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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

WILLAPA-GRAYS HARBOR  
OYSTER GROWERS  
ASSOCIATION,  
  
Appellant,  
  
v.  
  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Respondent.  
  
and  
  
AD HOC COALITION FOR  
WILLAPA BAY, CENTER FOR  
FOOD SAFETY, CENTER FOR  
BIOLOGICAL DIVERSITY, and  
COALITION TO PROTECT PUGET  
SOUND,  
  
Respondent-Intervenors.

PCHB No. 18-073  
  
JOINT MOTION TO DISMISS

Respondent State of Washington, Department of Ecology, represented by Robert W. Ferguson, Attorney General, and Ivy Anderson, Assistant Attorney General, and Appellant, Willapa-Grays Harbor Oyster Growers Association (WGHOGA), represented by Doug Steding, Northwest Resource Law PLLC, hereby submit this Joint Motion to Dismiss.

**I. MOTION TO DISMISS**

Based upon the attached Settlement Agreement, hereby incorporated by reference, the parties move the Pollution Control Hearings Board for an Order to dismiss this appeal with prejudice.

RESPECTFULLY SUBMITTED this 15th day of October 2019.

ROBERT W. FERGUSON  
Attorney General

NORTHWEST RESOURCE LAW PLLC



IVY M. ANDERSON, WSBA #30652  
Assistant Attorney General  
Attorneys for Respondent  
State of Washington  
Department of Ecology  
360-586-4619

DOUGLAS J. STEDING, WSBA #37020  
Attorney for Appellant  
Willapa-Grays Harbor Oyster Growers  
Association  
206-971-1567

Dated: 10/15/2019

Dated: \_\_\_\_\_

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STATE OF WASHINGTON,  
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AD HOC COALITION FOR  
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COALITION TO PROTECT PUGET  
SOUND,

Respondent-Intervenors.

PCHB NO. 18-073

SETTLEMENT AGREEMENT

The State of Washington, Department of Ecology, represented by Robert W. Ferguson, Attorney General, and Ivy Anderson, Assistant Attorney General, and Appellant, Willapa-Grays Harbor Oyster Growers Association (WGHOGA), represented by Douglas Steding, Northwest Resource Law PLLC, hereby submit this Settlement Agreement to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

1 **I. PROCEDURAL STIPULATIONS**

2 1. On January 8, 2016, the WGHOGA transmitted an application package to  
3 Ecology seeking an NPDES permit for the discharge of imidacloprid in Willapa Bay and Grays  
4 Harbor via ground applications and applications from boat. As used in this document,  
5 WGHOGA refers exclusively to the subset of members of WGHOGA that have pursued this  
6 January 8, 2016 NPDES permit.

7 2. On February 10, 2016, Ecology requested additional information regarding the  
8 2016 NPDES permit application, including two applications for sediment impact zone  
9 authorizations for Willapa Bay and Grays Harbor.

10 3. On March 17, 2016, WGHOGA provided additional information to Ecology for  
11 the 2016 NPDES permit application along with sediment impact zone authorization applications  
12 for both Willapa Bay and Grays Harbor.

13 4. Ecology determined the WGHOGA 2016 NPDES permit application and  
14 sediment impact zone authorization applications were complete on June 23, 2017.

15 5. On May 24, 2016, Ecology issued a State Environmental Policy Act (SEPA)  
16 Determination of Significance regarding the NPDES permit application and adopted and  
17 incorporated by reference the 2015 Final Environmental Impact Statement, which was issued for  
18 a 2013 NPDES application to discharge imidacloprid in Willapa Bay and Grays Harbor.

19 6. Ecology conducted a Supplemental Environmental Impact Statement (2018  
20 SEIS) specific to the 2016 NPDES application and sediment impact zone authorization  
21 applications. A public comment period was held on the draft 2018 SEIS from September 18,  
22 2017, through November 1, 2017. Two public meetings were held in October 2017. Ecology  
23 issued the Final 2018 SEIS on January 5, 2018.

24 7. On April 9, 2018, upon making a “tentative staff determination” to deny the 2016  
25 NPDES permit application, Ecology issued a Notice of Intent to Deny NPDES Permit for public  
26 review and comment. The comment period last from April 9, 2018, through May 14, 2018. Upon

1 completion of the public comment period and review of comments received, Ecology issued a  
2 Final Determination to Deny NPDES permit on September 27, 2018.

3 8. On October 26, 2018, WGHOGA filed an appeal of Ecology's 2016 NPDES  
4 permit application decision.

5 9. Ecology and WGHOGA have agreed to fully resolve the appeal of Ecology's  
6 denial of the NPDES permit application through the settlement outlined below.

## 7 II. SETTLEMENT AGREEMENT

8 The parties desire to resolve the dispute herein and avoid the cost and time associated  
9 with further litigation. The parties therefore stipulate and agree as follows:

### 10 A. RESOLUTION OF APPEAL

11 This Settlement Agreement constitutes the entire agreement between the parties to this  
12 appeal, and settles all issues raised by WGHOGA's appeal filed on October 26, 2018. As used  
13 in this Settlement Agreement "Integrated Pest Management" or "IPM" shall mean the following:

- 14 • A coordinated decision-making and action process that uses the most appropriate pest  
15 control methods and strategy in an environmentally and economically sound manner  
16 to meet the objective of controlling burrowing shrimp populations in Willapa Bay  
17 and Grays Harbor to facilitate continued shellfish cultivation on tidelands. The  
18 elements of this IPM plan are anticipated to include:
  - 19 ○ Identifying ways to prevent burrowing shrimp problems in Willapa Bay and  
20 Grays Harbor.
  - 21 ○ Monitoring of the presence of burrowing shrimp on shellfish beds in Willapa Bay  
22 and Grays Harbor.
  - 23 ○ Quantifying the damage caused to shellfish beds by burrowing shrimp in Willapa  
24 Bay and Grays Harbor.
  - 25 ○ Establishing acceptable densities of burrowing shrimp that can be tolerated  
26 without treatment.

- 1           ○ Treatment to reduce populations of burrowing shrimp on shellfish beds to below  
2           established thresholds using biological, cultural, mechanical, and chemical  
3           control methods that consider human health, ecological impact, feasibility, and  
4           cost-effectiveness.
- 5           ○ Evaluating the environmental effects and efficacy of burrowing shrimp  
6           treatments.

7           Under terms of this Settlement Agreement, the parties will undertake the following  
8 activities:

- 9           • Participate in a Working Group and work cooperatively to, as expeditiously as  
10           possible, identify an Integrated Pest Management plan approach to control and  
11           manage the burrowing shrimp infestation that is affecting WGHOGA oyster beds in  
12           Willapa Bay and Grays Harbor. The parties agree that such a plan will include  
13           chemical and non-chemical controls, with the goal of minimizing chemical use and  
14           maximizing its effectiveness. Any plan developed pursuant to this Settlement  
15           Agreement or using funds obtained by the parties pursuant to this Agreement will not  
16           include the use of imidacloprid. Laboratory studies comparing imidacloprid to other  
17           possible chemical control methods may be a part of the research conducted pursuant  
18           to this Agreement.
- 19           ○ Ecology commits to support research projects required to develop the IPM plan.  
20           The agency's support will include providing technical advice and assistance,  
21           including advice on the necessity of obtaining permit(s) or approval(s). Ecology's  
22           presence on the Working Group does not imply endorsement or approval by  
23           Ecology of any application(s) to be submitted by WGHOGA for permit(s) or  
24           approval(s) which may be required to implement any aspect of an Integrated Pest  
25           Management plan. Both parties shall bear their own costs of staff time in  
26           participating in the Working Group and development of the IPM plan.

- 1           ○ To the extent practicable and provided funding is available, the Working Group  
2 will seek to conduct research project(s) on the following topics in the 2019–2020  
3 research season:
- 4           ▪ Development of a burrowing shrimp monitoring program in Willapa Bay and  
5 Grays Harbor to assess impacts to shellfish beds and population trends.
  - 6           ▪ Assessment of past research regarding acceptable shrimp densities on a  
7 variety of shellfish beds.
  - 8           ▪ Laboratory studies designed to evaluate the efficacy and possible impacts of  
9 alternative chemicals to imidacloprid to be used as chemical controls for  
10 burrowing shrimp in an IPM plan.
  - 11          ▪ Assessment of non-chemical control options for burrowing shrimp and  
12 shellfish beds (e.g., including the work of Department of Natural Resources).
  - 13          ▪ Provided the laboratory studies identify chemical(s) that may be promising in  
14 terms of efficacy in controlling burrowing shrimp, and low impact to non-  
15 target organisms, the parties will work towards development of a 2020 field  
16 study protocol that will include: (a) field trials of alternative chemical(s) that  
17 may be used to control burrowing shrimp in conjunction with non-chemical  
18 methods; (b) further exploration of mechanical methods such as spike wheel  
19 injectors; and (c) continued dye studies to understand movement of water in  
20 the bay to help develop strategies that will minimize the use and impacts of  
21 chemicals.
  - 22          ▪ Additional project(s) as mutually agreed to by the Working Group.
- 23      • Identify at least one representative to participate in the Working Group regarding  
24 development of an Integrated Pest Management plan to address burrowing shrimp in  
25 Willapa Bay and Grays Harbor. Ecology’s representative will have authority to  
26 represent both the Water Quality and Toxic Cleanup Programs at Ecology, and to



1 make commitments of staff time and resources from the Department as necessary to  
2 fully support the Working Group. WGHOGA's representative will have authority to  
3 represent the Growers and to make commitments of time and resources as necessary  
4 to fully support the Working Group.

