



Citizens for a Healthy Bay

July 5, 2019

Assistant Attorney General Jeffrey Bossert Clark
U.S. Department of Justice

Environment and Natural Resources Division
950 Pennsylvania Avenue NW
Washington, DC 20530

pubcomment-ees.enrd@usdoj.gov

Re: United States v. Manke Lumber Company, Inc., D.J. Ref. No. 90-5-1-1-11580

Dear Mr. Clark,

Thank you for providing the opportunity to review and comment on the Manke Lumber settlement consent decree and related documents.

Citizens for a Healthy Bay (CHB) is a 29-year-old organization whose mission is to represent and engage people in the cleanup, restoration, and protection of Commencement Bay, its surrounding waters and natural habitat. We are a 501(c)3 nonprofit providing practical, solutions-based environmental leadership in south Puget Sound. We work side-by-side with residents, businesses, and government to prevent and mitigate pollution and to make our community healthier and more vibrant.

Staff and expert members of CHB's Policy and Technical Advisory Committee have reviewed the consent decree and related documents. Our comments are outlined below.

Background

Manke Lumber Company (Manke) is a lumber processing and storage facility located at the head of the Hylebos Waterway in Commencement Bay, Tacoma, Washington. On April 6, 2017 the Environmental Protection Agency (EPA) sued Manke for violations of Section 301 of the Clean Water Act, violations of the Industrial Stormwater General Permit issued by the Washington State Department of Ecology (Ecology), and violations of Spill Prevention, Control and Countermeasure laws as regulated by Ecology.¹ More specifically Manke failed to; obtain an Oil Spill Prevention, Control, and Countermeasures Plan, despite being an oil-handling facility; sample and properly analyze wastewater discharges; submit reports as required by Ecology; perform required monthly facility inspections, and; numerous other violations. These violations lead to the discharge of heavy metals, organic material, and oil into the Hylebos – a waterway that is part of the Commencement Bay Nearshore/Tideflats Superfund site, and home to the Puyallup Tribe of Indians.²

The EPA settlement requires Manke to pay a \$320,000 civil penalty, hire an Environmental Manager, install a new stormwater treatment system, and hire an engineering consultant to analyze and improve the stormwater treatment system. Manke has also elected to perform a Supplemental Environmental Project.¹

535 Dock Street

Suite 213

Tacoma, WA 98402

Phone (253) 383-2429

chb@healthybay.org

www.healthybay.org

Executive Director

Melissa Malott

Board of Directors

Brice Boland

Desiree Wilkins Finch

Bryan Flint

Barry Goldstein

Jerry Hallman

Kelly McCord

Sheri Tonn

A tax-exempt

501(c)(3) Washington
nonprofit corporation

Consent Decree Requirements

The Consent Decree stipulates that “[i]f any Benchmark Exceedances... occur during the second year of monitoring after Treatment Facility Completion at an Outfall [i.e., Outfalls 001 and 006]... Defendant shall conduct an assessment, in consultation with the Engineering Consulting Firm, to determine the potential design or operational reasons for the exceedances.... Defendant shall complete the assessment within twenty-five (25) Months after Treatment Facility Completion.” The deadline for the completion of this assessment is unacceptably long – it exceeds the assessment and treatment deadlines imposed by the Washington State Industrial Stormwater General Permit (ISGP), granting Manke leniency for compliance - and thereby more opportunities to further pollute - than if they were just being penalized by Ecology.³ *CHB requests that Manke’s compliance schedule for benchmark exceedances be at least as protective as the ISGP standards, if not more so, given the egregiousness of their federal and state water quality violations.*

Supplemental Environmental Project (SEP)

CHB is extremely disappointed with the EPA’s approval of Manke’s proposed SEP, and believes the SEP actually violates the EPA’s SEP Policy.⁴ Most notably, CHB believes the SEP violates the legal “nexus” guideline that states, “All projects must have sufficient nexus. Nexus is the relationship between the violation and the proposed project.” The SEP stipulates that Manke will permanently set aside approximately 38 acres of undeveloped land along Goldsborough Creek, in WRIA (Water Resource Inventory Area) 14. Goldsborough Creek outlets into Oakland Bay in Shelton, Washington.¹ Manke’s numerous water quality violations occurred in the Hylebos Waterway, which is in WRIA 10. Flushing from WRIA 14 to WRIA 10 is slow, and in some areas, non-existent. Because of Oakland Bay’s shape complexities, including two 90-degree turns, it was not even included in Ecology’s Water Circulation Model, as its inclusion would have severely degraded the accuracy of the model.⁵ Any water quality benefits resultant of this SEP will not make their way from Oakland Bay, through Hammersley Inlet, and then through Dana Passage, and then through the Nisqually Reach, and then through the Tacoma Narrows to reach the Hylebos Waterway, where the violations occurred. CHB understands that the SEP policy provides for a 50-mile radius of the violation site to the SEP site, and that Goldsborough Creek falls within that radius.⁴ However, it is clear that given the geographic setting and hydrodynamics of South Puget Sound, the nexus requirement is not being met.

