

HONORABLE JOHN. C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

SSA TERMINALS, LLC d.b.a.
STEVEDORING SERVICES OF
AMERICA TERMINALS, INC.,

Defendant.

Case No. 11-1617-JCC

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

Note on Motion Calendar: **March 13,**
2015

MOTION

Plaintiff, Puget Soundkeeper Alliance, and defendant, SSA Terminals, LLC d.b.a.
Stevedoring Services of America Terminals, Inc., hereby jointly move the Court for an order
approving the entry of the Consent Decree filed herewith.

STATEMENT IN SUPPORT

This action was filed pursuant to the citizen suit provision of the federal Clean Water Act,
33 U.S.C. § 1365 alleging violations of defendant's stormwater discharge permit.

Plaintiff and defendant have agreed that settlement of this matter is in the public interest
and that entry of the Consent Decree is the most appropriate means of resolving this matter.

JOINT MOTION FOR ENTRY - 1
No. 11-16-17-JCC


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Pursuant to 33 U.S.C. § 1365(c)(3) and 40 C.F.R. §§ 135.4 and 135.5, copies of the Complaint and the Consent Decree will be served on the U.S. Attorney General, the Administrator of the U.S. EPA and the Regional Administrator of Region 10 of the U.S. EPA. The Consent Decree may not be entered prior to 45 days following receipt by both the Administrator and the Attorney General. The noting date for the Court's consideration of this matter has been scheduled accordingly.


The parties respectfully request this Court enter the Consent Decree.

RESPECTFULLY SUBMITTED, this 20th day of January, 2015.

SMITH & LOWNEY, PLLC

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Attorneys for Plaintiff
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GORDON THOMAS HONEYWELL LLP

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UNITED STATES DISTRICT COURT
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SSA TERMINALS, LLC, d.b.a.
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Case No. 3:11-cv-1617-JCC

CONSENT DECREE

I. STIPULATIONS

Plaintiff Puget Soundkeeper Alliance ("Soundkeeper") sent a 60-day notice of intent to sue letter to defendant SSA Terminals, LLC ("SSAT") on or about July 27, 2011, and a supplemental 60-day notice of intent to sue letter to SSAT on or about May 23, 2012. Soundkeeper filed a complaint against SSAT on September 28, 2011, and an amended complaint against SSAT on July 31, 2012, each of which alleged violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*,

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1 relating to discharges of stormwater from SSAT's marine cargo terminal handling facility,
2 commonly called Terminal 18, located on Harbor Island at or about 2900 11th Ave. SW, Seattle,
3 Washington 98134 (the "Facility"), and seeking declaratory and injunctive relief, civil penalties,
4 and attorneys' and consultant's fees and costs.

5
6 Solely for the purpose of this Consent Decree ("Decree"), and for no other purpose, the
7 parties agree that this Court has jurisdiction over the Parties and the subject matter of this action
8 pursuant to Section 505(a) of the Clean Water Act, 33 U.S.C. §§ 1365(a) and 1342, and the terms
9 and conditions of National Pollutant Discharge Elimination System Permit No. WAR000467
10 authorizing discharges of pollutants from the Facility to the Duwamish Waterway (the "NPDES
11 Permit").
12

13
14 Solely for the purpose of this Decree, the parties agree that the amended complaint states
15 a cause of action upon which relief may be granted against SSAT.

16
17 The Department of Ecology approved an engineering report for a Level 3 response by
18 SSAT at the Facility, which Soundkeeper contends is inconsistent with the requirements of the
19 NPDES Permit. Under the terms of this Decree, SSAT will provide a much greater amount of
20 stormwater treatment than it would under the engineering report approved by Ecology.

