

# PROPOSED SETTLEMENT TO CLEAN UP MERCURY IN THE PENOBSCOT RIVER ESTUARY

Fact sheet prepared by Maine People's Alliance, Natural Resources Defense Council, and Mallinckrodt US LLC, 2021

Maine People's Alliance (MPA), the Natural Resources Defense Council (NRDC), and Mallinckrodt US LLC (Mallinckrodt) have filed a proposed consent decree to settle litigation over mercury contamination in the Penobscot River estuary. This settlement, if approved by the Court, would conclude more than two decades of litigation, benefit the environment, and accelerate the recovery of the river.

Under the proposed consent decree, Mallinckrodt will fund remediation and restoration work in the river. Mallinckrodt will commit \$187 million and will contribute up to an additional \$80 million if specific contingencies occur. MPA, NRDC, and Mallinckrodt have selected an independent trustee, the Greenfield Environmental Trust Group, to manage the funds and the work. Greenfield has 30 years of experience managing complex environmental response trusts and cleanups around the country.

MPA, NRDC, and Mallinckrodt anticipate that the cleanup work will reduce mercury concentrations across the estuary, but also recognize that the Penobscot River is a complex ecosystem and exact benefits of any particular remedial measure may be difficult to predict and measure with certainty.

The proposed consent decree has been lodged with the Federal District Court in Maine and will only take effect if the Court approves it. The Court will hold a public hearing in Bangor on October 1, 4, and 5, 2021, and consider public comments before deciding whether to approve it.

## QUICK FACTS

- Mallinckrodt will pay \$187 million, and up to \$267 million, for activities to remediate mercury in the Penobscot River estuary and environmentally beneficial projects
- Extensive Court-ordered scientific and engineering studies that lasted more than a decade inform the proposed activities
- Cleanup activities will be directed by an experienced independent trustee
- Work will include at least capping, targeted removal of contaminated sediments, beneficial environmental projects, and long-term monitoring
- All remediation work will go through applicable local, state, and federal permitting and review procedures
- The Court will establish a process for reviewing the proposed settlement
- The settlement will take effect only if the Court approves it

## Glossary of Possible Remediation Actions

### **Beneficial Environmental Projects**

Projects that provide benefits to affected communities or the environment

### **Capping**

The placement of clean materials over contaminated sediment to create a barrier between contamination and the water column

### **Enhanced Monitored Natural Recovery (EMNR)**

The addition of clean sediment naturally dispersed by tides and currents, so that the clean sediment mixes with contaminated sediments,

diluting contamination and accelerating natural recovery processes

### **Long-term Monitoring**

Repeated measurements of mercury levels in wildlife, sediments, and water over decades

### **Removal**

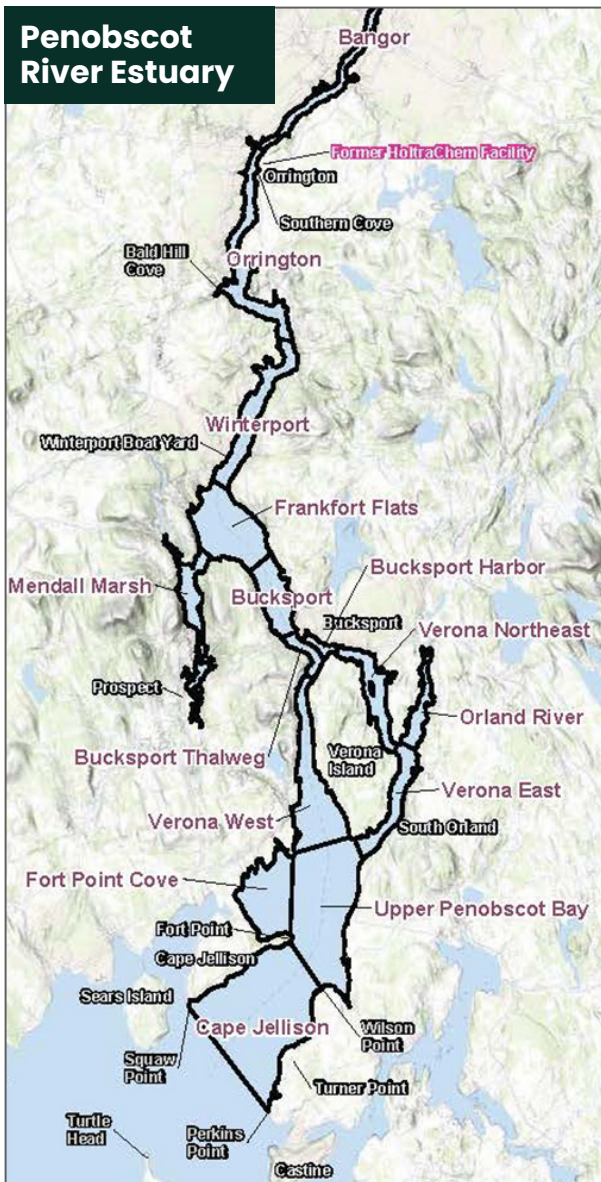
Excavation or dredging of contaminated materials to remove contamination

