

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

PUGET SOUNDKEEPER ALLIANCE,	)	
	)	No. 3:17-cv-05731-BHS
Plaintiff,	)	
v.	)	[PROPOSED] CONSENT DECREE
	)	
PIERCE COUNTY RECYCLING,	)	
COMPOSTING AND DISPOSAL, LLC	)	
d/b/a/ LRI; and WASTE CONNECTIONS	)	
OF WASHINGTON, INC.	)	
	)	
Defendants.	)	
_____	)	

**I. STIPULATIONS**

Plaintiff Puget Soundkeeper Alliance sent a notice of intent to sue letter to Defendants Pierce County Recycling, Composting and Disposal, LLC d/b/a/ LRI (“LRI”), and Waste Connections of Washington, Inc. on July 7, 2017, and filed its lawsuit against Defendants on September 11, 2017. Puget Soundkeeper Alliance’s notice letter and complaint allege violations of the Clean Water Act, 33 U.S.C. § 1251 et seq., relating to discharges of stormwater and wastewater from LRI’s landfill facility in Graham, Washington, and the complaint seeks declaratory and injunctive relief, civil

penalties, and attorney fees and costs. Defendants deny the allegations contained in the sixty-day notice and complaint.

Puget Soundkeeper Alliance and Defendants 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 means of resolving this action.

Puget Soundkeeper Alliance and Defendants stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Puget Soundkeeper Alliance's claims or allegations set forth in its complaint and its sixty-day notice.

PIERCE COUNTY RECYCLING, COMPOSTING  
AND DISPOSAL, LLC D/B/A/LRI

PUGET SOUNDKEEPER ALLIANCE

By [Signature]

By [Signature]

Title: Executive Vice President

Christopher Rilling  
Title: Executive Director & Soundkeeper

DATED this \_\_\_\_\_ of December, 2019.

DATED this 4th of December, 2019.

WASTE CONNECTIONS OF WASHINGTON,  
INC.

By [Signature]

Title: Executive Vice President

DATED this \_\_\_\_\_ of December, 2019.

## II. ORDER AND DECREE

THIS MATTER came before the Court upon the parties' Joint Motion for Entry of Consent Decree and the foregoing Stipulations of the parties. Having considered the Stipulations and the

promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

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

2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreements set forth below.

3. This Consent Decree (this “**Decree**”) applies to and binds the parties and their successors and assigns.

4. This Decree applies to the operation of LRI’s landfill facility at 30919 Meridian East, Graham, WA 98338 (the “**Facility**”).

5. This Decree is a full and complete settlement, covenant not to sue, and release of the claims in the Complaint and all other claims known and unknown existing as of the date of entry of this Decree that could be asserted against Defendants under the Clean Water Act, 33 U.S.C. §§ 1251-1387. These claims are released and dismissed with prejudice. Enforcement of this Decree is Puget Soundkeeper Alliance’s exclusive remedy for any violation of its terms.

6. This Decree is a settlement of disputed facts and law. It is not an admission or adjudication regarding any allegations by Puget Soundkeeper Alliance in this case or of any fact or conclusion of law related to those allegations.

7. Defendants agree to the following terms and conditions in full and complete satisfaction of the claims covered by this Decree:

A. No later than the date of entry of this Decree, LRI will comply fully with the Clean Water Act and all conditions of its National Pollutant Discharge Elimination System Permit No. WAR002557 (the “**ISGP**”) and National Pollutant Discharge Elimination System Permit No. WAR002603 (the “**CSGP**”) and any successor, modified, or replacement permits,

1 and the stormwater pollution prevention plans (“SWPPPs”) adopted thereunder;

2 B. LRI must comply with the terms of the Washington State Department of  
3 Ecology (“Ecology”) Agreed Order #16272 and implement the measures described in LRI’s  
4 Engineering Report and its supplements submitted to Ecology dated May 15, 2019;  
5 supplement #1 dated July 9, 2019; and supplement #2 dated September 13, 2019  
6 (collectively, “Engineering Report”).  
7

8 C. Not later than December 8, 2019, LRI will install and then maintain a  
9 Chitosan enhanced sand filtration treatment system to treat the effluent from the  
10 Facility’s stormwater pond before the effluent enters the wetland immediately north of  
11 the stormwater pond, as further specified in the Engineering Report.  
12

13 D. If the Facility (i) triggers a Level 3 Corrective Action as described in  
14 Condition S8.D of the ISGP; or (ii) the Facility has two consecutive quarters with ISGP  
15 Condition S5.C Table 4 monthly average effluent limit exceedances for the same  
16 parameter, LRI will evaluate and install an auxiliary treatment unit to the industrial  
17 Chitosan enhanced sand filtration treatment system. The auxiliary unit will be one that a  
18 qualified stormwater professional determines will prevent future exceedances of ISGP  
19 benchmarks and/or Condition S5.C Table 4 effluent limitations.  
20  
21

22 E. Not later than December 8, 2019, LRI will relocate its ISGP discharge  
23 monitoring point to the point identified in the Engineering Report as “SWPO-1” (a point  
24 before the effluent enters the wetland immediately north of the stormwater pond).  
25

26 F. Not later than November 7, 2019, LRI began operating a Chitosan-  
27 enhanced sand filtration system to treat construction stormwater from active construction  
28

1 areas prior to the construction stormwater commingling with industrial stormwater. LRI  
2 will continue to operate and use this system to treat construction stormwater whenever  
3 necessary to meet CSGP benchmarks.