21
22 Soundkeeper and SSAT agree that settlement of this matter is in the best interest of the
23 parties and the public and that entry of this Consent Decree is the most appropriate means of
24 resolving this matter.
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1 Soundkeeper and SSAT's stipulate to the entry of this Consent Decree without trial,
2 adjudication, or admission of any issues of fact or law regarding the claims and allegations set
3 forth in Soundkeeper's amended complaint and 60-day notice of intent to sue letters.
4

5 GORDON THOMAS HONEYWELL

SMITH & LOWNEY PLLC

6 By Bradley B. Jones
7 Bradley B. Jones, WSBA #17197
8 Attorneys for Defendant SSA Terminals,
9 LLC.

By Richard A. Smith for:
Richard A. Smith, WSBA #21788
Attorneys for Plaintiff Puget Soundkeeper
Alliance

10 SSA TERMINALS, LLC.

PUGET SOUNDKEEPER ALLIANCE

11 By Kyle B. Lukins
12 NAME, TITLE
13 Kyle B. Lukins
14 J. P. General Counsel

By Christopher Wilke
Christopher Wilke, Puget Soundkeeper

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 terms and conditions set forth below, the Court
18 ORDERS, ADJUDGES, and DECREES as follows:

- 19
- 20 1. This Court has jurisdiction over the parties and subject matter of this action.
 - 21 2. Each signatory for the parties certifies for that party that he or she is authorized to
22 enter into the agreements set forth below.
 - 23 3. This Consent Decree applies to and binds the parties and their successors and
24 assigns.
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1 4. This Consent Decree and any injunctive relief ordered within applies solely to
2 SSAT's operation and oversight of the Facility, which is subject to the NPDES Permit. This
3 Consent Decree has no application with regard to any issue at any other location where SSAT may
4 conduct operations.

5 5. This Consent Decree is a full and complete settlement and release of all claims in
6 the complaint and the amended complaint, the 60-day notice of intent to sue letter and
7 supplemental notice of intent to sue letter, and all other known or unknown claims under the Clean
8 Water Act that arise from operations at the Facility and existing as of the date of entry of this
9 Consent Decree that could be asserted against SSAT or its employees, agents, successors, and
10 assigns,. These claims are released and dismissed with prejudice.

11 6. This Consent Decree is a settlement of disputed facts and law. Aside from SSAT's
12 admission of jurisdiction on page two of this Decree solely for the purpose of entering the Decree,
13 it is not an admission or adjudication regarding any allegations by Soundkeeper in this case or of
14 any fact or conclusion of law related to those allegations.

15 7. SSAT agrees to the following terms and conditions in full and complete satisfaction
16 of all the claims covered by this Consent Decree:

17 a. SSAT will comply fully with all monitoring, reporting, and recordkeeping
18 conditions of the NPDES Permit and any successor, modified, or replacement permit authorizing
19 discharges of stormwater associated with industrial activity from the Facility. SSAT reserves all
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1 rights consistent with the NPDES Permit to seek modification of the NPDES Permit, termination
2 of the NPDES Permit, or any other change to the NPDES Permit authorized by law;

3 b. SSAT will conduct testing at Outfalls 1, 2, and 18 at the Facility to
4 determine the primary species contributing to the fecal coliform discharges from those Outfalls.
5 SSAT will thereafter utilize a consultant to investigate feasible, cost-effective measures that may
6 be employed to reduce or eliminate fecal coliform concentrations and, if feasible, cost-effective
7 and practical, develop a plan for controlling fecal coliform discharges to the extent practicable.
8 Soundkeeper will have an opportunity to provide review and comment on such analysis and/or
9 plan. SSAT agrees to consider Soundkeeper's comments in the course of finalizing and
10 implementing any plan that may be developed. Any plan so developed will be finalized and
11 incorporated into SSAT's SWPPP for Terminal 18;
12
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14 c. Every outfall not scheduled for treatment in 2016 pursuant to paragraph 7(d)
15 herein that SSAT proposes for the potential "off-ramp" for treatment (pursuant to paragraph
16 7(d)(5)(b)) must be monitored quarterly, consistent with the Washington Industrial Stormwater
17 General Permit ("ISGP") sampling protocol, commencing in 2015 ;
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19