## What happened and what areas are affected?

The Penobscot River estuary extends from the head of tide near Bangor to the northern end of Penobscot Bay around Cape Jellison (see map on the next page). Beginning in 1967, a former chlor-alkali plant in Orrington that, among other things, made chlorine for the pulp and paper industry released mercury associated with the process to the Penobscot River. The plant was most recently operated by HoltraChem Manufacturing Co. and was previously owned by a predecessor to Mallinckrodt.

## What has happened in the litigation?

In 2000, MPA and NRDC sued Mallinckrodt and HoltraChem, seeking a study and cleanup of the mercury. The Court found that Mallinckrodt was liable as a source of the mercury and that



Source: Amec Foster Wheeler, Sept. 2018, Phase III Engineering Study Report, Fig. 1-1.

the mercury could endanger health and the environment. The Court appointed a panel of scientists to study the river. The studies found elevated concentrations of mercury in sediment and wildlife and recommended cleanup actions.

After a second trial in 2014, the Court appointed an engineering firm to identify cost-effective remedial actions that would accelerate the recovery of the river. The structure of the proposed consent decree is generally modeled on the engineering firm's recommendations, which were filed with the Court in October 2018. In total, the extensive Court-ordered scientific and engineering studies lasted more than a decade and involved a study of many biota on the river.

### What does the proposed consent decree do?

Under the proposed consent decree, Mallinckrodt would agree to fund the following:

1. **Capping near Orrington:** At least \$50 million for capping approximately 130 acres of intertidal sediments along the east bank of the River near Orrington.
2. **Targeted Removal of Mobile Sediment:** At least \$70 million for targeted removal of contaminated sediments that are trapped in the estuary by tides and currents. The specific locations and amounts will be determined later. Materials removed will be beneficially reused if possible or safely disposed outside of the aquatic environment.
3. **Remediation in the Orland River and East Channel:** \$30 million for remediation in the region of the Orland River and the channel east of Verona Island. The specific remedial actions will be determined by the trustee.
4. **Beneficial Environmental Projects:** \$20 million for projects to benefit the environment and affected communities. Specific projects will be determined later.
5. **Long-term Monitoring:** At least \$10 million for 30 to 45 years of monitoring of mercury concentrations in sediment, water, and wildlife. The length of the monitoring program will depend in part on the results of the monitoring.

Mallinckrodt is also seeking an order from the Court to bar future claims related to the mercury contamination.

### What will happen next?

The proposed settlement will only take effect if the Court approves it. The Court is reviewing the proposed consent decree and will hold a hearing at the federal courthouse in Bangor on October 1, 4, and 5, 2021.

### How do I get more information?

For more information about the proposed consent decree, visit [www.PenobscotRiverRemediation.com](http://www.PenobscotRiverRemediation.com).

### How can members of the public participate?

There are several ways to participate:

- **Review** the proposed consent decree and additional information about the proposed settlement at [www.PenobscotRiverRemediation.com](http://www.PenobscotRiverRemediation.com).
- **Submit written comments** via the contact form at [www.PenobscotRiverRemediation.com/contact](http://www.PenobscotRiverRemediation.com/contact) by **September 21, 2021**.
- **Provide oral comments** at the Court hearing on **October 5, 2021**. You must notify the Parties and provide a one-paragraph summary of your anticipated comments by **September 21, 2021**, by submitting a form at [www.PenobscotRiverRemediation.com/contact](http://www.PenobscotRiverRemediation.com/contact)