

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

| | | |
|--------------------------------------|---|-----------------------|
| COLUMBIA RIVERKEEPER , a |) | |
| Washington non-profit corporation, |) | No. 3:09-cv-05578-RJB |
| |) | |
| Plaintiff, |) | CONSENT DECREE |
| v. |) | |
| |) | |
| RSG FOREST PRODUCTS, INC. , a |) | |
| Washington corporation, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Columbia Riverkeeper (“Plaintiff”) and RSG Forest Products, Inc. (“Defendant”)

hereafter collectively the “Parties” enter into the following Consent Decree:

WHEREAS, Plaintiff filed a Complaint against Defendant on September 24, 2009, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Defendant’s facility located in Kalama, Washington, and seeking declaratory and injunctive relief, civil penalties and attorneys’ fees and costs;

WHEREAS, Defendant denies any fault, wrongdoing, or liability for all claims alleged by Plaintiff in this action;

WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the best interest of the Parties and the public, and that entry of this Consent Decree without additional

1 litigation is the most appropriate means of resolving this action; and

2 WHEREAS, Plaintiff, Defendant, and their respective counsel consent to entry of this
3 Decree without trial, adjudication, or admission of any issue of fact or law with respect to
4 Plaintiff's claims or allegations and without admission of any fact, allegations, or legal argument
5 contained in Plaintiff's sixty (60) day notice or Complaint in this action.

6 NOW THEREFORE, upon consideration of the mutual promises herein contained, it is
7 hereby

8 ORDERED, ADJUDGED AND DECREED as follows:

9 1. This Court has jurisdiction over the Parties and the subject matter of this action.

10 2. The undersigned representative for each Party certifies that he or she is fully
11 authorized by the Party whom he or she represents to enter into the terms and conditions of this
12 Consent Decree and to legally bind the Party or Parties and their successors in interest to it.

13 3. This Consent Decree shall apply to, and be binding upon, the Parties, and upon
14 the successors and assigns of the Parties.

15 4. This Consent Decree shall apply to Defendant's operation and/or oversight of its
16 facility located at or about 985 2nd Street NW, Kalama, WA 98625 (the "Facility").

17 5. This Consent Decree is intended to be and shall constitute the exclusive remedy
18 and a full and complete settlement of the claims alleged in the Complaint in this case and all
19 other known and unknown claims existing as of the date of entry of this Consent Decree that
20 could be asserted by Plaintiff under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from
21 operations at the Facility, which claims are released and dismissed with prejudice. Plaintiff's
22 exclusive remedy for any violation of the terms of this Consent Decree shall be enforcement of
23 this Consent Decree.
24
25
26

1 6. This Consent Decree is a settlement of disputed facts and law, and shall not
2 constitute evidence in any proceeding, an admission or adjudication with respect to any
3 allegation of the Complaint, any fact or conclusion of law with respect to any matter alleged in or
4 arising out of the Complaint, or admissions or evidence of any wrongdoing or misconduct on the
5 part of the Defendant or any successor.

6 7. In full and complete satisfaction of the claims covered by the Complaint and all
7 other claims covered by this Consent Decree as described in Paragraph 5, Defendant agrees to
8 comply with the following terms and conditions:
9

10 a. During the time period from when this Consent Decree is entered to when
11 the Project described in paragraph 7.b. is fully operational, Defendant shall engage in the
12 following interim measures:

13 i. Store all galvanized materials either in Defendant's buildings or
14 outside under cover;

15 ii. Implement a truck driver protocol limiting turns on-site to
16 minimize potential zinc deposition in the truck stop area;

17 iii. Equip all outfalls with baskets containing filter fabric to capture
18 runoff and replace the filter fabric on a routine basis;

19 iv. Equip all stormwater drains, except those stormwater drains
20 identified by an "X" on Exhibit 1, with a downturned elbow pipe to reduce
21 turbidity and maintain each pipe as necessary. Equip with filter fabric those
22 stormwater drains identified by an "X" on Exhibit 1;

23 v. Create and maintain elevated rims around stormwater drains not
24 located in traffic areas to help remove sawdust and other matter from stormwater.
25
26

1 Equip with filter fabric those stormwater drains located in traffic areas which are
2 identified by a “Y” on Exhibit 1;

3 vi. Utilize a street-sweeper bi-weekly to keep the Facility clear of
4 sawdust and other debris;

5 vii. The above best management practices (BMPs) are designed to
6 reduce pollution discharges. To the extent these practices are not successful in so
7 doing, RSG will implement additional reasonable measures recommended by its
8 storm water engineer or consultant to ensure compliance with the permit
9 violations noticed by Plaintiff and included in the Complaint.

