

HON. RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLUMBIA RIVERKEEPER,)	
)	No. 3:09-CV-05425-RBL
Plaintiff,)	
)	CONSENT DECREE
v.)	
)	
OREGON IRON WORKS, INC.,)	
)	
Defendant.)	
_____)	

WHEREAS, Plaintiff Columbia Riverkeeper filed a Complaint against Defendant Oregon Iron Works, Inc. on July 14, 2009 alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from two facilities operated by Defendant located in Vancouver, Washington, seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs;

WHEREAS, Defendant denies Plaintiff's claims and any liability for the alleged violations; and

WHEREAS, counsel and representatives for the parties to this action have engaged in

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SEATTLE, WASHINGTON 98112
(206) 860-2883

1 discussions relating to the potential settlement of this litigation, which discussions have included
2 an assessment of the facts surrounding the alleged violations; and

3 WHEREAS, Defendant has discontinued operations at one of the two facilities that is the
4 subject of this lawsuit since the Complaint was filed and Defendant does not anticipate resuming
5 operations at that location;

6
7 WHEREAS, Defendant has undertaken, and is implementing, measures to further ensure
8 compliance with the Clean Water Act and to address issues raised in the notice of intent to sue
9 served by Plaintiff at the facility that is the subject of this lawsuit where Defendant's operations
10 continue; and

11
12 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best
13 interest of the parties and the public, and that entry of this Consent Decree without additional
14 litigation is the most appropriate means of resolving these actions; and

15
16 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or
17 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,
18 consent to the entry of this Consent Decree in order to avoid the risks of litigation and to resolve
19 the controversy between them.

20
21 NOW THEREFORE, without trial of any issue of fact or law, and without admission by
22 the Defendant of the facts or violations alleged in the Complaint, and upon consent of the parties,
23 and upon consideration of the mutual promises herein contained, it is hereby

24 ORDERED, ADJUDGED AND DECREED as follows:

25 1. This Court has jurisdiction over the parties and subject matter of this action.

26 2. The undersigned representative for each party certifies that he or she is fully

27 authorized by the party or parties whom he or she represents to enter into the terms and
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1 conditions of this Consent Decree and to legally bind the party or parties and their successors in
2 interest to it.

3 3. This Consent Decree shall apply to, and be binding upon, the parties, and upon
4 the successors and assigns of the parties.

5 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its
6 facility located at or about 3515 SE Columbia Way, Building 48, Vancouver, Washington 98661
7 (the "facility").

8 5. This Consent Decree constitutes a full and complete settlement of the claims
9 alleged in the Complaint and all other claims known and unknown existing as of the date of entry
10 of this Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-
11 1387, arising from operations of the facility identified in paragraph 4 of this Consent Decree.

12 6. This Consent Decree shall not constitute evidence in any proceeding, an
13 admission or adjudication with respect to any allegation of the Complaint, any fact or conclusion
14 of law with respect to any matter alleged in or arising out of the Complaint, or the admission or
15 evidence of any wrongdoing or misconduct on the part of the Defendant or its successor.

16 7. In full and complete satisfaction of the claims covered by the Complaint and all
17 other claims covered by this Consent Decree, as described in Paragraph 5, Defendant agrees to
18 abide by and be subject to the following terms and conditions:

19 a. Defendant shall comply fully with all conditions of its National Pollutant
20 Discharge Elimination System Permit No. WAR000275 and any successor, modified, or
21 replacement permit (the "NPDES permit");

22 b. Defendant shall, for a period of two (2) years beginning on the date that
23 this Consent Decree is entered by the Court, forward copies to Plaintiff of all written or

1 electronic communications between Defendant and the Washington Department of Ecology
2 (“Ecology”) concerning Defendant’s compliance with the NPDES permit and the Clean Water
3 Act, including but not limited to Discharge Monitoring Reports, Level One, Two, or Three
4 response reports or similar adaptive management reports, correspondence, and inspection
5 reports. During this same period Defendant shall additionally forward copies to Plaintiff of all
6 inspection reports and/or checklists of all visual monitoring conducted at the facility pursuant to
7 the terms and conditions of the NPDES permit. All copies shall be forwarded to Plaintiff on a
8 quarterly basis and not later than the forty-fifth (45th) day following the end of each calendar
9 quarter;
10

