

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (“Agreement”) is entered into this ___ day of October, 2011, by and between the Rosemere Neighborhood Association and Land Owners and Citizens for a Safe Community (“Rosemere”) and Millennium Bulk Terminals Longview, LLC (“MBTL”), a Delaware limited liability company, (the “Parties”). The Agreement will become effective upon execution by the Parties.

WHEREAS, MBTL currently operates a multi-modal bulk materials handling facility (“facility”) at 4029 Industrial Way, Longview, Washington;

WHEREAS, on August 9, 2011, Rosemere issued a notice of intent to sue under Clean Water Act (“CWA”) section 505, 33 U.S.C. §1365, alleging various violations concerning MBTL’s compliance with certain CWA requirements, including allegations that MBTL is currently operating a “flat transport and storage facility for the import, export, storage, and transportation of coal, pet coke, fly ash, and other bulk materials absent any permit authorization to discharge process and stormwater related to such activities”, under CWA section 402;

WHEREAS, in order to resolve the threatened lawsuit, without admitting any of the allegations set forth in the notice letter, and in efforts to avoid the unnecessary expenditures of legal fees and associated costs;

NOW THEREFORE, in consideration of the mutual promises and undertakings of the Parties hereto, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1) Operational Measures:

a. ConocoPhillips’ green petroleum coke pile

(i) MBTL agrees to continue to collect and capture all of the stormwater runoff from this green petroleum-coke pile on site, and to ship the excess runoff for off-site disposal, until such time as the green petroleum-coke pile and any remnants are removed from the facility by ConocoPhillips;

(ii) MBTL will use its best efforts to work with ConocoPhillips- the owner of the green petroleum coke stored at the facility- to have ConocoPhillips remove its green petroleum coke within six (6) months of the entry of this Agreement;

(iii) MBTL agrees not to store any additional green petroleum coke once the existing material stored for ConocoPhillips is removed --until such time as a new National Pollutant Discharge Elimination System (“NPDES”) permit is issued for the facility by the Washington State Department of Ecology (“Ecology”).

b. Weyerhaeuser coal

(i) MBTL has entered into a contract with Weyerhaeuser Company (“Weyerhaeuser”) to store coal for Weyerhaeuser;

(ii) MBTL agrees not to store any coal for any other party other than Weyerhaeuser pending Ecology's issuance of a new NPDES permit;

(iii) MBTL will continue to store Weyerhaeuser coal indoors and will not store any coal outdoors;

(iv) MBTL will retrofit those conveyors used at the facility to transfer coal from the storage silos to the coal loading area to totally enclose the conveyors. MBTL will begin engineering this retrofit within one (1) month of the effective date of this Agreement and will apply for any necessary permits or approvals for this retrofit within four (4) months of the effective date of this Agreement with the goal of completing this retrofit within (10) months of the effective date of this Agreement subject to the timely issuance of any necessary permit or approval;

(v) Pending completion of this retrofit, MBTL will construct a temporary cover and catch pan for the conveyors referenced in subsection (iv) of this paragraph scheduled for retrofit. The temporary retrofit shall be completed within (1) one month of the effective date of this Agreement;

(vi) Within (1) one month of the effective date of this Agreement, MBTL will install fabric filters that comply with 40 CFR 122.26 (1999) in the storm drains located in the coal loading and truck haul route areas at the facility, and will inspect them daily, and replace them as needed. MBTL will provide Rosemere with copies of any manufacturer specifications associated with these fabric filters. MBTL will sweep the truck haul route at the facility as necessary.

c. Termination

The obligations set forth in this paragraph of the Agreement shall terminate and be superseded upon Ecology's issuance of the permit referenced in paragraph 2 of this Agreement.

2) MBTL's Pending NPDES Renewal Application

a. MBTL submitted an NPDES permit renewal application to Ecology on August 31, 2011.

b. MBTL commits to use its best efforts to encourage Ecology to issue the renewed NPDES permit on a timely basis, and further commits not to withdraw its pending permit renewal application, unless otherwise required by Ecology. However, MBTL reserves the right to amend or modify the pending permit application.

