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HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT, a Washington
non-profit corporation,

Plaintiff,

v.

EDMAN COMPANY, a Washington
corporation,

Defendant.

Case No. 11-5750BHS

CONSENT DECREE

I. STIPULATIONS

Plaintiff Waste Action Project sent a sixty day notice of intent to sue letter to Defendant Edman Company (“Edman”) on July 18, 2011, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater from Edman’s Facility in Tacoma, Washington and seeking declaratory and injunctive relief, civil penalties and attorneys fees and costs.

Edman denies any fault, wrongdoing, or liability regarding all claims and alleged violations.

Waste Action Project and Edman agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate

1 means of resolving this action.

2 Waste Action Project and Edman stipulate to the entry of this Consent Decree without
3 trial, adjudication, or admission of any issues of fact or law regarding Waste Action Project's
4 claims or allegations set forth in its complaint and its sixty-day notice.

5 DATED this January 4, 2012

6 COASTLINE LAW GROUP

SMITH & LOWNEY PLLC

8 By s/ Kimberly Seely
9 Kimberly A. Seely, WSBA #21676
10 Attorneys for Defendant
Edman Company

By s/ Richard A. Smith
Richard A. Smith, WSBA #21788
Attorneys for Plaintiff
Waste Action Project

11 EDMAN COMPANY

WASTE ACTION PROJECT

13 By _____
14 George Edman
President

By _____
Greg Wingard
Title: _____

15 **II. ORDER AND DECREE**

16 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.
17 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,
18 ADJUDGES, and DECREES as follows:

- 19 1. This court has jurisdiction over the parties and subject matter of this action.
- 20 2. Each signator for the parties certifies for that party that he or she is authorized to
21 enter into the agreements set forth below.
- 22 3. This Consent Decree applies to and binds the parties and their successors and
23 assigns.
- 24 4. This Consent Decree applies to the operation, oversight, or both by Defendant
25 Edman Company ("Edman") of its Facility at 2502 Marine View Drive, Tacoma, Washington (the
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CONSENT DECREE: No. 11-5750BHS
p. 2

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN ST.
SEATTLE, WASHINGTON 98112
(206) 860-2883

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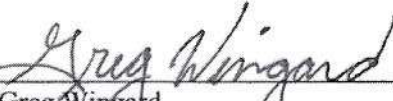

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Edman Company

By _____
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24 assigns.
- 25 4. This Consent Decree applies to the operation, oversight, or both by Defendant
26 Edman Company ("Edman") of its Facility at 2502 Marine View Drive, Tacoma, Washington (the

1 “Facility”).

2 5. This Consent Decree is a full and complete settlement of the claims in the
3 complaint and all other claims known and unknown existing as of the date of entry of this
4 Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387,
5 arising from operations of the Facility. These claims are released and dismissed with prejudice.
6 Enforcement of this decree is Waste Action Project’s exclusive remedy for any violation of its
7 terms.

8 6. This Consent Decree is a settlement of disputed facts and law. It is not an
9 admission or adjudication regarding any allegations by Waste Action Project in this case or of any
10 fact or conclusion of law related to those allegations. It is not evidence of any wrongdoing or
11 misconduct on the part of Edman.

12 7. Edman agrees to the following terms and conditions in full and complete
13 satisfaction of the claims covered by this decree:

14 a. Edman will comply fully with all conditions of its National Pollutant
15 Discharge Elimination System Permit No. WAR003019 (the “*NPDES permit*”) and any
16 successor, modified, or replacement permit;

17 b. By the date of entry of this Consent Decree, Edman will permanently cease
18 distributing the contents of its stormwater detention basin to paved areas of the Facility
19 where industrial activities, including storage and vehicle traffic, occur.

20 c. Not later than December 31, 2011, Edman will increase vacuum sweeping
21 frequency to a minimum of once each business day the Facility conducts industrial
22 activities. This sweeping will cover all areas safely accessible by the vacuum sweeping
23 equipment used by Edman.

24 d. No later than the date of entry of this Consent Decree, Edman will amend
25 the monitoring and sampling provisions in its Storm Water Pollution Prevention Plan
26 (“*SWPPP*”) to include sufficiently detailed instructions to enable inexperienced Edman

1 employees to conduct monitoring and sampling that complies with the NPDES permit and
2 the requirements of this Consent Decree.

3 e. Stormwater Management and Treatment: Edman shall implement
4 corrective measures to manage stormwater at its Facility in three phases as follows:

5 1) Feasibility Analysis: No later than February 29, 2012, Edman will provide
6 Waste Action Project a Feasibility Analysis ("Analysis") conducted by a qualified
7 stormwater consultant. The Analysis will present available approaches to manage and
8 treat stormwater at Edman's Facility to reduce levels of oxygen demand, zinc, and
9 turbidity, and neutralize the level of pH and otherwise ensure compliance with the NPDES
10 Permit and requirements of this Consent Decree. The analysis will evaluate available
11 operational, structural, and treatment measures including but not limited to, structural
12 modification of operational areas, aeration of stormwater in storage tanks, increased
13 vacuum sweeping, discharge to the City of Tacoma sanitary sewer, infiltration of
14 stormwater on-site (e.g., bioretention cell(s)), additional on-site treatment prior to
15 discharge (e.g., bioretention cell with underdrain, bioretention swale), and combinations of
16 the above measures. The Analysis will set forth the selected set of measures that will
17 achieve stormwater management objectives.

18 a.) Waste Action Project will review and either approve or provide
19 comments on the Feasibility Analysis within 30 days of receipt. In the event that Waste
20 Action Project submits comments on the Analysis, such comments will be incorporated
21 into a revised Feasibility Analysis to the extent feasible and resubmitted to Waste Action
22 Project for approval within 45 day of receipt of such comments. Waste Action Project
23 will not unreasonably withhold approval.

24 2) Engineering Design Report: No later than June 15, 2012, Edman shall provide
25 Waste Action Project with an Engineering Design Report that describes the engineering
26 and other measures necessary to achieve stormwater objectives identified in the approved

1 Feasibility Analysis. The Engineering Design Report will include measures to minimize
2 erosion and the discharge of pollutants during any associated installation and construction.

3 3) Implementation: No later than October 31, 2012, Edman will implement the
4 engineering controls and other measures selected in the Feasibility Analysis and verify
5 that NPDES Permit standards and requirements set forth in this Consent Decree are
6 achieved.

7 4) Edman will pay Waste Action Project's reasonable expert fees and costs of up
8 to \$4,000.00 (FOUR THOUSAND DOLLARS) to review Edman's Feasibility Analysis
9 comprising recommended measures to achieve stormwater management objectives and the
10 Engineering Design. Such costs will be payable to Waste Action Project fourteen (14)
11 days after its receipt of the Engineering Design Report and Edman's receipt of an
12 accounting of fees and costs. To facilitate review by Waste Action Project's expert,
13 Edman will provide reasonable access to the facility and information requested by Waste
14 Action Project's expert.

15 f. Edman will forward copies of all written or electronic communications
16 between it and Ecology concerning its compliance with the NPDES permit and the Clean
17 Water Act, including but not limited to discharge monitoring reports to Waste Action
18 Project on or before the NPDES permit's quarterly due dates for discharge monitoring
19 reports. This obligation will continue through the termination date of this Consent Decree.

20 8. Not later than 30 days after the entry of this Consent Decree, Edman will pay
21 \$30,000.00 (THIRTY THOUSAND DOLLARS) to Citizens for a Health Bay for Yowkwala
22 Beach, Squally Beach and Skookum Wulge habitat restoration projects, described in Attachment
23 A to this Consent Decree. Checks shall be made to the order of Citizens for a Healthy Bay.
24 Payment shall be sent to: 535 Dock St., Ste 213, Tacoma, WA 98403. Payment shall include the
25 following reference in a cover letter or on the check: "Consent Decree, WAP v. Edman
26 Company" A copy of each check and cover letter, if any, shall be sent simultaneously to: Greg

1 Wingard, Waste Action Project, P.O. Box 4832, Seattle, WA 98104.

2 9. Edman will pay Waste Action Project's reasonable attorney and expert fees and
3 costs in the amount of \$12,000 (TWELVE THOUSAND DOLLARS). Payment will be made
4 within 30 days of the entry of this decree by check payable and mailed to Smith & Lowney,
5 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard A. Smith. This payment is full and
6 complete satisfaction of any claims Waste Action Project may have under the Clean Water Act
7 for fees and costs.

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

16 Edman will notify Waste Action Project of the occurrence of a force majeure event as
17 soon as reasonably possible but, in any case, no later than fifteen days after the occurrence of the
18 event. In such event, the time for performance of the task will be extended for a reasonable
19 period of time following the force majeure event.

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

- 21 a. Acts of God, war, insurrection, or civil disturbance;
22 b. Earthquakes, landslides, fire, floods;
23 c. Actions or inactions of third parties over which defendant has no control;
24 d. Unusually adverse weather conditions;
25 e. Restraint by court order or order of public authority;
26 f. Strikes; and

1 g. Litigation, arbitration, or mediation that causes delay.

2 11. This court retains jurisdiction over this matter. And, while this decree remains in
3 force, this case may be reopened without filing fee so that the parties may apply to the Court for
4 any further order that may be necessary to enforce compliance with this decree or to resolve any
5 dispute regarding the terms or conditions of this decree. In the event of a dispute regarding
6 implementation of, or compliance with, this decree, the parties must first attempt to resolve the
7 dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute.
8 Such a meeting should be held as soon as practical but must be held within 30 days after notice of
9 a request for such a meeting to the other party and its counsel of record. If no resolution is
10 reached at that meeting either party may file a motion with this court to resolve the dispute.

11 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
12 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
13 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
14 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent
15 Decree by the parties, Waste Action Project shall serve copies of it upon the Administration of the
16 U.S. EPA and the Attorney General.

17 13. This Consent Decree takes effect upon entry by the court. It terminates three years
18 after that date.

19 14. Both parties have participated in drafting this decree.

20 15. This Consent Decree may be modified only upon the approval of the court.

21 16. If for any reason the court should decline to approve this Consent Decree in the
22 form presented, this Consent Decree is voidable at the discretion of either party. The parties
23 agree to continue negotiations in good faith in an attempt to cure any objection raised by the court
24 to entry of this Consent Decree.

25 17. Notifications required by this Consent Decree must be in writing. The sending
26 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or

1 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
2 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
3 communication regarding this decree to be valid, it must be delivered to the receiving party at the
4 one or more addresses listed below or to any other address designated by the receiving party in a
5 notice in accordance with this paragraph 17.

6 **if to WAP:**

7 Waste Action Project
8 P.O. Box 4832
9 Seattle, WA 98104
email: gwingard@earthlink.net

10 **and to:**

11 Smith & Lowney PLLC
12 2317 East John St.
Seattle, WA 98112
email: rasmithwa@igc.org

13 **if to Edman:**

14 Edman Company
15 2502 Marine View Drive
Tacoma, WA 98422
email: edmanco@wamail.net

16 **and to:**


17 Coastline Law Group PLLC
18 4015 Ruston Way, Ste 200
Tacoma, WA 98402
19 email: kseely@coastlinelaw.com

20 A notice or other communication regarding this Consent Decree will be effective when
21 received unless the notice or other communication is received after 5:00 p.m. on a business day,
22 or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
23 next business day. A notice or other communication will be deemed to have been received: (a) if
24 it is delivered in person or sent by registered or certified mail or by nationally recognized
25 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
26 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a

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change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

DATED this 28 day of Feb 2012.



HON. BENJAMIN H. SETTLE
UNITED STATES DISTRICT JUDGE

Presented by:

COASTLINE LAW GROUP PLLC

SMITH & LOWNEY PLLC

By s/ Kimberly A. Seely
Kimberly A. Seely, WSBA #21676
Attorneys for Defendant
Edman Company

By s/ Richard A. Smith
Richard A. Smith, WSBA #21788
Attorneys for Plaintiff
Waste Action Project