11
12 c. Defendant shall have its stormwater consultant complete a hydrologic
13 analysis of the entire facility within sixty (60) days of entry of this Consent Decree by the Court.
14 Defendant shall ensure that this hydrologic analysis includes the determinations necessary to
15 comply with paragraphs 7.d and 7.e of this Consent Decree. The hydrologic analysis shall be
16 performed using the Western Washington Hydrologic Model to simulate the runoff response to
17 the rainfall quantities and patterns as provided by the existing default data sets in the model.
18 Defendant shall provide Plaintiff with a copy of this hydrologic analysis within thirty (30) days
19 of its completion;
20

21
22 d. If the hydrologic analysis required by Paragraph 7.c of this Consent
23 Decree determines that stormwater from any portion of the facility has the potential to discharge
24 to the Columbia River without first being channeled into one of the facility’s stormwater catch
25 basins at an average frequency of more than once every twenty-five (25) years, Defendant shall
26 make improvements at the facility to eliminate any such direct discharge and to ensure that all
27 stormwater at the facility is channeled to the facility’s stormwater catch basins. Defendant shall
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1 complete such improvements within one hundred and twenty (120) days of entry of this Consent
2 Decree by the Court and shall provide written notice to Plaintiff of such completion at that time;

3 e. If the hydrologic analysis required by paragraph 7.c of this Consent
4 Decree estimates an average frequency of discharge to the Columbia River from the rock filter
5 trench constructed near the southern edge of the facility of more than once every twenty-five
6 (25) years, Defendant shall implement additional measures to manage stormwater to limit
7 discharges from the trench to an average frequency of no more than once every twenty-five (25)
8 years. Such additional measures may include, but are not limited to, increasing the capacity of
9 the trench, installing additional catch basins, or other measures recommended by Defendant's
10 stormwater consultant. Any stormwater that will be redirected into the trench under the
11 requirements of paragraph 7.d of this Consent Decree shall be included in determining whether
12 the trench is of a sufficient capacity. Defendant shall implement such additional measures, if
13 necessary under the terms of this paragraph, within one hundred and twenty (120) days of entry
14 of this Consent Decree by the Court and shall provide written notice to Plaintiff of such
15 completion at that time;

16 f. Defendant shall retain its stormwater consultant to prepare a report
17 addressing all stormwater discharges from the northern portion of the facility to the separate
18 stormwater system that discharges to the Columbia River (the "Report"). The Report shall
19 describe additional stormwater measures to be implemented at the facility, which shall
20 specifically include one or more stormwater treatment systems, that are, in the professional
21 judgment of Defendant's stormwater consultant, sufficient to reduce the levels of turbidity, total
22 zinc, total copper, total lead, and total petroleum hydrocarbons in the stormwater discharges at
23 this location of the facility to or below the benchmarks established in the NPDES permit

1 effective on the date this Consent Decree is entered by the Court. The requirements of the
2 previous sentence shall apply to all stormwater catch basins and discharge points that discharge
3 to the separate stormwater system that discharges to the Columbia River. The Report shall
4 incorporate the results of the hydrologic analysis required by paragraph 7.c of this Consent
5 Decree in sizing and verifying sizing of the stormwater control features, including the two
6 existing catch basins, in this north drainage area. The Report shall be completed within sixty
7 (60) days of entry of this Consent Decree by the Court and a copy shall be provided to Plaintiff
8 at that time. The Report shall include a schedule that requires all additional stormwater
9 measures, specifically including one or more stormwater treatment systems, to be implemented
10 as soon as practicable and no later than two hundred and forty (240) days from the entry of the
11 Consent Decree by the Court, and Defendant shall fully comply with this schedule. Defendant
12 shall provide Plaintiff with written notice of its completion of all additional measures described
13 in the Report;

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17 g. Upon entry of this Consent Decree, and irrespective of the stormwater
18 monitoring frequency required under the Defendant's NPDES permit, Defendant shall collect
19 samples of stormwater at the facility in the manner specified by Defendant's stormwater
20 pollution prevention plan for the facility and the NPDES Permit on a monthly basis and have
21 such samples analyzed for the pollutant parameters required by the NPDES Permit. Defendant
22 shall collect and analyze stormwater samples from both of the two stormwater catch basins
23 located in the northern portion of the facility that discharge to the separate stormwater system
24 that discharges to the Columbia River until such time as those two catch basins are outfitted with
25 equivalent stormwater treatment devices. For the purposes of this subparagraph, Defendant need
26 not collect stormwater samples in months when precipitation is insufficient to generate a
27

1 stormwater discharge from the facility. The results of all such monitoring shall be reported to
2 Ecology on Discharge Monitoring Reports in accordance with the NPDES permit. Defendant
3 shall use the results of all such monitoring in a good faith effort to evaluate the effectiveness of
4 the best management practices implemented at the facility and to determine whether additional
5 or alternative measures are necessary to ensure that stormwater discharges at the facility do not
6 exceed the benchmarks established in the NPDES permit. The stormwater monitoring frequency
7 requirements of this paragraph shall terminate two years from entry of this Consent Decree by
8 the Court;

9
10 8. Within thirty (30) days of entry of this Consent Decree by the Court, Defendant
11 shall make a payment in the amount of Forty Thousand Dollars (\$40,000) to The Gifford Pinchot
12 Task Force for the Clear-Lewis Road Removal Project that is described in Attachment A to this
13 Consent Decree. Such payment shall be made by check payable and mailed to The Gifford
14 Pinchot Task Force, 917 SW Oak Street, Suite 410, Portland, Oregon 97205, and shall bear the
15 notation "Columbia Riverkeeper v. Oregon Iron Works, Inc., Clean Water Act Settlement," with
16 a copy provided to Plaintiff;

17
18 9. Within thirty (30) days of entry of this Consent Decree by the Court, Defendant
19 shall pay Plaintiff's reasonable attorney fees and costs in the amount of Forty Thousand
20 Dollars (\$40,000) by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St.,
21 Seattle, WA 98112, attn: Brian A. Knutsen, in full and complete satisfaction of any claims
22 Plaintiff may have under the Clean Water Act for fees and costs.

23
24 10. The Court shall retain jurisdiction over this matter and allow this case to be
25 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
26 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any

1 dispute regarding the terms or conditions of this Consent Decree until termination of the Consent
2 Decree per paragraph 12. In the event of a dispute regarding implementation of, or compliance
3 with, this Consent Decree, the parties shall first attempt to informally resolve the dispute through
4 meetings between the parties by serving written notice of request for resolution to the parties and
5 their counsel of record. If no resolution is reached within thirty (30) days from the date that the
6 notice of dispute is served, the parties may resolve the dispute by filing motions with the Court.
7

8 11. The parties recognize that no consent judgment can be entered in a Clean Water
9 Act suit in which the United States is not a party prior to forty-five (45) days following the
10 receipt of a copy of the proposed consent judgment by the United States Attorney General and
11 the Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. §
12 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall
13 serve copies of it upon the Administrator of the United States Environmental Protection Agency
14 and the United States Attorney General.
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16
17 12. This Consent Decree shall take effect on the date it is entered by the Court. This
18 Consent Decree shall terminate sixty (60) days following completion of all obligations under it.

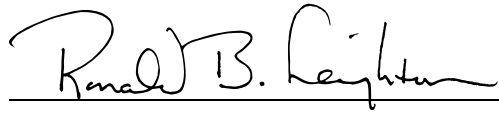
19 13. This Consent Decree may be modified only upon the written consent of the
20 parties and the approval of the Court.
21

22 14. If for any reason the Court should decline to approve this Consent Decree in the
23 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the
24 sole discretion of either party. The parties agree to continue negotiations in good faith in an
25 attempt to cure any objection raised by the Court to entry of this Consent Decree.
26

27 15. Notifications or copies required by this Consent Decree to be made to Plaintiff
28 shall be mailed to Columbia Riverkeeper, Attn: Lauren Goldberg, 724 Oak Street, Hood River,

1 Oregon 97031. Notifications required by this Consent Decree to be made to Defendant shall be
2 mailed to Oregon Iron Works, Inc., 9700 S.E. Lawnfield Road, Clackamas, Oregon 97015.

3 Dated and entered this 30th day of August, 2010
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7 RONALD B. LEIGHTON
8 UNITED STATES DISTRICT JUDGE
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COLUMBIA RIVERKEEPER

Signature: s/ Brett VandenHeuvel

Title: Executive Director

Dated: June 22nd, 2010

OREGON IRON WORKS, INC.

Signature: s/ Tara A. Aarnio

Title: General Counsel

Dated: 6/22/10