10 The requirements contained in this paragraph 7.a. shall terminate when Defendant
11 provides Plaintiff with notification that the Project (described in paragraph 7.b.) is
12 fully operational.

13
14 b. Defendant shall implement a Stormwater Management Plan (“Project”) to
15 eliminate stormwater runoff from the Facility during rainfall amounts of up to a five (5) –
16 year storm event. The Project is described in Exhibit 2. The Project will be implemented
17 within a year and a half from the effective date of this Consent Decree. After the Project
18 is fully operational, Defendant will provide written notice to Plaintiff. Defendant shall
19 inform Plaintiff if it becomes clear that the Project cannot be implemented within a year
20 and a half from the effective date of this Consent Decree, and the Parties will endeavor to
21 work out an alternative as proposed in paragraph 11.

22
23 c. Defendant will continue to hold a Permit and will implement the following
24 best management practices to address the discharge of pollutants that may occur during
25 rainfall amounts of more than five (5) –year storm events:
26

1 i. Utilize a street-sweeper to remove sawdust and other debris from
2 the Facility at least monthly;

3 ii. Maintain previously installed elevated rims around stormwater
4 drains, stand pipes, and filter baskets; and

5 iii. The above best management practices (BMPs) are designed to
6 reduce pollution discharges. To the extent these practices are not successful in so
7 doing, RSG will implement additional reasonable measures recommended by its
8 storm water engineer or consultant to ensure compliance with the permit violations
9 noticed by Plaintiff and included in the Complaint.

10 d. Defendant shall, for a period of three years beginning on the effective date
11 of this Consent Decree, forward to Plaintiff copies of Discharge Monitoring Reports,
12 Level One, Two, or Three response reports for the Facility submitted by Defendant to the
13 State of Washington Department of Ecology pursuant to the National Pollutant Discharge
14 Elimination System Industrial Stormwater General Permit (“Permit”). All copies shall be
15 forwarded to Plaintiff on a quarterly basis and not later than the forty-five (45) days
16 following the end of each calendar quarter;

17 e. Not later than ninety (90) days after the effective date of this Consent
18 Decree, Defendant shall make a payment in the amount of \$20,000 to the Lower
19 Columbia River Estuary Partnership for the Kalama Service Learning and Community
20 Volunteer Project that is described in Exhibit 3 to this Consent Decree. Such payment
21 shall be made by check payable and mailed to the Lower Columbia River Estuary
22 Partnership, 811 SW Naito Parkway Suite 410, Portland, Oregon 97204, Attn: Debrah
23 Marriot, Executive Director, and bear the notation “Columbia Riverkeeper v. RSG Forest
24
25
26

1 Products, Inc., Clean Water Act Settlement,” with a copy to Plaintiff;

2 f. Within ninety (90) days of the effective date of this Consent Decree,
3 Defendant shall pay Plaintiff’s reasonable attorneys’ fees and costs in the amount of
4 \$24,440.80 by check payable and mailed to Crag Law Center, 917 SW Oak Street, Suite
5 417, Portland, OR 97205, Attn: Tanya Sanerib. This payment shall constitute full and
6 complete satisfaction of any claims Plaintiff may have under the Clean Water Act for
7 attorneys’ fees and costs.
8

9 8. Defendant shall comply with all terms and conditions of this Consent Decree
10 within the time periods specified herein.

