, the extent of their application required to do so, and the anticipated
11 replacement frequency to sustain performance;

12 viii. Preparation of a report presenting the T4 Study's results and
13 conclusions to Riverkeeper for review and comment within two months of completing the year
14 of sampling;

15 ix. Revising the stormwater pollution prevention plan ("SWPPP" for
16 the Port Facility to incorporate the T4 Study's recommendations on the use, maintenance and
17 replacement frequency of catch basin inserts necessary to achieve the copper benchmark at
18 monitoring point T4M;

19 x. If it is determined that the Stormwater Biochar inserts are not
20 sufficient to prevent copper benchmark exceedances during the T4 Study or at its conclusion, an
21 alternative insert shall be selected and the T4 Study repeated until an option yielding acceptable
22 performance is identified. If analysis of the data at the conclusion of the T4 Study or thereafter
23 concludes that inserts are not necessary due to changes in copper handling practices, the Port
24 may select (1) no inserts, (2) a reduced maintenance schedule, or (3) alternative media types; and
25 such changes will be reflected in the Port's SWPPP
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1 G. Upon entry of this Consent Decree by the Court and for a period of three
2 years the Port shall, no later than forty-five (45) days following each calendar quarter, send via e-
3 mail to Riverkeeper copies of the following Port Permit-related documents that the Port has
4 transmitted to, or received from, Ecology during the previous calendar quarter: discharge
5 monitoring reports (“DMRs”), annual reports, engineering reports, and inspection reports.
6 Riverkeeper shall provide the Port’s counsel the recipient e-mail address for such Port Permit-
7 related documents no later than fourteen (14) days after entry of this Consent Decree by the
8 Court.

9 7. The Port shall take the following additional measures and make the following
10 payment to benefit water quality in the Columbia River Basin:

11 A. The Port shall implement the following measures expected to improve the
12 quality of stormwater discharges to the Columbia River from the Port Facility:

13 i. Terminal 4 Stormwater Treatment Enhancement Project – 1 (T4-
14 STEP 1), estimated to cost approximately \$793,100, will test and analyze treatment polishing
15 options for the discharge at T4M for ISGP parameters with the intent of consistently meeting
16 benchmarks. The polishing system will provide end of pipe treatment for the entire Terminal 4
17 pond drainage basin integrating the latest industry standard treatment media and technologies;

18 ii. The Port shall purchase a Vactor Truck, estimated to cost
19 approximately \$634,000, within ninety (90) of entry of this Consent Decree by the Court. The
20 Port shall revise its SWPPP within ninety (90) days of receipt of the Vactor Truck to include best
21 management practices defining how the Vactor Truck will be used at the Port Facility to improve
22 stormwater discharges, including how the Port will provide services with the Vactor Truck at
23 cost to all of the Port’s tenants;

24 iii. The Port shall provide training, materials, staging location and
25 labor to facilitate construction of 5 Grattix units to be provided at no cost to businesses in
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1 Oregon and Washington along the Columbia River to help reduce metals in roof runoff,
2 estimated to cost approximately \$4,400;

3 B. The Port shall fund and implement projects to improve water quality in the
4 flushing channel that connects the Columbia River to Vancouver Lake (“Flushing Channel
5 Projects”) at an estimated cost of approximately \$150,000. The Flushing Channel Projects shall
6 be completed by January 31, 2024. To the extent that the Port implements the Flushing Channel
7 Projects at a cost below \$150,000, the Port shall pay the difference between \$150,000 and the
8 costs of the Flushing Channel Projects to the Lower Columbia Fish Recovery Board for projects
9 that benefit water quality in the Columbia River Basin as described in Exhibit 2 to this Consent
10 Decree. Such payment shall be made within six (6) months of completion of the Flushing
11 Channel Projects by check payable and mailed to the Lower Columbia Fish Recovery Board,
12 11018 NE 51st Circle, Vancouver, Washington 98682, and shall bear the notation “Columbia
13 Riverkeeper v. Port of Vancouver U.S.A., Clean Water Act Settlement,” with a copy provided to
14 Riverkeeper at that same time.