20 1) Once the contributing drainage basin of an outfall has received
21 treatment pursuant to paragraph 7(d), SSAT will monitor outfalls representative of the installed
22 treatment on a quarterly basis, consistent with the ISGP sampling protocols, for four quarters
23 commencing on the first quarter following the installation of treatment;
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1 2) Except as to requirements specifically set forth in this section, the
2 monitoring required under this paragraph must in all other respects comply with the ISGP in effect
3 at the time the sample is taken. Such compliance includes the pollutants that must be sampled in
4 the particular basin (including additional pollutants that must be sampled for due to 303(d) listing
5 or other requirements of the then-applicable ISGP); the timing and methods for sampling;
6 applicable criteria excusing the taking of a sample during a particular period, if any; sample
7 averaging; and reporting. If a sample cannot be taken from a particular outfall scheduled for
8 sampling in any given quarter based upon the monitoring provisions of the ISGP, SSAT must
9 collect another sample so that it takes a minimum of four samples per year on different days, unless
10 SSAT's relief from sampling under the ISGP occurs in the 4th calendar quarter, in which case
11 SSAT must take at least two samples the following quarter. The first sample taken of that basin
12 in the quarter immediately following the quarter in which a sample could not be taken will be
13 considered the prior quarter's sample for purposes of this paragraph 7, in which case that sample
14 will not be considered a sample for the quarter in which it was actually taken (For example, if a
15 2Q sample is used to represent 1Q for a basin under this provision, then that basin would be
16 considered to not have a 2Q sample unless and until a second 2Q sample is taken from that basin).

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21 d. For the purposes of this Section, "site-wide" means the entire area of
22 Terminal 18 leased by SSAT except the Wharf Apron, with the "site-wide" area comprising
23 approximately 190 acres. Both the "site-wide" area and the Wharf Apron are depicted on
24 Appendix A. Except as authorized by subparagraph 7(d)(5) below, SSAT will implement site-
25 wide treatment as follows:
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1 1) By October 30, 2016 (in conjunction with end-of-pipe treatment
2 installation), SSAT will install an oil water separator to treat runoff from the maintenance yard
3 outside of the M&R Shop, the perimeter of which is identified in Figure B.7 to SSAT's March 2014
4 Engineering Report Addendum;

5
6 2) Subject to subparagraph 7(d)(5)(a) below, SSAT will install by
7 October 30, 2016 end-of-pipe treatment to at least 67 acres of the "site-wide" area, which acreage
8 must include basins 3, 14, and 15;

9
10 3) Subject to subparagraphs 7(d)(5)(a) and (b) below, by October 30,
11 2018, SSAT will install end-of-pipe treatment to at least 124 acres of the "site-wide" area;

12 4) Subject to subparagraphs 7(d)(5)(a) and (b) below, by October 30,
13 2020, SSAT will install end-of-pipe treatment to the remainder of the "site-wide" area.

14
15 5) With respect to subparagraphs 7(d)(2), 7(d)(3), and 7(d)(4) above:

16 a) Up to 10% of the "site-wide" area may be treated by
17 installation of catch basin inserts with filtration media or other similar treatment BMPs; and

18
19 b) Any basin that has been subject to the "enhanced
20 monitoring" described in paragraph 7(c) may be eligible for an "off-ramp" and avoid the need for
21 treatment under this Decree if it can demonstrate the lack of need for treatment through the
22 application of source control or operational and/or structural best management practices. A basin
23 qualifies for the "off-ramp" if the results of the enhanced monitoring of that basin's discharges
24 meet any then-applicable benchmarks and effluent limitations in two or more quarters during both
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of two consecutive calendar years. In no event may the "off-ramp" be used to reduce the 67 acres that must receive end-of-pipe treatment pursuant to subparagraph 7(d)(2). As for the at least 57 acres planned for treatment pursuant to subparagraph 7(D)(3), SSA will identify the basins to be treated by June 30, 2017 and those basins will not include any basins that have already qualified for the off-ramp based on 2015-16 enhanced monitoring. Nonetheless, basins scheduled for treatment by October 30, 2018 and included on the list prepared by June 30, 2017 may qualify for the off-ramp based on 2016-17 sample results. Any BMPs not previously identified in the SWPPP that are applied to one or more basins that qualify for the off-ramp shall then be included in a revised SWPPP.

6) SSAT reserves the right to determine the type of end-of-pipe treatment system to be installed pursuant to this section, provided it fulfills the engineering report requirements under the ISGP in effect at that time.