11 9. If any Force Majeure Event that Defendant is unable to overcome with reasonable
12 diligence causes a delay in complying with this Consent Decree within the time periods specified
13 herein, such delay shall not constitute a failure to comply with the terms of this Consent Decree,
14 provided that Defendant submits written notification to Plaintiff no later than fifteen (15) days
15 after the date that Defendant first concludes that such event has caused or will cause a delay in
16 complying with this Consent Decree. Such notice to Plaintiff shall describe the length or
17 anticipated length of the delay, the precise circumstances causing the delay, the measures taken
18 or to be taken to prevent or minimize non-compliance, and a schedule for implementation of the
19 measure to be taken.
20

21 a. A force majeure event includes but is not limited to the following:

- 22 i. Acts of God, war, insurrection, or civil disturbance;
- 23 ii. Earthquakes, landslides, fire, floods;
- 24 iii. Actions or inactions of third parties over which Defendant has no
25 control;
26

1 iv. Adverse weather conditions or unusual delay in transportation;

2 v. Strikes; and

3 vi. Any other litigation or arbitration or mediation that causes delay.

4 b. In the event that Defendant fails to comply or anticipates failing to comply
5 with this Consent Decree within the time frames specified herein because of a Force
6 Majeure Event and has notified Plaintiff as provided in this Consent Decree, Defendant's
7 failure to comply shall not be a violation of this Consent Decree and shall not result in
8 any liability or other sanctions. In such event, the milestone date(s) shall be extended for
9 a reasonable period of time following the Force Majeure Event.

10 10. The Court shall retain jurisdiction over this matter until termination of this
11 Consent Decree as provided in Paragraph 12 and allow this case to be reopened without a filing
12 fee for the purpose of allowing the parties to apply to the Court for any further order that may be
13 necessary to construe, carry out, enforce compliance with, and/or resolve any dispute regarding
14 the terms or conditions of this Consent Decree. In the event of a dispute regarding
15 implementation of, or compliance with, this Consent Decree, the Parties shall first attempt to
16 informally resolve the dispute through meetings between the Parties by either Party serving
17 written notice of request for resolution to the other Party and their counsel of record. If no
18 resolution is reached within thirty (30) days from the date that the notice of dispute is served, the
19 Parties may resolve the dispute by filing motions with the Court.

20 11. The Parties recognize that no consent decree can be entered in a Clean Water Act
21 suit in which the United States is not a party prior to forty-five (45) days following the receipt of
22 a copy of the proposed consent decree by the United States Attorney General and the
23 Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. §
24
25
26

1 1365(c)(3). Therefore, upon the signing of this Consent Decree by the parties, Plaintiff shall
2 serve copies of the Consent Decree upon the Administrator of the United States Environmental
3 Protection Agency and the United States Attorney General.

4 12. The Consent Decree takes effect on the date it is entered by the Court. It is the
5 parties' intent that the SEP and attorneys' fees and costs payments will not be made until after
6 any potential appeal is resolved. This Consent Decree shall terminate sixty (60) days following
7 completion of all obligations in paragraphs 7a, 7b, 7d, 7e, and 7f.
8

9 13. This Consent Decree may be modified only upon the written consent of the
10 Parties and the approval of the Court.

11 14. The rule of construing ambiguities against the drafting party shall not apply to this
12 Consent Decree.

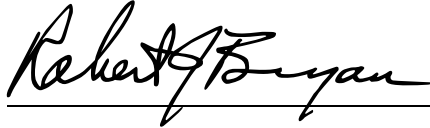
13 15. If for any reason the Court should decline to approve this Consent Decree in the
14 form presented, this Consent Decree and the settlement embodied herein shall be voidable at the
15 sole discretion of either Party. The Parties agree to continue negotiations in good faith in an
16 attempt to cure any objection raised by the Court to entry of this Consent Decree.
17

18 16. Notifications or copies required by this Consent Decree to be made to Plaintiff
19 shall be mailed to: Columbia Riverkeeper, Attn: Lauren Goldberg, 724 Oak Street, Hood River,
20 OR 97031. Notifications required by this Consent Decree to be made to Defendant shall be
21 mailed to: RSG Forest Products, Inc., c/o James Benedict, Cable Huston Benedict Haagensen &
22

23 //

Lloyd, LLP, 1001 SW Fifth Avenue, Suite 2000, Portland, OR 97204.

Dated and entered this 11th day of August, 2010,



ROBERT J. BRYAN
United States District Judge

Columbia Riverkeeper

Signature: _____/s/_____

Title: _____

Date: _____

RSG Forest Products, Inc.

Signature: _____/s/_____

Title: _____

Date: _____