- 5 • The Working Group will meet for a period of at least one year, dating from the  
6 effective date of this Agreement. The Working Group may be extended by mutual  
7 agreement of the parties.
- 8 • Ecology will host a Working Group meeting every other month for the one-year time  
9 period in Lacey, Washington. WGHOGA will host a Working Group meeting every  
10 other alternate month for the one-year time period in Pacific County, Washington.
- 11 • The parties will jointly invite representatives from the Departments of Agriculture,  
12 Natural Resources, Commerce, and the Conservation Commission, and a mutually  
13 agreed to environmental interest to participate in the Working Group.
- 14 • Ecology will engage with WGHOGA or its representatives as the Growers seek to  
15 obtain funding through legislative appropriation request in the Supplemental  
16 Legislative Session beginning in January 2020. The appropriation request to be  
17 submitted by WGHOGA will seek the following:
  - 18 ○ An appropriation of \$650,000 to be used exclusively to fund research related to  
19 development of the IPM plan. As detailed above, IPM plan research projects may  
20 include investigation of chemical controls as one aspect of the plan, but will not  
21 include use of imidacloprid as a chemical control. To the extent permitted by law,  
22 research projects to be funded from this appropriation would be identified and  
23 mutually agreed to as part of the Working Group activities.

24 **B. WAIVER OF APPEAL RIGHTS**

25 WGHOGA understands that it has the right to appeal Ecology's decision to deny the  
26 2016 NPDES permit application by presenting evidence at a Board hearing. WGHOGA

1 voluntarily waives its right to a hearing upon signature and acceptance of this Settlement  
2 Agreement by representatives for WGHOGA and Ecology.

3 **C. DISMISSAL OF APPEAL**

4 The parties consent to the submission of this Settlement Agreement to the Board and  
5 request that, based upon a full and final settlement having been reached, the Board dismiss this  
6 appeal with prejudice. Both parties further agree to forego all costs and attorneys' fees associated  
7 with this appeal.

8 **D. EFFECTIVE DATE**

9 This Settlement Agreement shall become effective upon the Board's dismissal of this  
10 appeal.

11 **E. SIGNATORIES AUTHORIZED**

12 The undersigned representatives for Ecology and WGHOGA certify that they are fully  
13 authorized by the party whom they represent to enter into the terms and conditions of this  
14 Settlement Agreement and to legally bind such party thereto.

15 **F. EXECUTION**

16 This document may be executed in counterparts and may be executed by facsimile and/or  
17 electronically, and each executed counterpart shall have the same force and effect as the original  
18 instrument.

19  
20 STATE OF WASHINGTON  
21 DEPARTMENT OF ECOLOGY

20 WILLAPA-GRAYS HARBOR OYSTER  
21 GROWERS ASSOCIATION

22 

23 \_\_\_\_\_  
24 KEN WIEGARDT  
25 President  
26 Willapa Grays Harbor Oyster Growers  
Association

23 RICH DOENGES  
24 Department of Ecology  
25 Southwest Regional Director

26 Dated: 10/14/19

Dated: \_\_\_\_\_

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26 Southwest Regional Director

Dated: \_\_\_\_\_

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GROWERS ASSOCIATION

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Attorney General

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Attorneys for Respondent  
State of Washington  
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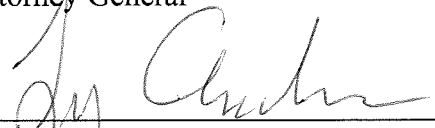
DOUGLAS J. STEDING, WSBA #37020  
Attorney for Appellant  
Willapa-Grays Harbor Oyster Growers  
Association  
206-971-1567

Dated: \_\_\_\_\_

Dated: 10/15/19

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Attorney General



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Attorneys for Respondent  
State of Washington  
Department of Ecology  
360-586-4619

Dated: 10/15/2019

NORTHWEST RESOURCE LAW PLLC

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Respondent-Intervenors.

PCHB NO. 18-073

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, I certify that on the 15th day of October 2019, I caused to be served the Joint Motion to Dismiss in the above-captioned matter upon the parties herein as indicated below:

DOUGLAS J. STEDING  
MADELINE ENGEL  
NORTHWEST RESOURCE LAW PLLC  
101 YESLER WAY, SUITE 205  
SEATTLE, WA 98104

U.S. Mail  
 Hand Delivered  
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[mengel@nwresourceclaw.com](mailto:mengel@nwresourceclaw.com)  
[ehinkes@nwresourceclaw.com](mailto:ehinkes@nwresourceclaw.com)

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LARRY WARNBERG  
AD HOC COALITION FOR WILLAPA BAY  
31 HURT ROAD  
RAYMOND, WA 98577

U.S. Mail  
 Hand Delivered  
 Overnight Express  
 Email  
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ANDREW HAWLEY  
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SEATTLE, WA 98101

U.S. Mail  
 Hand Delivered  
 Overnight Express  
 Email  
[hawley@westernlaw.org](mailto:hawley@westernlaw.org)

the foregoing being the last known address.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of October 2019, in Olympia, Washington.

  
DANIELLE E. FRENCH, Legal Assistant