

# Penobscot River Mercury Remediation Proposed Settlement

2021

## Mallinckrodt US LLC



Maine People's  
**Alliance**

**NRDC**

# **AGENDA**

## **The Proposed Settlement**

*Brief Summary of Proposed Consent Decree*

## **Site and Case Background**

*History of Litigation*

## **Overview of Proposed Consent Decree**

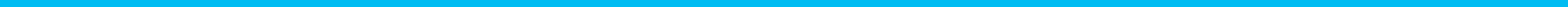
*Major Elements of Proposed Consent Decree*

## **Next Steps**

*Hearing and Public Participation*



# The Proposed Settlement



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# Proposed Consent Decree: Overview



Settlement would resolve 20 years of litigation between MPA, NRDC, and Mallinckrodt regarding mercury contamination in the Penobscot River.



Mallinckrodt will provide \$187 million, and up to \$267 million, for remediation work and beneficial environmental projects.



Extensive Court-ordered scientific and engineering studies that lasted almost two decades inform the proposed activities.



An independent trustee will manage the funds and direct the remediation.



The settlement will only take effect if the Court approves it. The Court will hold a hearing in Bangor on October 1, 4, and 5, 2021.

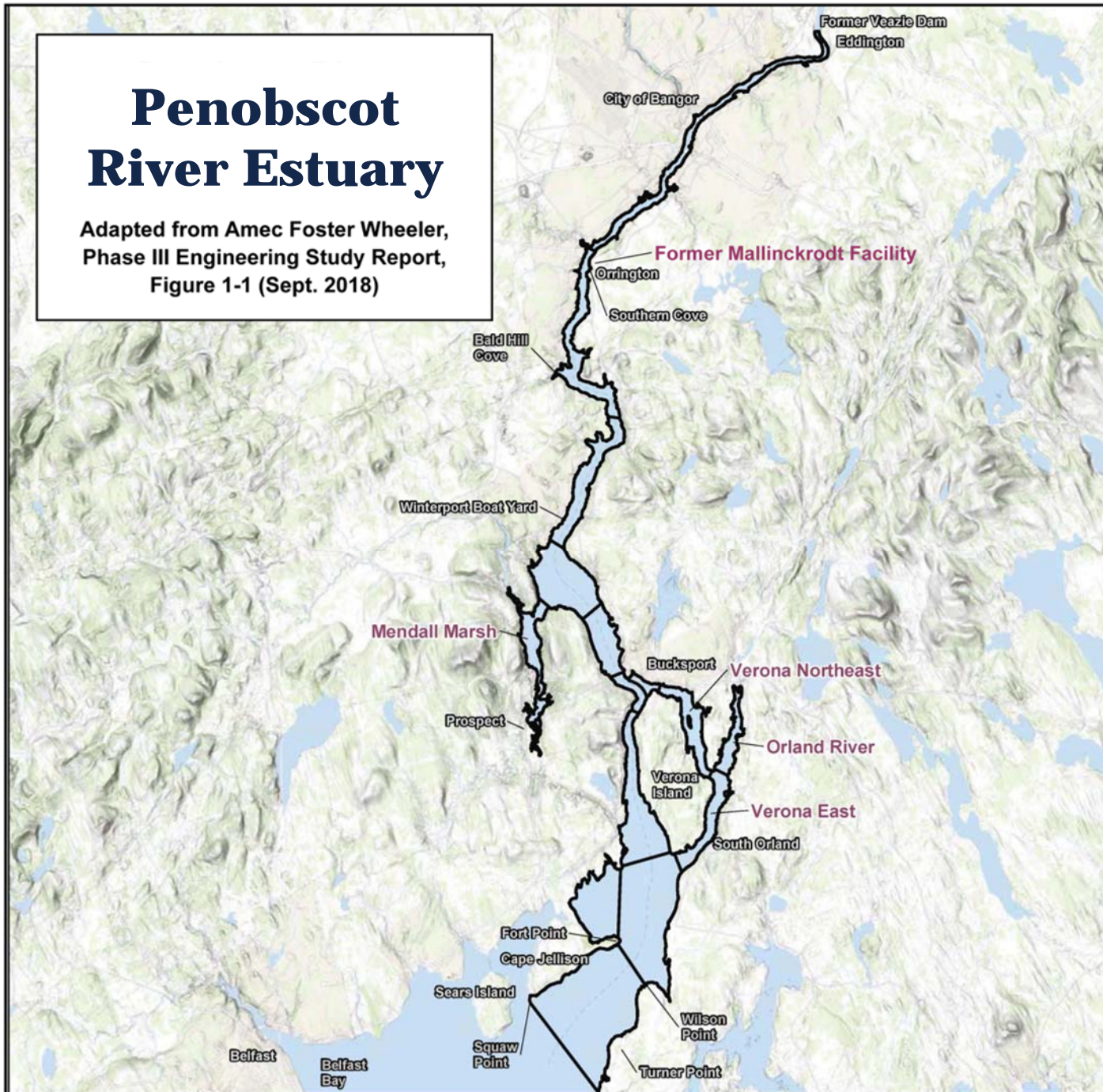


# Site and Case Background



# Penobscot River Estuary

Adapted from Amec Foster Wheeler,  
Phase III Engineering Study Report,  
Figure 1-1 (Sept. 2018)



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# Case History: Early Years

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1967

The former Mallinckrodt/HoltraChem facility in Orrington began producing chlorine and other products for the pulp and paper industry and discharged mercury into the Penobscot River.

2000

Maine People's Alliance and NRDC sued Mallinckrodt in federal court seeking a study and cleanup of mercury in the River.

2002