7) For each engineering report that SSAT submits to Ecology, SSAT will provide Soundkeeper with up to \$3,000 to fund a third-party consultant to review and provide comments on each report within 30 days of Soundkeeper's submission to SSAT of invoices from such consultant. Soundkeeper will have 30 days advanced review of any engineering report before its submittal by SSAT to Ecology. Upon written request from Soundkeeper, SSAT and its stormwater consultant will have a face to face meeting with Soundkeeper's consulting engineer to discuss any identified issues regarding the engineering report.

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1 8) Under no circumstances will SSAT treat less than 50 percent of the
2 "site-wide" area with end-of pipe treatment by 2018.

3 e. SSAT will forward to Soundkeeper copies of all substantive written or
4 electronic communications between it and the Department of Ecology concerning its compliance
5 with the NPDES Permit and the Clean Water Act, including but not limited to discharge monitoring
6 reports, annual reports, engineering reports, reports of non-compliance with the NPDES permit,
7 and NPDES permit terms or coverage within seven days of the communication. The requirements
8 in this paragraph will cease upon termination of this Consent Decree.
9

10
11 8. Soundkeeper will provide written communication(s) to the Department of Ecology
12 supporting any request of SSAT for permit modifications, extensions of time, and/or
13 administrative orders necessary to comply with this Consent Decree.
14

15 9. SSAT will be provided a copy of any proposed press release that Soundkeeper
16 intends to issue in connection with either the filing and/or entry of this Decree at least two full
17 business days before any release, and Soundkeeper agrees to consider, in good faith, any comments
18 or suggestions by SSAT regarding such release.
19

20 10. Soundkeeper agrees to a covenant not to sue SSAT as follows: Before December
21 31, 2020, Soundkeeper will not commence any Clean Water Act enforcement action against SSAT
22 in connection with T-18.
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24 11. Within seven days of entry of this Consent Decree, SSAT will pay the sum of TWO
25 HUNDRED AND FIFTEEN THOUSAND DOLLARS (\$215,000.00) to the Puget Sound
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1 Stewardship and Mitigation Fund of the Rose Foundation for Communities and the Environment,
2 as described in **Attachment A** of this Consent Decree, for environmental benefit projects in the
3 Duwamish River and Puget Sound watersheds. Payment will be made to the order of and delivered
4 to The Rose Foundation for Communities and the Environment. Payment will include the
5 following reference in a cover letter or on the check: "Consent Decree, Puget Soundkeeper
6 Alliance v. SSA Terminals." SSAT agrees to provide a copy of the check and cover letter, if any,
7 to Soundkeeper and its counsel at the addresses identified in Paragraph 18, below.
8

9
10 12. Within seven days of the effective date of this Consent Decree, SSAT will pay
11 Soundkeeper SIX HUNDRED AND EIGHTY FIVE THOUSAND DOLLARS (\$685,000) as full
12 and final reimbursement for all litigation fees, expenses, and costs (including reasonable attorneys'
13 and consultant's fees) incurred in this matter by check payable and mailed to Smith & Lowney,
14 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard Smith. SSAT's payment will be in
15 full and complete satisfaction of any claims that Soundkeeper has or may have, either legal or
16 equitable, and of any kind or nature whatsoever, for fees (including attorneys' and consultant fees),
17 expenses, and costs incurred in this matter. Smith and Lowney will provide an attestation to SSAT,
18 under oath, that it has incurred at least \$685,000 in fees and costs in this matter based on the
19 standard hourly rates of its attorneys.
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22 13. This court retains jurisdiction over this matter and, while this decree remains in
23 force, this case may be reopened without a filing fee so that the parties may apply to the Court for
24 any further order or relief that may be necessary regarding compliance with this Decree or to
25 resolve any dispute regarding the terms or conditions of this Decree until termination of the
26