3) Funding of a Supplemental Environmental Project

a. MBTL agrees to fund a Supplemental Environmental Project, to be paid to Friends of the East Fork Lewis River up to a maximum amount of \$50,000, payable as follows:

b. The SEP shall be payable in two installments \$25,000 to be paid within (30) thirty days of the effective date of this Agreement; and the remaining \$25,000 to be paid

within (7) seven days of the issuance of the final NPDES permit, assuming no additional notices of intent to sue under CWA section 505, 33 U.S.C. § 1365, are issued to MBTL from a 501(c)(3) environmental group alleging violations similar to those set forth in the August 9, 2011 notice letter issued by Rosemere to MBTL, which alleged, *inter alia*, on-going discharges without a permit.

4) Force Majeure

If MBTL is prevented from performing its duties under this Agreement by circumstances beyond its control, including, without limitation, fires, floods, or acts of nature ("Force Majeure"), then MBTL shall be excused from performance hereunder during the period of such disability. MBTL shall promptly notify Rosemere when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. Notwithstanding anything in this Agreement to the contrary, the term "Force Majeure" does not include and MBTL shall not be excused from performance under this Agreement for events related to increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the obligations hereunder.

5) Attorneys Fees

MBTL shall reimburse Rosemere their reasonable attorneys fees and costs in the amount of \$30,641.85 within thirty (30) days of the execution of this Agreement. Such payment shall be made by check payable and mailed to Field Jerger LLP, 621 SW Morrison St, Suite 1225, Portland, OR 97205.

6) Covenant Not To Sue

a. Rosemere hereby agrees not to file any future notices of intent to sue pursuant to 33 U.S.C. § 1365, nor future lawsuits, against MBTL concerning current facility operations, until such time as Ecology issues MBTL a renewed NPDES permit.

b. This covenant does not preclude Rosemere from filing comments on the draft NPDES permit, and does not preclude Rosemere from challenging the final NPDES permit once issued by Ecology.

7) No Admission of Wrongdoing

By entering into this Agreement, MBTL does not admit any liability or wrongdoing and does not admit to the facts alleged in Rosemere's August 9, 2011 notice letter.

8) Interpretation and Venue

This Agreement shall be interpreted according to the laws of the State of Washington; and the United States District Court for the Western District of Washington shall be the proper venue for legal action related to this Agreement.

9) Enforcement of Agreement

In any action to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in bringing and maintaining or defending such enforcement action unless manifest injustice would result. Not less than sixty (60) days before bringing any such action, the aggrieved party shall provide written notice to the other party of the dispute and the parties or their counsel shall endeavor to confer to discuss means to resolve such dispute.

10) No Third Party Beneficiaries

This Agreement is made solely and specifically between and for the benefit of the Parties and their respective successors and assigns. No other person or entity shall have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Agreement, whether as a third party beneficiary or otherwise.

11) Execution in Counterparts

This Agreement may be signed in counterparts.

12) Amendment and Waiver

This Agreement may not be amended, modified, or waived except by a writing mutually executed and exchanged by both Parties.

13) Entire Understanding

This Agreement contains the final, complete and exclusive agreement of the Parties, and supersedes and prevails over all prior communications, understandings, representations or agreements by and between the Parties concerning the matters contained herein.

14) Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties hereto, as well as their employees, members, agents, officers, directors, shareholders, attorneys and other parties succeeding to their interests contractually or by operation of law.

DATED 9/30/11

ROSEMERE NEIGHBORHOOD ASSOCIATION

[Signature]
By: _____
Title: *Director of Environment & Conservation*


DATED _____

LAND OWNERS AND CITIZENS FOR A SAFE
COMMUNITY

By:
Title:

DATED: 9/30/2011

MILLENNIUM BULK TERMINAL LONGVIEW



By: Kristin Gaines
Title: VP, Environmental Planning and Services

DATED 10-3-2011

LAND OWNERS AND CITIZENS FOR A SAFE
COMMUNITY

Gayle A Kisa

By:
Title: President

DATED: _____

MILLENNIUM BULK TERMINAL LONGVIEW

By:
Title: