

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)	
)	Case No. 12-01201RSM
Plaintiff,)	
v.)	AMENDMENT TO CONSENT DECREE
)	
SEATTLE IRON & METALS, CORP.,)	[PROPOSED]
)	
Defendant.)	
)	

I. RECITALS

A. On March 15, 2019, this Court entered a consent decree in this matter (Dkt. #84) (the “Consent Decree”) by which Plaintiff Puget Soundkeeper Alliance (“Soundkeeper”) and defendant Seattle Iron & Metals Corporation (“SIMC”) resolved all claims that Soundkeeper had asserted in its Complaint (Dkt. #1) and Amended Complaint (Dkt. #4).

B. Soundkeeper and SIMC desire to amend the Consent Decree as provided by Section 15 of the Consent Decree.

C. Soundkeeper and SIMC, therefore, stipulate to the entry of this Amendment to Consent Decree without trial, adjudication, or admission of any additional issues of fact or law.

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II. AMENDMENT TO CONSENT DECREE

The Consent Decree is amended as follows:

1. Section 7(b) of the Consent Decree is amended and replaced as follows:

b. 730 Facility Paving and Engineering Report and Implementation

i. SIMC will conduct monthly stormwater discharge monitoring for the parameters identified in Table 1 of Administrative Order No. 13739 (Dkt. 42-23) (including PCB testing by EPA method 8082) for three years (through February 2022), except that SIMC may cease monthly monitoring for any non-PCB parameter that is not detected for twelve consecutive months of sampling.

ii. SIMC will maintain the chitosan-enhanced sand filtration (CESF) system that was installed to replace the modular wetland treatment system on July 12, 2020.

2. Section 7(e) of the Consent Decree is amended and replaced as follows:

e. Deduster.

i. SIMC has completed design drawings for the shredder enclosure, blower, and dust collection system (hereinafter “deduster”) that meet the requirements of this section and are approved by Dr. Ranajit Sahu, the parties’ joint consultant. SIMC has submitted applications for the permits that are necessary to install the deduster. (Application materials are included herein as **Attachment A.**) The deduster will address the dust from the shredding process itself and will create sufficient containment to allow a blower to create sufficient negative pressure within it to maximize the capture of dust emissions from the shredder, to the satisfaction of Dr. Sahu.

ii. SIMC will exercise its best efforts to obtain all necessary permits for construction and installation of the deduster as soon as

1 practicable, including but not limited to promptly responding to any City of
2 Seattle requests for corrections to the deduster permit application materials.

3 iii. Within 63 weeks of the City of Seattle’s issuance of the
4 building and land use permit(s) (including, but not limited to, a shoreline
5 substantial development permit) for the deduster, SIMC shall complete
6 installation of the permitted deduster and put the deduster into full operation.
7 In the event that SIMC fails to complete installation of the deduster and put
8 the deduster into full operation within 63 weeks of permit issuance, SIMC
9 shall pay stipulated penalties of \$1,000 per day for each day in which it
10 violates the deadline established in this paragraph. SIMC shall pay these
11 stipulated penalties directly to Just Health Action via payment by check to
12 address provided in **Attachment B**. Payment must be made within 30 days
13 of violating the deadline. In the event that SIMC violates the deadline for
14 more than 1 day, payments may be consolidated into monthly checks paid
15 no later than every 30 days until SIMC comes into compliance with this
16 section.

17 iv. After the deduster is installed and operational, SIMC shall not
18 operate its auto shredder unless all components of the deduster are fully
19 intact and fully functional, and the blower, and dust capture system are fully
20 functional and properly maintained. In addition, from May 1, 2021 until the
21 deduster is installed and fully operational, SIMC shall not operate its auto
22 shredder on the following days:

- 23 • Saturday afternoons (from 12:00 PM to 12:00 AM) during the
24 dry season (May 1 to September 30);
- 25 • Sundays during the dry season (May 1 to September 30);
- 26 • Memorial Day;

- Independence Day; and
- Labor Day.

3. Section 7(f) of the Consent Decree is amended and replaced as follows:

f. Wind fences and trommel enclosure.

i. SIMC has completed design drawings and City of Seattle permit applications for wind fences and a trommel enclosure that meet the requirements of this section and are approved by Dr. Ranajit Sahu, the parties' joint consultant. SIMC has submitted applications for the permits that are necessary to install the wind fences and trommel enclosure, and those applications are currently pending. (Application materials are included herein in **Attachments A and C**).

ii. SIMC will exercise its best efforts to obtain all necessary permits for construction and installation of the wind fences and trommel enclosure as soon as practicable, including but not limited to promptly responding to any City of Seattle requests for corrections to the permit application materials.

iii. Within 23 weeks of the City of Seattle's issuance of the building and land use permit(s) (including, but not limited to, a shoreline substantial development permit) for the wind fences, SIMC will install the permitted wind fences. In the event that SIMC fails to install the wind fences within 23 weeks of permit issuance, SIMC shall pay stipulated penalties of \$1,000 per day until the wind fences are installed. SIMC shall pay these stipulated penalties directly to Just Health Action via payment by check to address provided in Attachment B. Payment must be made within 30 days of violating the deadline. In the event that SIMC violates deadline for more than 1 day, payments may be consolidated into monthly checks paid no later than

1 every 30 days until SIMC comes into compliance with this section.

2 iv. Within 21 weeks of the City of Seattle’s issuance of the
3 building permit for the trommel enclosure, SIMC shall install the permitted
4 trommel enclosure. In the event that SIMC fails to install the trommel
5 enclosure within 21 weeks of permit issuance, SIMC shall pay stipulated
6 penalties of \$1,000 per day until the trommel enclosure is installed. SIMC
7 shall pay these stipulated penalties directly to Just Health Action via payment
8 by check to address provided in Attachment B. Payment must be made
9 within 30 days of violating the deadline. In the event that SIMC violates
10 deadline for more than 1 day, payments may be consolidated into monthly
11 checks paid no later than every 30 days until SIMC comes into compliance
12 with this section.

13 4. Section 7(g) of the Consent Decree is amended and replaced as follows:

14 g. Dust emissions monitoring and corrective action.

15 Under the direction of Dr. Sahu and with Soundkeeper’s full involvement,
16 SIMC will design and implement the following three-phase dust monitoring regime:

17 i. Phase I: In 2019, SIM conducted ten weeks of “background”
18 dust monitoring at no fewer than three monitoring stations offsite, with the
19 locations selected by Dr. Sahu. A meteorological station was maintained
20 during the study period at the same location as in Dr. Sahu’s 2018 study.
21 Each monitoring station monitored total suspended particulate (“TSP”) and
22 PM 2.5 on a continuous basis, and also collect TSP for the duration. The
23 collected TSP was analyzed for PCBs using Method 1668, metals, and
24 dioxins.

25 ii. Phase II: Starting in June of 2020, SIMC will conduct one
26 year of continuous dust monitoring at the following locations (1) the same

1 two locations as in Dr. Sahu's 2018 study; and (2) at least three additional
2 locations selected by Dr. Sahu on the north, south and east fence lines of
3 SIM's 701 Myrtle parcel. This phase is intended to document SIMC's dust
4 emissions prior to installation of the dust management BMPs required by
5 Sections 7(e) and 7(f) of this Consent Decree. Each monitoring station will
6 monitor TSP and PM 2.5 on a continuous basis and will also collect TSP for
7 the duration. As detailed in the June 2020 Dust Monitoring Plan: Phase II,
8 from the beginning of the Phase II monitoring through at least September 11,
9 2020, SIMC shall collect TSP weekly and cause it to be analyzed for PCBs
10 using Method 1668, metals, and dioxins monthly. From September 12, 2020
11 through the end of the Phase II monitoring (June 15, 2021), SIMC shall
12 composite the media and filters collected during each approximately 3-
13 month sampling period for analysis, resulting in a total of three PCB and
14 dioxin results at each location, one each for the sampling periods September
15 15 – December 15, 2020, December 15, 2020 – March 15, 2021, and March
16 15 – June 15, 2021. If there is an insufficient volume of dust in any sample
17 to complete the foregoing analyses, Soundkeeper will determine the
18 parameters to be analyzed.

19 iii. Phase III: Upon installation of all of the dust control
20 equipment referenced in Paragraphs 7(e) and 7(f), above, SIMC will
21 commence two years of continuous dust monitoring at the same locations
22 monitored in Phase II. Each monitoring station will monitor TSP and PM 2.5
23 on a continuous basis, and will also collect TSP for the duration. SIMC shall
24 collect the TSP and cause the collected TSP to be analyzed for PCBs using
25 Method 1668, metals, and dioxins, as specified above for the Phase II
26 monitoring or as otherwise directed by Dr. Sahu. This phase is intended to

1 document SIMC’s dust emissions following installation of dust management
2 BMPs required by Sections 7(e) and 7(f) of this Consent Decree.

3 iv. Correspondence: Soundkeeper and SIMC will be copied on
4 all correspondence to and from Dr. Sahu by the other regarding dust analysis
5 or the design of dust control measures or studies. Soundkeeper and SIMC
6 will be notified of and permitted to participate in any substantive meetings
7 or conference calls with Dr. Sahu relating to the dust analysis or the design
8 of dust control measures or studies. All data from the dust monitoring studies
9 described in this Consent Decree will be shared with Soundkeeper within
10 seven days of it becoming available to SIMC.

11 v. Website: SIMC agrees to maintain the public facing webpage
12 (www.seairon.com/environmental-documents) and to post all data collected
13 during each of the three phases described above within 14 days of data
14 validation. SIMC will post copies of all final reports produced by Dr. Sahu
15 to analyze the data on this webpage within 7 days of report finalization.
16 SIMC will also fund production by Dr. Sahu of publicly accessible
17 explanations and summaries using nontechnical language, and depicting data
18 both numerically and graphically, to post on the webpage
19 contemporaneously. SIMC also agrees to fund the translation of the reports
20 and summaries into Spanish and Vietnamese, and to post the translated
21 copies on the above-mentioned webpage within 7 days of translation. SIMC
22 will pay translation costs directly to mutually acceptable translators within
23 14 days of invoicing.

24 vi. Public Meetings: SIMC agrees to coordinate with
25 Soundkeeper on community town hall meetings to occur annually for the
26 duration of the Consent Decree in either Georgetown or South Park to

1 publicize results of each phase of the dust study, and answer community
2 questions and concerns. SIMC agrees to have at least one facility
3 representative present at each meeting, and also agrees to fund Dr. Sahu's
4 attendance and presentation. SIMC further agrees to fund the costs of the
5 meeting space, language translation (Spanish and Vietnamese), production
6 and printing of outreach materials, dinner for attendees, and onsite childcare
7 for attendees. SIMC will pay all costs directly to mutually agreeable vendors.

8 vii. Corrective action: The data from the first dry season of
9 the Phase III dust monitoring described above must be analyzed to
10 determine if the controls are effective. If the controls are not effective at
11 reducing the dust concentrations during SIMC's operating hours (during
12 dry weather) to 10 µg/m³, or the background level determined by Dr.
13 Sahu based on additional data collection, and reducing PCBs to the
14 background PCB levels determined in Phase I monitoring completed
15 under Section 7(g)(i) of this Consent Decree (hereinafter, the "Phase I
16 background PCB level"), SIMC must commit to enhancing the controls
17 as follows:

18 1. If the dust controls installed at the 601 Myrtle
19 parcel of the 601 Facility, or the 701 parcel of the 601 Facility,
20 as measured during Phase III, are insufficient to reduce the dust
21 concentrations during SIM's operating hours (during dry
22 weather) to 10 µg/m³, or the background level determined by Dr.
23 Sahu based on additional data collection, or the PCBs are above
24 the Phase I background PCB levels, Dr. Sahu will inspect the
25 pertinent facility and make recommendations for appropriate
26 improvements to address the issues. Within two months of such

1 an inspection, Dr. Sahu will issue his recommendations. SIMC
2 must implement Dr. Sahu's recommendations before the onset of
3 the next dry season. If SIMC determines that one or more of the
4 recommendations are not practicable or implementable then
5 SIMC may invoke the dispute resolution provisions of this
6 Consent Decree and obtain relief from Dr. Sahu's
7 recommendations from the Court in the form of a modification to
8 this Consent Decree.

9 viii. SIMC will pay into Smith & Lowney PLLC's client trust
10 account money sufficient to cover the cost of Dr. Sahu's work under this
11 Consent Decree. Smith & Lowney PLLC will administer the funds to Dr.
12 Sahu, but SIMC is solely responsible for adequately funding the trust
13 account to cover the cost of Dr. Sahu's work and any subcontractors and
14 laboratory costs.

15 ix. SIMC will continue to maintain daily logs of dust
16 observations and dust control efforts at the 601 Facility during the period May
17 1 through September 30 each year, and during extended dry periods (defined
18 by the absence of rainfall for more than five days) during the period October
19 1 through April 30. Not later than the date of entry of this Consent Decree,
20 SIMC will begin keeping track of whether its auto shredder is operating
21 normally and any unusual shredding activities with the potential to generate
22 dust on the daily logs. Log entries shall be made for all hours during which
23 the Facility and/or the shredder operates.

24 x. Not later than the date of entry of this Consent Decree, SIMC
25 will implement a program to discourage truck traffic associated with the
26 Facilities from using certain residential streets nearby the Facilities.

1 Specifically, SIMC will post the Approved and Restricted Traffic Routes map
2 and legend, attached to this Amendment to Consent Decree as **Attachment**
3 **D**, to its website, and provide copies of the map to and instruct trucks entering
4 and exiting the Facilities to use the Approved Routes and avoid the Restricted
5 Routes identified in Attachment D.

6 xi. SIMC will arrange a meeting with Soundkeeper, the City of
7 Seattle, and Ecology to discuss the Filterra treatment systems in the city right-
8 of-way abutting the north and south sides of the 601 Facility and will employ
9 its best efforts to coordinate with the City of Seattle and Ecology regarding
10 this issue.

11 5. Section 7(h) of the Consent Decree is amended and replaced as follows:

12 h. Starting on March 15, 2019, and continuing for six years, SIMC will
13 forward all correspondence to and from the Department of Ecology, and all
14 documents provided to the Department of Ecology, related to the NPDES Permits,
15 and monthly dust control logs and dust observation or complaint emails SIMC
16 receives in the corresponding month, to Soundkeeper on a monthly basis, and
17 provide written summaries to Soundkeeper on its progress implementing the consent
18 decree, on a quarterly basis. Where practicable, as in the case of structural
19 improvements, SIMC will include photographs of tasks completed in its quarterly
20 progress reports to Soundkeeper. SIMC will also provide Soundkeeper with
21 electronic copies of its SWPPPs as required herein and upon request within 5 days.

22 6. Section 7(i) of the Consent Decree is amended and replaced as follows:

23 i. Not later than thirty days after invoicing, SIMC will pay
24 Soundkeeper its reasonable costs, including expert and attorneys' fees, of
25 monitoring SIMC's compliance with this consent decree, and conferring regarding
26 corrective actions and dispute resolution pursuant to this consent decree, in an

1 amount not to exceed \$60,000 (SIXTY THOUSAND DOLLARS).

2 7. Section 8 of the Consent Decree is amended and replaced as follows:

3 8. Not later than thirty days after entry of this Amendment to Consent Decree,
4 SIMC will pay \$90,000 (NINETY THOUSAND DOLLARS) to Just Health Action and
5 Seattle Parks Foundation via payments of \$45,000 to each organization by check to
6 addresses provided in **Attachments B and E** for environmental and human health benefit
7 projects in the Duwamish River and central Puget Sound watersheds as described in
8 Attachments B and E. Payment shall include the following reference in a cover letter or on
9 the check: "Amendment to Consent Decree, Soundkeeper v. Seattle Iron & Metals Corps."
10 A copy of the check and cover letter shall be sent simultaneously to Soundkeeper.
11 Additionally, in the event that SIMC fails to install the deduster by the deadline established
12 in Section 7(e)(iii), above, SIMC will pay an additional \$10,000 to Just Health Action. In
13 the event that SIMC further fails to install the deduster within 60 days of the deadline
14 established in Section 7(e)(iii), above, SIMC will pay an additional \$15,000 to Just Health
15 Action. These contingent payments are in addition to any stipulated penalties required by
16 Section 7(e)(iii), above.

17 8. Section 13 of the Consent Decree is amended and replaced as follows:

18 13. This Consent Decree takes effect upon entry by the Court. It terminates on
19 March 15, 2026.

20 9. The contact information for SIMC in Section 17 of the Consent Decree is amended
21 as follows:

1 **if to Seattle Iron & Metals Corp.:**

2 Matthew Stock
3 JOYCE ZIKER PARTNERS, PLLC
4 1601 Fifth Avenue, Suite 2040
5 Seattle, WA 98101
6 Email: mstock@jzplaw.com

7 10. Except as specifically amended by this Amendment to Consent Decree, the terms
8 and conditions of the Consent Decree (Dkt. #84) remain in full force and effect.

9 DATED this ____ day of _____, 2020.

10
11 _____
12 HON. RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE

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19 *Presented by:*

20 JOYCE ZIKER PARTNERS, PLLC

SMITH & LONEY PLLC

21
22 By: /s/ Matthew Stock

23 Matthew J. Stock, WSBA No. 40223
Attorneys for Defendant SIMC

By: /s/ Claire E. Tonry

24 Richard A. Smith, WSBA No. 21788
25 Claire E. Tonry, WSBA No. 44497
26 Attorneys for Plaintiff Soundkeeper