15 C. The Port shall make a payment in the amount of \$500,000 to the Lower
16 Columbia Fish Recovery Board for projects that benefit water quality in the Columbia River
17 Basin as described in Exhibit 2 to this Consent Decree. Such payment shall be made within
18 seven (7) days of the entry of this Consent Decree by the Court by check payable and mailed to
19 the Lower Columbia Fish Recovery Board, 11018 NE 51st Circle, Vancouver, Washington
20 98682, and shall bear the notation “Columbia Riverkeeper v. Port of Vancouver U.S.A., Clean
21 Water Act Settlement,” with a copy provided to Riverkeeper at that same time. The Lower
22 Columbia Fish Recovery Board shall provide a brief summary to the Port and Riverkeeper
23 regarding what projects receive funding from this payment, as those funds are awarded.

24 8. Within seven (7) days of entry of this Consent Decree by the Court, the Port
25 and/or Metro shall pay Riverkeeper’s attorney fees and costs in the amount of \$600,000 in full
26 and complete satisfaction of any claims Riverkeeper may have against the Port, Metro, and/or
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1 VBT under the CWA for attorney fees and litigation costs and expenses incurred in this matter in
2 pursuing the claims against the Port, Metro, and/or VBT. Such payment shall be made via
3 electronic funds transfer or wire transfer to the Oregon IOLTA account maintained by
4 Kampmeier & Knutsen, PLLC. Riverkeeper's above-signed counsel hereby certifies that the
5 actual costs and fees incurred in pursuing Riverkeeper's claims against the Port, Metro, and/or
6 VBT in this matter equal or exceed \$600,000. Counsel for Riverkeeper shall provide counsel for
7 the Port and Metro the account information necessary for this payment within fourteen (14) days
8 of the Parties' execution of this Consent Decree. The Port and Metro shall be jointly and
9 severally liable for the payment required by this paragraph.

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

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

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

- 23 a. Acts of God, war, insurrection, or civil disturbance;
24 b. Earthquakes, landslides, fire, floods;
25 c. Actions or inactions of third parties over which the Port has no or limited
26 control;

- d. Unusually adverse weather conditions;
- e. Restraint by court order or order of public authority;
- f. Strikes;
- g. Any permit or other approval sought by the Port and/or VBT from a government authority to implement any of the actions required by this Consent Decree where such approval is not granted or is delayed, and where the Port and/or VBT has timely and in good faith sought the permit or approval;
- h. Litigation, arbitration, or mediation that causes delay;
- i. Epidemics and pandemics, including but not limited to, COVID-19 related delays;
- j. Supply chain issues and delays.

11. This Court retains jurisdiction over this matter and, while this Consent Decree remains in force, this case may be reopened without filing fee so that the Parties may apply to the Court for any further order or relief that may be necessary regarding compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of this Consent Decree until it is terminated. A precondition to any application to the Court under this paragraph is that the Parties must first seek to resolve the dispute themselves as follows: 1) the party identifying or wishing to raise an issue or dispute must provide the other party a written notice detailing the nature of the issue or dispute; and 2) within thirty (30) days of receipt of such notice, the Parties shall meet and confer regarding the issue or dispute. If no resolution is reached at that meeting or within thirty (30) days of the written notice, whichever occurs first, either party may file a motion with this Court to resolve the dispute. In any action to enforce this Consent Decree, the Court shall apply the same standard applied by courts in awarding fees and costs under section 505(d) of the CWA, 33 U.S.C. 1365(d).

12. The Effective Period of this Consent Decree is as follows. This agreement shall take effect upon entry of the Consent Decree by the Court. The provisions of this Consent

1 Decree, except for Riverkeeper's releases of claims described in paragraph II.4 of this Consent
2 Decree, shall terminate five years from the Court's entry of this Consent Decree or upon the
3 Port's compliance with all of the payment obligations contained in paragraphs II.7, and II.8 of
4 this Consent Decree, whichever occurs last.