Liability Trial: The Court found that mercury in the River may endanger health and the environment and that Mallinckrodt was a source of the mercury. As an initial remedy, the Court ordered an independent scientific study of the mercury contamination.






2013

The Court-appointed scientists completed a two-phase study of the Penobscot River and recommended active remediation.

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# Scientific Study Results (2013)

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-  Penobscot estuary sediments have elevated mercury concentrations, both at the surface and especially in deeper layers.
-  Mercury concentrations in some birds and fish are elevated, and birds in Penobscot marshes may be at particular risk.
-  There may be concerns for human consumers of ducks, eels, and lobsters from the estuary.
-  The rate of natural recovery is slow due to trapping and redistribution of mercury-contaminated sediments.
-  At current rates, recovery will take many decades; an active remediation program may hasten recovery.



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# Remedy Trial and Engineering Study

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2014

Remedy Trial: The parties disputed some aspects of the scientific study and the Court held a trial to evaluate the study results.

2015

The Court found that the mercury still may endanger health and the environment and ordered an independent engineering study to evaluate potential remediation strategies.

2018

The Court-appointed engineering firm, Amec Foster Wheeler, completed the Phase III Engineering Study and proposed a suite of active remediation activities in the Penobscot River.

2019

The parties began to prepare for a third trial regarding disputed aspects of the engineering study. The parties agreed to postpone the trial to allow time to negotiate a settlement.

2021

The parties filed a proposed Consent Decree for the Court's approval. The structure of the proposed settlement is generally modeled on Amec Foster Wheeler's recommendations.



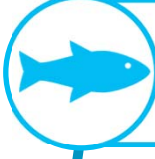




# Overview of Proposed Consent Decree

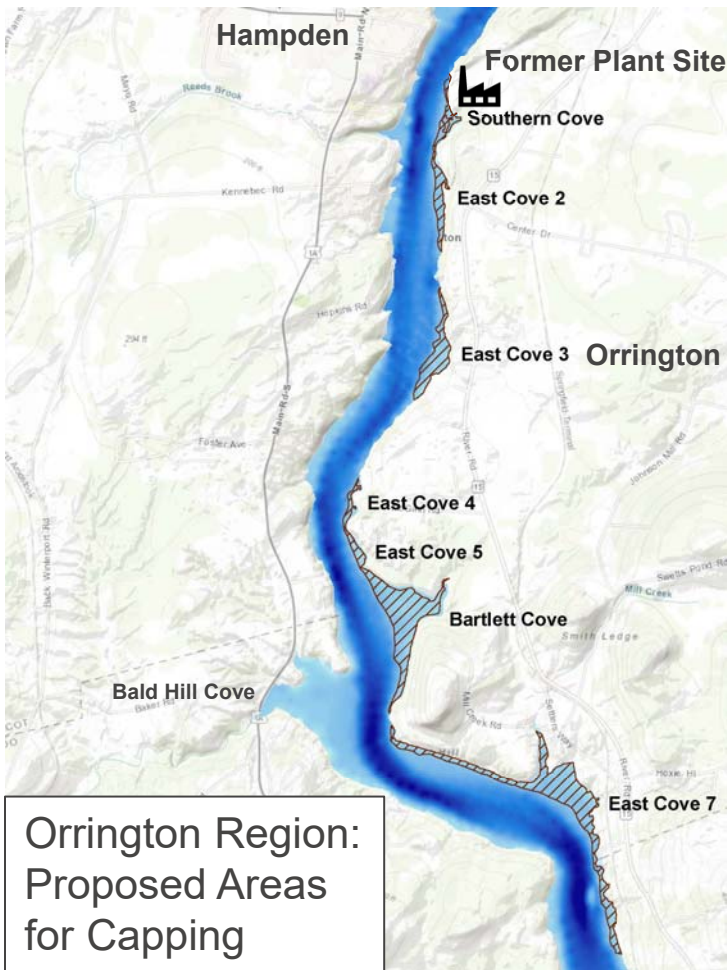


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# Settlement Structure

-  Remediation and restoration work is focused on targeted areas in the Penobscot River to achieve the greatest predicted benefits.
-  Over time, the work is anticipated to reduce mercury concentrations across the Penobscot River Estuary.
-  The River is a complex ecosystem and exact benefits may be difficult to predict and measure with certainty.
-  All remediation work will follow applicable local, state, and federal permitting and review procedures.
-  The settlement will take effect only if the Court approves it.

# Orrington Region Capping



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

At least \$50 million for capping approximately 130 acres of intertidal sediments along the east bank of the Penobscot River in the vicinity of Orrington.