The SEP policy states, “Defendants are encouraged to consider SEPs in communities where there are EJ [Environmental Justice] concerns.” Additionally, “the EPA strongly encourages defendants to reach out to the community for SEP ideas and prefers SEP proposals that have been developed with input from the impacted community.” Unfortunately, Manke performed no community outreach to inform their choice of SEP. The community impacted by Manke’s violations is one with many environmental justice concerns. Tacoma has a population of over 200,000, of which 40% are minority and 17% live below the poverty line.⁶ Many of these underserved communities live in areas that rank 10 out of 10 on the Washington Department of Health’s health disparities scale – meaning these communities experience worsened health outcomes, including shorter life expectancy and higher rates of chronic disease, because of where they live. Over 21,000 people, including many residing within the Puyallup Tribe’s reservation, live in these highly-impacted parcels directly adjacent to the Commencement Bay Superfund site, but the exposure to air pollution, contaminated water and contaminated soils expand far beyond these political boundaries.⁷ We are saddened to see that these communities were again ignored in the decision-making processes that impact their health.

It is particularly troublesome to CHB that Manke’s civil penalty will be “mitigated” (i.e., lowered) because they are electing to do this SEP, when their choice in SEP is clearly misguided, provides no benefit to the community impacted, and is especially convenient to them as they are the owners of the land set aside in the SEP.

CHB requests Manke Lumber design a new SEP in WRIA 10, after meaningful community outreach, including with the Puyallup Tribe of Indians. There are plenty of restoration opportunities outside of the Commencement Bay Superfund site (as to not violate the EPA’s “augmentation” policy) that Manke could sponsor in order to fully remediate the harm done here in WRIA 10. Many restoration activities are already occurring, or are complete and could be augmented, in the Hylebos Creek watershed (e.g., Puget Sound Gateway Program Riparian Restoration Program, Wildlands Inc Hylebos Creek Estuarine Restoration site, City of Federal Way restoration programs, removal of fish-passage barriers along Hylebos creek, etc.).⁸

Please contact me if there are questions regarding my comments. Thank you for the opportunity to provide feedback on the Manke Lumber settlement consent decree and related documents.

Sincerely,



Melissa Malott
Executive Director, Citizens for a Healthy Bay
mmalott@healthybay.org, (253) 383-2429

cc: Allyn Stern, EPA
J. Clark Thurmom, EPA
Edward Kowalksi, EPA
Joel Manke

1. Consent Decree, United State of America vs. Manke Lumber Company, Inc. (Civil No. 3:17-cv-5257-RJB, May 17, 2019)
2. Krell, A. (2017, April 30). More than \$50,000 a day? EPA asks court to fine Tacoma lumber company. *Tacoma News Tribune*. Retrieved from <https://www.thenewstribune.com/news/local/crime/article147677139.html> on July 3, 2019.
3. Ecology. *Industrial Stormwater General Permit*. Effective Date January 2, 2015.
4. U.S. EPA. (2015). *U.S. Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update*. Author.
5. Ecology. (2014). *South Puget Sound Dissolved Oxygen Study – South and Central Puget Sound Water Circulation Model Development and Calibration*. Publication No. 14-03-015.
6. 1. United States Census Bureau. (n.d.). Quick Facts: Tacoma city, Washington. Accessed from www.census.gov/quickfacts/tacomacitywashington on March 14, 2019.
7. Washington State Department of Health. (n.d.). Washington Tracking Network: A Source for Environmental Public Health Data. Accessed from <https://fortress.wa.gov/doh/wtn/WTNIBL/> on March 5, 2019.
8. Earth Corps. (2016). *Hylebos Watershed Plan*. Accessible from: https://www.earthcorps.org/ftp/ECScience/Hylebos/HylebosWatershedPlan_2016.pdf