5 13. All notices and other communications regarding this Consent Decree shall be in
6 writing and shall be fully given by mailing via first-class mail, postage pre-paid; by delivering
7 the same by hand; or by sending the same via e-mail to the following addresses, or to such other
8 addresses as the Parties may designate by written notice, provided that communications that are
9 mailed shall not be deemed to have been given until three business days after mailing:

10 For Riverkeeper:

11 Columbia Riverkeeper
12 c/o Simone Anter
13 P.O. Box 950
14 Hood River, Oregon 97031
15 simone@columbiariverkeeper.org

16 Kampmeier & Knutsen, PLLC
17 c/o Brian Knutsen
18 1300 S.E. Stark Street, Suite 202
19 Portland, Oregon 97214
20 brian@kampmeierknutsen.com

21 For Metro:

22 Metropolitan Stevedore Company
23 c/o Brian Johnson CCO
24 Nautilus International Holding Corporation
25 3806 Worsham Avenue
26 Long Beach, California 90808
27 Brian.Johnson@Nautilustintl.com

28 Williams, Kastner, & Gibbs, PLLC
c/o Mark Myers
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
mmyers@williamskastner.com

For the Port:

Port of Vancouver U.S.A.
c/o Patty Boyden
3103 N.W. Lower River Road
Vancouver Washington 98660
pboyden@portvanusa.com

Schwabe, Williamson & Wyatt, PC
c/o Connie Sue Martin
1420 5th Avenue, Suite 3400
Seattle, Washington 98101
csmartin@schwabe.com

For VBT:

Vancouver Bulk Terminal LLC
c/o Stephanie Goetz, General Manager
3103 N.W. Lower River Road
Vancouver Washington 98660
Stephanie.goetz@vbt-llc.com

Miller Nash LLP
c/o Steven F. Hill
500 Broadway Street, Suite 400
Vancouver, Washington 98660
Steve.hill@millernash.com

1 14. This Consent Decree constitutes the entire agreement between the Parties. There
2 are no other or further agreements, either written or verbal. This agreement may not be modified
3 or amended except by a writing signed by all Parties and entered by the Court.

4 15. Each party acknowledges that it has sought and obtained the advice of its own
5 independent legal counsel before executing this Consent Decree. The Parties acknowledge that
6 they have had the opportunity to freely negotiate the terms of this Consent Decree.

7 16. If for any reason the Court should decline to approve this proposed Consent
8 Decree in the form presented, this Consent Decree is voidable at the discretion of any party. The
9 Parties agree to continue negotiations in good faith in an attempt to cure any objection raised by
10 the Court to entry of this Consent Decree.

11 17. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
12 judgment can be entered in a CWA suit in which the United States is not a party prior to forty-
13 five (45) days following the receipt of a copy of the proposed consent judgment by the U.S.
14 Attorney General and the Administrator of the U.S. Environmental Protection Agency (“U.S.
15 EPA”). Therefore, upon the filing of this proposed Consent Decree by the Parties, Riverkeeper
16 will serve copies of it upon the Administrator of the U.S. EPA and the U.S. Attorney General.
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18 DATED this ____ day of _____ 2023.
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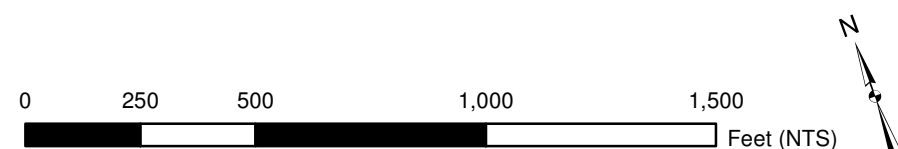
23 HONORABLE BENJAMIN H. SETTLE
24 UNITED STATES DISTRICT JUDGE
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26
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EXHIBIT 1