4 G. Not later than the date of entry of this Decree, LRI will transport, store,  
5 and use automotive shredder residue (“ASR”) in a manner that prevents ASR and water  
6 (including precipitation and runoff) that contacts ASR from entering the Facility’s  
7 stormwater system, including the concrete stormwater channel. Not later than the date of  
8 entry of this Decree, LRI will implement best management practices to contain water that  
9 contacts ASR and will manage that contact water as leachate.  
10

11 H. In the event landfill leachate reaches the Facility’s stormwater pond, LRI  
12 will make a payment in lieu of a penalty to the Rose Foundation for Communities and the  
13 Environment in the amount of \$5,000 per event. Payments under this subparagraph will  
14 be made within 30 days of the triggering event in the manner described in ¶ II.8 below.  
15

16 I. During the term of this Decree, LRI will provide to Puget Soundkeeper  
17 Alliance copies of all reports submitted to Ecology under the ISGP or the CSGP. Reports  
18 will be provided to Puget Soundkeeper Alliance quarterly on February 15, May 15,  
19 August 15, and November 15 of each year.  
20

21 J. LRI will install five (5) acres of final landfill closure comprising a portion  
22 of cells 4B, 5, 6A and 6B no later than December 31, 2021.  
23

24 K. Not later than June 30, 2021, LRI will replace the Facility’s permanent  
25 leachate forcemain pipe with a double-walled pipe.  
26

27 L. As of November 7, 2019:

- i. LRI implemented and was maintaining an upgraded stormwater flap (as described in the Engineering Report) around the landfill perimeter and the perimeter of any new landfill areas or cells;
- ii. LRI was inspecting the Facility perimeter, slopes under interim cover, and stormwater concrete channel for the presence of leachate seeps, as described in the Engineering Report, twice daily. LRI will continue such inspections for the duration of this Decree; and
- iii. LRI implemented and was maintaining revised landfilling practices to prevent leachate and contact stormwater from entering the stormwater system, as further described in the Engineering Report. LRI will continue such revised landfilling practices for the duration of this Decree.

8. No later than fourteen (14) days after the entry of this Decree, LRI will pay an amount of SEVEN HUNDRED AND THIRTY FOUR THOUSAND DOLLARS (\$734,000) to the Rose Foundation for Communities and the Environment, as described in **Exhibit A** to this Decree, for environmental benefit projects benefiting water quality in the Muck Creek/ Nisqually River watershed. Payment will be made to the order of and delivered to Tim Little, Rose Foundation for Communities and the Environment, 201 4th Street, Suite 102, Oakland, California, 94607. Payment shall include the following reference in a cover letter or on the check: "Consent Decree, Puget Soundkeeper Alliance / LRI, Clean Water Act Settlement." A copy of the check and cover letter, if any, shall be sent simultaneously to Puget Soundkeeper Alliance.

9. LRI will pay Puget Soundkeeper Alliance's reasonable attorney and expert fees and costs in the amount of THREE HUNDRED AND SIXTY-FIVE THOUSAND DOLLARS

(\\$365,000). Payment will be made within fourteen (14) days of the entry of this Decree by check payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, Washington 98112, attn: Claire Tonry. This payment is full and complete satisfaction of any claims Puget Soundkeeper Alliance may have against Defendants under the Clean Water Act for fees and costs.

10. A force majeure event is any event outside the reasonable control of LRI that causes a delay in performing tasks required by this Decree that cannot be cured by due diligence. Delay in performance of a task required by this Decree caused by a force majeure event is not a failure to comply with the terms of this Decree, provided that LRI notifies Puget Soundkeeper Alliance of the event; the steps that LRI will take to perform the task; the projected time that will be needed to complete the task; and the measures that have been taken or will be taken to prevent or minimize any impacts to effluent quality resulting from delay in completing the task.

LRI will notify Puget Soundkeeper Alliance of the occurrence of a force majeure event as soon as reasonably possible but, in any case, no later than ten (10) business days after the occurrence of the event. In such event, the time for performance of the task will be extended for a reasonable period of time following the force majeure event.

