

CR 2A Terms Sheet

Puget Soundkeeper Alliance v. Port of Everett (W.D. Wash. No. 2:22-cv-00745-JCC)

The following terms are agreed upon by the parties to the above-caption Clean Water Act (“CWA”) citizen suit and are intended to be enforceable per Washington CR2A

The parties mediated the case on May 4, 2023, with Hon. Ronald B. Leighton (Ret.) at Washington Arbitration & Mediation Services and contingently agreed to the terms herein. This agreement applies to the facility located at or about 3500 Terminal Avenue, Everett, WA 98201, which is permitted under the Washington State Industrial Stormwater General Permit no. WAR001207 (the “NPDES permit”)

The undersigned representatives have authority to bind the parties to the litigation.

The parties agree to promptly reduce this CR2A agreement to a proposed consent decree and file a joint motion requesting that Judge Coughenour enter the proposed consent decree.

The parties agree to submit any dispute about interpreting or translating the CR2A terms into a proposed consent decree to mediation with a mutually agreeable mediator.


The Port of Everett is referred to herein as “the Port.”


The consent decree will include the following enforceable terms:

1. The Port agrees to adhere to the requirements of the NPDES permit and any successive or modified versions of the NPDES permit.
2. The Port agrees to provide Soundkeeper with copies of all communications or documents provided to or received from Ecology on a quarterly basis related to the NPDES Permit for the life of the consent decree.
3. The Port will immediately begin monitoring stormwater discharges from one designated Hewitt Scupper as a designated monitoring point under the NPDES permit for at least one year. If no stormwater monitoring data from the Hewitt Scupper exceeds any NPDES permit benchmark after one year, the Port may suspend monitoring at the Hewitt Scupper.
4. Before October 31, 2024, the Port will install bioretention cells in the facility’s two Biofiltration Swales, enhance the Biofiltration Swales with bioretention soil media, plug Outfall 003 and pump all stormwater previously discharged from Outfall 003 to the south Biofiltration Swale and operate and maintain the cells and swales according to an O&M plan submitted to Ecology.
 - a. The Port will provide Soundkeeper with a copy of its engineering report for the bioretention cells and swale enhancements by November 15, 2023. Soundkeeper may provide comments on the engineering report to the Port within 45 days of receipt of the report. Within thirty days of receipt of Soundkeeper’s comments, the Port must either adopt Soundkeeper’s comments or respond in detail, in writing to each comment, explaining why any were not adopted. The Port will provide \$5,000 for Soundkeeper to conduct this process with assistance of a consultant and counsel.
5. The Port will monitor discharges to Outfall 006 at Monitoring Point #2 twice per quarter for benchmark parameters and quarterly for TSS. The Port will use the highest recorded