All data shown on this map is approximate and should not be relied upon for planning or design at the Port of Vancouver. This map covers the core of the port's active operating area. Terminal 1 and other parcels are not mapped.
Background imagery Google Earth, 16 July 2018

**Port of Vancouver
Industrial Stormwater General Permit WAR000424
January 2019**



Vehicle Maintenance Facility

Terminal 4 Pond

Floating Treatment Wetlands
Contech at Decant Facility

T4M Sample Point

Port Outfall T40

- Parcel 1D
- 3201 (BLDG 2575)
- 2801
- 2851
- 2901
- 2707
- 2701
- 2471
- 2601
- 2401
- 2480
- 2400
- 2501
- 2100
- 2001
- Drains to City Storm
- Mill Plain Blvd.
- City of Vancouver Westside Wastewater Treatment Plant
- 2877 Kinder Morgan
- Ports America Leasehold No Exposure
- 2725
- 2745
- 2685
- 2210
- 2601
- 2401
- 2100
- 2001
- 3120
- 2845
- 2725
- 2745
- 2692
- 2685
- 2525
- 2645
- 2585 NuStar Leasehold No Exposure
- 2565
- 2625
- 2655
- 2645
- 2585 NuStar Leasehold No Exposure
- 2565
- 2305
- 2245
- 2185
- 2155
- 2025
- 2305
- 2245
- 2185
- 2155
- 2025
- 3125 (Demoed)
- 3105
- 2835
- 2715
- 2700
- 2645
- 2655
- 2625
- 2655
- 2625
- 2565
- 2305
- 2245
- 2185
- 2155
- 2025
- 3165
- 3155
- 3125 (Demoed)
- 3105
- 2835
- 2715
- 2700
- 2645
- 2655
- 2625
- 2655
- 2625
- 2565
- 2305
- 2245
- 2185
- 2155
- 2025
- 3675
- 3665
- 3405
- 3400
- 3205
- 3203
- 3165
- 3155
- 3125 (Demoed)
- 3105
- 2835
- 2715
- 2700
- 2645
- 2655
- 2625
- 2655
- 2625
- 2565
- 2305
- 2245
- 2185
- 2155
- 2025
- 3675
- 3665
- 3405
- 3400
- 3205
- 3203
- 3165
- 3155
- 3125 (Demoed)
- 3105
- 2835
- 2715
- 2700
- 2645
- 2655
- 2625
- 2655
- 2625
- 2565
- 2305
- 2245
- 2185
- 2155
- 2025

Connection to Sanitary
Kinder Morgan Bulk Mineral Facility
All runoff captured, treated, and discharged to sanitary sewer.

COLUMBIA RIVER

Port Outfall T20
(also City and Pump & Treat Comingle)

Connection to Sanitary
Pacific Coast Shredding Metal Shred Facility
All inlets on berth paved over, surface runoff captured, treated, and discharged to sanitary sewer.

United Grain

EXHIBIT 2



Lower Columbia Fish Recovery Board

September 7, 2023

2023 BOARD

Todd Olson, Chair
Hydro-Electric Representative

Scott Brummer, Vice Chair
Lewis County Commissioner

Dennis Weber,
Secretary-Treasurer
Cowlitz County Commissioner

Dan Cothren
Wahkiakum County Commissioner

Dalton Fry
Cowlitz Indian Tribe

Maryllynne Kostick
Lewis County Citizen Designee

Asa Leckie
Skamania County Commissioner

Hal Mahnke
Cowlitz County Citizen Designee
Private Property Representative

Troy McCoy
SW WA Cities Representative

Gary Medvigy
Clark County Councilor

Ann Rivers
WA State Senate

Don Swanson
SW WA Environmental
Representative

Sandra Staples-Bortner
Wahkiakum County Citizen
Designee

Jade Unger
Clark County Citizen Designee

Del Wilson
Skamania County Citizen Designee

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Steven Manlow  
Executive Director  
11018 NE 51<sup>st</sup> Circle  
Vancouver, WA 98682  
(360) 425-1555