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

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods;
- c. Actions or inactions of third parties over which LRI has no control;
- d. Restraint by court order or order of public authority;
- e. Any permit or other approval sought by LRI from a government authority to implement any of the actions required by this Decree where such approval is not granted or is delayed, and where LRI has timely and in good faith sought the permit or approval;
- f. Strikes; and

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

11. This court retains jurisdiction over this matter. While this Decree remains in force, this case may be reopened without filing fee so that the parties may apply to the Court for any further order that may be necessary to enforce compliance with this decree or to resolve any dispute regarding the terms or conditions of this Decree. In the event of a dispute regarding implementation of, or compliance with, this Decree, the parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. Such a meeting should be held as soon as practical but must be held within thirty (30) days after notice of a request for such a meeting to the other party and its counsel of record. If no resolution is reached at that meeting or within thirty (30) days of the notice, whichever occurs first, unless extended by mutual written agreement of the parties, either party may file a motion with this court to resolve the dispute. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, shall apply to any proceedings seeking to enforce the terms and conditions of this Decree.

12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Decree by the parties, Puget Soundkeeper Alliance shall serve copies of it upon the Administrator of the U.S. EPA and the Attorney General.

13. This Decree takes effect upon entry by the court. It terminates two years after the date of entry by the court.

14. All parties have participated in drafting this Decree.

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



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

5           17.     Notifications required by this Decree must be in writing. A notice or other  
6 communication regarding this Decree will be effective when received unless the notice or other  
7 communication is received after 5:00 p.m. on a business day, or on a day that is not a business day,  
8 then the notice will be deemed received at 9:00 a.m. on the next business day. The sending party  
9 may use any of the following methods of delivery: (1) personal delivery; (2) registered or certified  
10 mail, in each case return receipt requested and postage prepaid; (3) a nationally recognized overnight  
11 courier, with all fees prepaid; or (4) e-mail. For a notice or other communication regarding this  
12 Decree to be valid, it must be delivered to the receiving party at the addresses listed below or to any  
13 other address designated by the receiving party in a notice in accordance with this paragraph.  
14

15           **if to Puget Soundkeeper Alliance:**

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

20           email: katelyn@pugetsoundkeeper.org

21           **and to:**

22           Claire Tonry, Esq.

23           Smith & Lowney PLLC  
24           2317 East John St.  
25           Seattle, WA 98112

26           email: claire@smithandlowney.com

27           **if to LRI:**

28           John Rodgers  
29           4822 70th Ave E

1 Fife, WA 98424

2 email: John.Rodgers@WasteConnections.com

3  
4 **and to:**

5 Beth Ginsberg, Esq.  
6 Stoel Rives LLP  
7 600 University Suite 3600  
8 Seattle, WA 98101

9 email: beth.ginsberg@stoel.com

10  
11 DATED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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THE HONORABLE BENJAMIN H. SETTLE  
15 UNITED STATES DISTRICT COURT JUDGE  
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EXHIBIT A

201 4TH STREET, SUITE 102, OAKLAND, CA 94607  
ROSE@ROSEFDN.ORG



WWW.ROSEFDN.ORG

OFFICE: 510.658.0702  
FAX: 510.658.0732

December 3, 2019

Peter McVeigh  
United States Department of Justice  
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. Pierce County Recycling, Composting and Disposal, LLC  
(Case No: 3:17-cv-05731-BHS)

Dear Mr. McVeigh,

This letter is intended to provide assurance that I have received the Proposed Consent Decree between Puget Soundkeeper Alliance and Pierce County Recycling, Composting and Disposal, 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 Pierce County Recycling, Composting and Disposal, LLC as specified in the Proposed Consent Decree.
- 2) The Rose Foundation shall only use these Pierce County Recycling, Composting and Disposal, LLC funds for environmentally beneficial projects benefitting water quality in South Puget Sound, with a preference for the Muck Creek/ Nisqually River watershed, but also including other waterways within 50 miles of Graham, WA, and shall disperse them 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.
- 3) Due to the disproportionate impact of pollution from major industrial facilities to low-income neighborhoods and communities of color, the Rose Foundation's policy is to prioritize projects from these neighborhoods in selecting grantees
- 4) 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 Rose Foundation does not support lobbying activities that are prohibited by Section 501(c)(3) of the IRS Code, and no portion of the Pierce County Recycling, Composting and Disposal, LLC funds shall be used to support any political lobbying activities whatsoever.
- 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's capacity to complete the project, 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, with the assistance of a Puget Sound-based volunteer funding advisory board of individuals who have deep experience in the area. Staff then makes recommendations to the Foundation Board for action. All grants are governed by binding grant contracts, and 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 a strong accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Maze and Associates are posted on the Foundation's website [www.rosefdn.org](http://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](mailto:tlittle@rosefdn.org).

Sincerely,

A handwritten signature in dark ink, appearing to read "T. Little", with a long horizontal flourish extending to the right.

Tim Little, Executive Director