27 CONSENT DECREE - 10
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1 Consent Decree as set forth in paragraph 15 below. A precondition to any application to the Court
2 under this paragraph is that the parties must first seek to resolve the dispute themselves as follows:
3 1) the party identifying or wishing to raise an issue or dispute must provide the other party's
4 counsel of record with a written notice detailing the nature of the issue or dispute; and 2) within
5 30 days of receipt of such notice, the parties will meet and confer regarding the issue or dispute.
6 If no resolution is reached at that meeting or within 30 days of the written notice, whichever occurs
7 first, either party may file a motion with this Court to resolve the dispute. The prevailing party or
8 substantially prevailing party with respect to such motion will be entitled to its reasonable
9 attorneys' fees and costs.
10

11
12 14. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
13 may be entered in a Clean Water Act suit in which the United States is not a party before 45 days
14 following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General
15 and the Administrator of the U.S. EPA. Therefore, upon the filing of this Consent Decree by the
16 parties, Soundkeeper will serve copies of it upon the Administrator of the U.S. EPA and the U.S.
17 Attorney General, with copy to SSAT.
18

19 15. This Consent Decree will take effect upon entry by this Court. It terminates on
20 December 31, 2020.
21

22 16. Both parties have participated in drafting this Consent Decree.

23 17. This Consent Decree may be modified only upon the approval of the Court.
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27 CONSENT DECREE - 11
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1 18. If for any reason the Court should decline to approve this Consent Decree in the
2 form presented, this Consent Decree is voidable at the discretion of either party. The parties agree
3 to continue negotiations in good faith in an attempt to cure any objection raised by the Court to
4 entry of this Consent Decree.

5
6 19. Notifications required by this Consent Decree must be in writing. The sending
7 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
8 certified mail, in each case return receipt requested and postage prepaid; or (3) a nationally
9 recognized overnight courier, with all fees prepaid. For a notice or other communication regarding
10 this Consent Decree to be valid, it must be delivered to the receiving party at one or more of the
11 addresses listed below or to any other address designated by the receiving party in a notice in
12 accordance with this paragraph.
13

14
15 **if to Puget Soundkeeper Alliance:**

16 Chris Wilke
17 Katelyn Kinn
18 Puget Soundkeeper Alliance
19 130 Nickerson, Suite 107
20 Seattle, WA 98109

21 **and to:**

22 Richard A. Smith
23 Elizabeth Zultoski
24 Smith & Lowney, PLLC
25 2317 E. John St.
26 Seattle, WA 98112
27 rasmithwa@igc.org
28 elizabethz@igc.org