- sample values in each quarter to determine if Marine Terminals has exceeded any benchmark value in three out of four quarters in a calendar year. If the Port exceeds a benchmark value for a single parameter for any three quarters during a calendar year, the Port will conduct a Level 3 Corrective Action process consistent with paragraph 7.
6. The Port will monitor a representative catch basin that discharges to Outfall 007 monthly for benchmark parameters and quarterly for TSS. The Port will use the highest recorded sample values in each quarter to determine if Marine Terminals has exceeded any benchmark value in three out of four quarters in a calendar year. If the Port exceeds a benchmark value for a single parameter for any three quarters during a calendar year, the Port will conduct a Level 3 Corrective Action process consistent with paragraph 7.
 7. For Outfalls 006 and 007, the Port will follow the ISGP requirements for implementing Level 3 Corrective Actions, using the highest recorded sample values in each quarter, without averaging the monitoring data. For any Level 3 Corrective Action, the Port will conduct an engineering analysis, documented in an engineering report, and install engineered treatment by the Level 3 Corrective Action deadline identified in the NPDES Permit, subject to the Port's procurement process, as required by state law. In this event, the Port agrees not to request any waiver from Ecology.
 - a. The Port will provide Soundkeeper with a copy of its engineering report for the engineered stormwater treatment at the same time it is submitted to Ecology. Soundkeeper may provide comments on the engineering report to the Port within 45 days of receipt of the report. Within thirty days of receipt of Soundkeeper's comments, the Port must either adopt Soundkeeper's comments or respond in detail, in writing to each comment, explaining why any were not adopted. In the event that this process is triggered, the Port will provide \$5,000 for Soundkeeper to conduct this process with assistance of a consultant and counsel.
 8. The Port will monitor discharges from Outfall 002 as a designated monitoring point per the terms of the ISGP.
 9. Within thirty (30) days of entry of the consent decree, the Port must incorporate the following best management practices (BMPs) for cement loading/offloading operations into its SWPPP and implement them on site:
 - a. Sweep Pier 3 weekly between ship unloading operations.
 10. Within thirty (30) days of entry of the consent decree, the Port must incorporate the following additional BMPs into its SWPPP and implement them on site:
 - a. The BMPs identified in Exhibit D to Soundkeeper's mediation submission containing the previously agreed upon terms, except, as to the staff member, the Port agrees only to continue utilizing the Environmental Management Specialist, Port consultants, and Port contractors to fulfill stormwater operation and compliance activities.
 - b. Welding training will be conducted under cover in the future, and the Port will have welding areas swept after welding.
 - c. The Port will cover or store inside unused or damaged equipment with exposed fuels, lubricants, or surface grease, or that have structural integrity issues that could allow a leak, and greasy equipment.
 11. Within thirty (30) days of entry of the consent decree, the Port must further amend its SWPPP as follows:
 - a. Update SWPPP to include any terms agreed upon in settlement

- b. The site map will add the locations of any catch basins which do not already appear on the site map.
 - c. The site map must show locations of all structural source control BMPs which are missing, including: internal grading of fueling station pad and internal grading of wash pads.
 - d. Include a log of dates of employee training.
 - e. Include all inspection reports required by the NPDES permit.
12. The Port will divert discharges from the northwest corner of the Maintenance Equipment Yard back into facility by creating a permanent barrier.
 13. The Port will remove the piled asphalt near Discharge Point 015.
 14. The Port will make the treatment system in the North Yard permanent.
 15. The Port will develop a guidance sheet for personnel involved in Pier 3 cleaning.
 16. Immediately upon entry of the consent decree, the Port will pay to the SEP recipient \$2,000 stipulated penalty for any TSS exceedance at all monitoring locations, except STSO. Beginning on Nov.1, 2024, the Port will pay to the SEP recipient \$2,000 stipulated penalty for any TSS exceedance at STSO.
 17. The consent decree will terminate three years after entry of the consent decree and the payment of all applicable escrow allocations under paragraph 18.
 18. Within thirty days of entry of the consent decree, the Port will pay \$500,000 to a non-party organization for an environmental benefit project agreed to by Puget Soundkeeper Alliance and the Port, with at least \$50,000 going to the Ocean Research College Academy (ORCA). An additional \$150,000 will be placed into a competitive interest-bearing escrow account. If the Port triggers a Level 3 Corrective Action under the ISGP during the term of the consent decree, the Port will transfer all funds in escrow to the SEP recipient within two weeks. If the Port does not trigger a Level 3 Corrective Action under the ISGP, \$150,000 of the escrow funds will be transferred back to the Port and all accrued interest above \$150,000 will be transferred to the SEP recipient two weeks before termination of the consent decree.
 19. Within thirty days of entry of the consent decree, the Port will pay Puget Soundkeeper Alliance's reasonable fees and costs in the amount of \$138,000.
 20. Within 60 days of entry of the consent decree, the Port will install biochar wattles at the Pier 3 and Hewitt Wharf scuppers. The Port will provide a written analysis, certified by an engineer, explaining the engineering options the Port rejected for collecting and conveying stormwater at Pier 3. The Port will inspect the wattles regularly to ensure they remain in place and are maintained properly.


For Puget Soundkeeper Alliance
Title: Director of Law and Policy
Date: 5/4/23


For Port of Everett
Title: CEO/Executive Director
Date: 5/4/2023