# Targeted Removal of Sediment

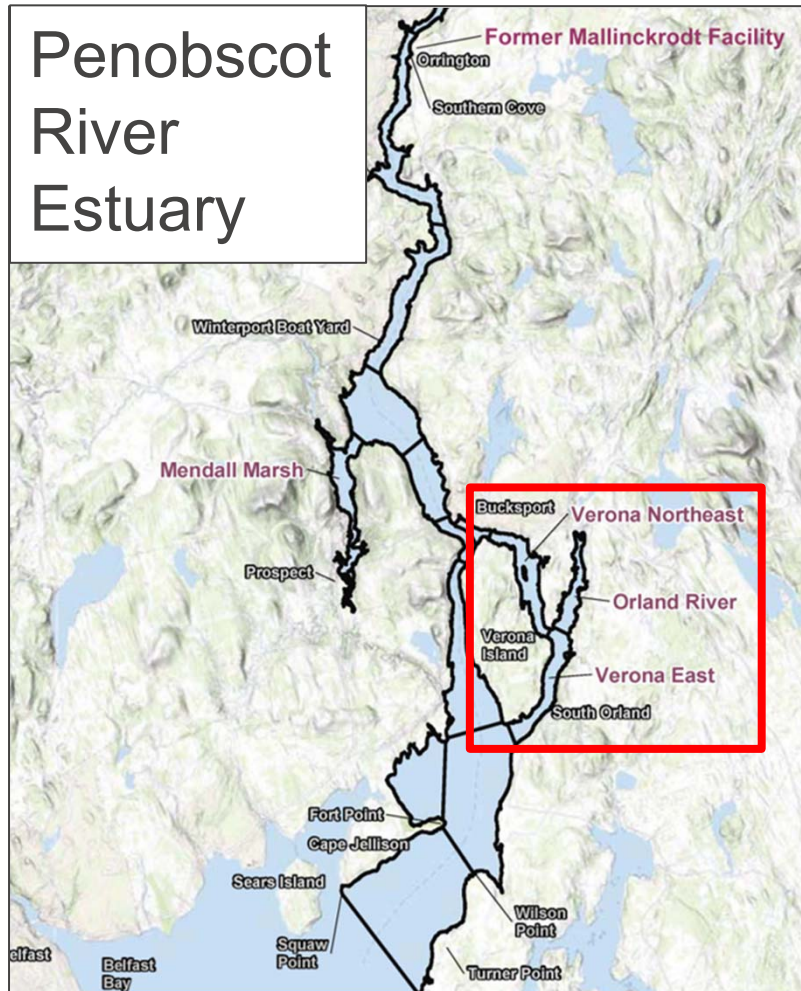


**Removal: Excavation or dredging of contaminated materials to remove contamination.**

At least \$70 million for targeted removal of contaminated sediments and wood waste that have been trapped in the estuary by tides and currents, with upland disposal.

The specific locations and amount of removal will be determined by the trustee.

# Orland River and East Channel



\$30 million for remediation in the region that includes the Orland River and the channel east of Verona Island.

The specific remedial actions in this region will be determined by the trustee.

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# Beneficial Environmental Projects

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**Funding for projects that will benefit the people and natural environment of Maine.**

\$20 million for restoration projects that will benefit the environment and affected communities.

The specific projects will be determined later. Interested persons, groups, or towns may suggest projects.

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# Long Term Monitoring

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**Monitoring of mercury concentrations in sediment, water, and wildlife.**

At least \$10 million for 30 to 45 years of monitoring.

The length of the monitoring program will depend in part on the results of the monitoring.



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# Project Management

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Greenfield Environmental Trust Group will serve as trustee, administer the funds, and direct the remediation work.

Greenfield has 30 years of experience managing complex environmental cleanups around the country.

The proposed Consent Decree provides at least \$7 million for the trustee's project administration costs.

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# Additional Funding for Contingencies

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**Orrington Capping**

Up to \$10 million if the cost of capping is higher than anticipated

**Targeted Removal of Sediment**

Up to \$50 million if sediments cannot be beneficially reused and require landfill disposal

**Long-Term Monitoring**

Up to \$10 million if needed for monitoring

**Project Administration**

Up to \$10 million if needed for the trustee's project administration costs

# Total Funding

	Category	Funding (millions)
<b>Committed Funding</b>	Orrington Capping	\$50
	Removal	\$70
	Orland River/East Channel	\$30
	Beneficial Environmental Projects	\$20
	Long-Term Monitoring	\$10
	Project Administration	\$7
	<b><i>SUBTOTAL</i></b>	<b><i>\$187</i></b>
<b>Funding for Specific Contingencies</b>	Orrington Capping	\$10
	Removal	\$50
	Long-Term Monitoring	\$10
	Project Administration	\$10
	<b><i>SUBTOTAL</i></b>	<b><i>\$80</i></b>

Mallinckrodt will commit \$187 million and will contribute up to an additional \$80 million if specific contingencies occur.

Mallinckrodt's total potential liability is capped at \$267 million.



# Next Steps

*Hearing and Public Participation*



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# Public Participation

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The parties are providing notice of the proposed Consent Decree to interested individuals and organizations and the general public.



A website with additional information about the proposed Consent Decree is at [www.PenobscotRiverRemediation.com](http://www.PenobscotRiverRemediation.com).



The Court will hold a fairness hearing in Bangor on Oct. 1-5, 2021. The public may provide oral comments on Oct. 5, 2021.



Members of the public may submit written comments by Sept. 21, 2021, at [www.PenobscotRiverRemediation.com/contact](http://www.PenobscotRiverRemediation.com/contact).



To provide oral comments at the Court hearing, submit a notification and one-paragraph summary of the comments by Sept. 21, 2021, at [www.PenobscotRiverRemediation.com/contact](http://www.PenobscotRiverRemediation.com/contact).

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# Questions

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