Citizen Suit Coordinator Lucy Chiu  
United States Department of Justice  
Environmental & Natural Resources Division  
Law & Policy Section  
P.O. Box 7415  
Washington, D.C. 20044-7415

Subject: Assurance Letter for Consent Decree Fund Acceptance, Columbia Riverkeeper v. Ports of Vancouver, U.S.A., Metropolitan Stevedore Company, and Vancouver Bulk Terminal LLC, Case No. 3:21-vc-05486-BHS

Dear Ms. Chiu:

This letter is intended to provide assurances that I have received and reviewed the above-referenced proposed consent decree between Columbia Riverkeeper v. Port of Vancouver, USA, Metropolitan Stevedore Company, and Vancouver Bulk Terminal, and that I am authorized by my Board to make the following binding commitments on behalf of the Lower Columbia Fish Recovery Board (LCFRB):

- (1) LCFRB has read the proposed consent judgment;
- (2) LCFRB will spend any monies it receives under the proposed judgment for the purposes specified in the judgment;
- (3) LCFRB will not use any money received under the proposed consent judgment for political lobbying activities; and,
- (4) LCFRB will submit to the Court, the United States, and the parties a letter describing how the funds were spent within 60 days upon conclusion of the last grant round.

The LCFRB was established by state statute (RCW 77.85.200) in 1998 to coordinate and oversee fish recovery planning efforts among federal and state agencies, tribes, local jurisdictions and interested stakeholders in the Lower Columbia Basin, and is a tax-exempt entity. The Board operates under an interlocal agreement between five Southwest Washington counties. The Board is comprised of members of area city and county governments, citizens, tribes, hydro-utility industry and environmental organizations. The Board is the lead entity for soliciting, evaluating and ranking habitat protection and restoration projects for potential funding from a variety of salmon recovery and habitat funds in southwest Washington.

The primary sources of funding for projects evaluated and funded by the Board are the federal Pacific Coast Salmon Recovery Fund administered by the National Oceanic and Atmospheric Administration, and capital funds appropriated by the Washington State legislature. These funds are made available to the Board through the Washington Salmon Recovery Funding Board. The Board also receives and administers funds from other sources, including public utilities, conservation organizations, and private parties, also for habitat protection, restoration and water quality projects. The Board operates an open and competitive grant application process for the available funds, and each year, the Board solicits and evaluates project proposals. The Board submits a ranked project list to the Salmon Recovery Funding Board for projects funded through that source. For other funds, the Board directly contracts with the sponsoring organization for project implementation.

In selecting projects and priorities under its existing programs, the Board and its appropriate technical panel of experts performs a transparent and robust analysis of a project's benefits to target resources, certainty of success, and cost relative to benefit, to determine whether a project warrants funding, as well as its ranking relative to other proposals. For this funding, the Board would utilize and augment its technical review committee established for implementation of the Clark County Clean Water grant program, under a prior Consent Decree fund allocation. This committee consists of professionals with both water quality expertise and knowledge of aquatic resources in southwest Washington. Project review criteria will be developed to ensure projects benefit water quality in the Columbia River Basin, per the Consent Decree. The Board will emphasize projects that focus on attenuation and treatment of stormwater runoff, including toxic metals. The Board will not use any Consent Decree Funds for any political purposes or lobbying.

The Board will immediately deposit the funds when received into an interest-bearing account. The Board will provide a letter to counsel for the parties, the U.S. Government, and to the court, on an annual basis, accounting for interest earned, and describing expenditures of Consent Decree funds, both for administrative costs and for projects, made by the Board for the previous year. Any unspent interest in any given year will remain in the account for expenditure on projects pursuant to the Consent Decree.

The Board looks forward to working with the parties to ensure significant benefits for salmon and clean water in the Region as a result of the Consent Decree. Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Steve Manlow". The signature is written in a cursive, flowing style.

Steve Manlow  
Executive Director, LCFRB

cc: LCFR Board