29 **if to SSA Terminals:**

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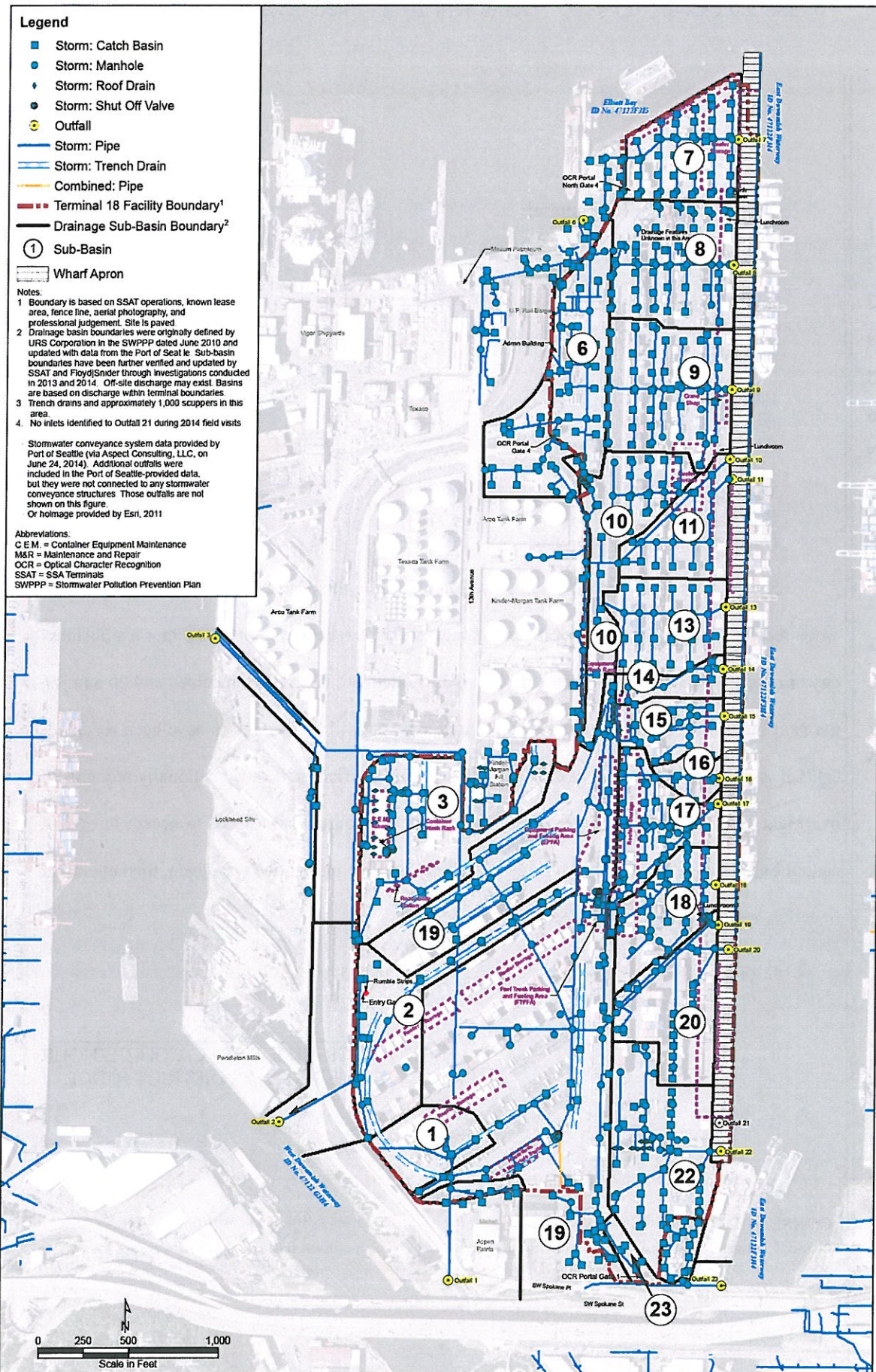
14 20. A notice or other communication regarding this Consent Decree will be effective
15 when received unless the notice or other communication is received after 5:00 p.m. on a business
16 day or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on
17 the next business day. A notice or other communication will be deemed to have been received:
18 (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized
19 overnight courier; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it
20 cannot be delivered because of a change in address for which no notice was given, then upon that
21 rejection, refusal, or inability to deliver.

22 DATED this ____ day of _____ 2015.

23 _____
24 HONORABLE JOHN C. COUGHENOUR
25 UNITED STATES DISTRICT JUDGE

26
27 CONSENT DECREE - 13
28 No. 3:11-cv-01617-JCC
29

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12/22/14

Thomas W. Swegle, Senior Counsel
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: Puget Soundkeeper Alliance v. SSA Terminals LLC 3:11-cv-01617-JCC

Dear Mr. Swegle,

This letter is intended to provide assurance that I have received the proposed Consent Decree between Puget Soundkeeper Alliance and SSA Terminals LLC, and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from SSA Terminals LLC as specified in the Consent Decree.
- 2) The Rose Foundation shall only use these SSA Terminals LLC funds to award grants to qualified organizations in support of environmentally beneficial projects in the Duwamish River and Puget Sound watersheds. The funds shall be disbursed through the Rose Foundation's Puget Sound Stewardship & Mitigation Fund, a grantmaking fund which is wholly dedicated to supporting projects which benefit the water quality of Puget Sound. None of the funds shall be used to support political lobbying.
- 3) After the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Consent Decree.

Rose Foundation for Communities and the Environment

The Rose Foundation is a 501(c)(3) public charity (tax ID #94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Foundation does not fund political lobbying activities prohibited by Section 501(c)(3) of the IRS Code.
- Work directly in schools and in the community to encourage environmental stewardship and civic participation.

- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website www.rosefdn.org.

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or tlittle@rosefdn.org.

Sincerely,



Tim Little, Executive Director