

## Recomp of Washington Consent Decree Responsiveness Summary

### INTRODUCTION

This document addresses questions and comments received by the Washington State Department of Ecology (Ecology) during the public comment period for the Recompt Consent Decree. The comment period extended from January 29, 1996 through March 30, 1996. Ecology has considered all comments received during this period.

Ecology provided opportunities for the public to make both oral and written comments. Four letters were received that contained comments or questions concerning the Recompt Consent Decree. Oral comments were received at the public meeting which was held in Bellingham on January 29, 1996. All comments are addressed in this document. Since some commenters expressed common concerns, similar comments have been combined for response.

After reviewing all comments received, Ecology made some changes Consent Decree with Recompt's concurrence. These changes are discussed in the responses to comments below. Ecology will consider this Decree to be final after it has been both signed by authorized representatives of Ecology and Recompt of Washington, Inc., and entered by the Whatcom County Superior Court.

More information regarding this Decree is available for review at Ecology's Northwest Regional Office in Bellevue. Please contact Sally Perkins at (206) 649-7239 for an appointment if you are interested in reviewing Ecology's files.

Written comments were received from:

- " Vincent P. Kelley
- " Washington Citizens for Resource Conservation
- " Lewis Leake
- " ReSources for Sustainable Communities

### IF YOU HAVE QUESTIONS

If you have questions about the Responsiveness Summary or about public involvement opportunities, contact John Keeling at (206) 649-7052.

Individual questions and comments are listed in bold, followed by Ecology's response.

## COMMENT

**The Consent Decree allows an excessive length of time for Recomp to remove and dispose of its ash pile.**

## RESPONSE

Ecology is aware that the Consent Decree sets out a completion date for the removal of Recomp's ash pile that is different from the date in the company's contractual agreement with the City of Bellingham. The Consent Decree provides a completion date for the removal of the ash by the year 2002. This date reflects a timeframe established in Recomp's Financial Assurance documents, which were developed according to Ecology regulations applicable to ash monofill facilities. Ecology is striving to be consistent in its dealings with Recomp and, therefore, has not changed the completion date.

## COMMENT

**Without a written schedule, Recomp may delay the removal of the ash pile until the year 2002.**

## RESPONSE

Ecology expects Recomp to remove the ash from the site at a relatively constant rate between 1996 and 2002, and agrees that the Consent Decree would benefit from language to this effect. Such language would allow Ecology to seek judicial enforcement of the Consent Decree if Recomp stopped removing ash for any considerable length of time, or if Recomp significantly decreased its rate of removal. Ecology does not believe, however, that a detailed schedule for the ash removal would provide any greater environmental protection than would the requirement to continuously remove ash. To address this comment, Ecology and Recomp have agreed to amend Paragraph 36.b. so that it reads as follows:

Remove the Prior Production from the Disposal Facility at a rate such that by May 1, 2002 all the Prior Production shall be removed from the Disposal Facility. Recomp shall remove the Prior Production at a relatively constant yearly rate, but in no event shall it remove less than ten (10) percent per year of the original total volume of the Prior Production. The minimum removal percentage shall be prorated for any part of a calendar year during which this Decree is in effect. The parties recognize, for example, that this Decree shall be in effect for only part of the 1996 calendar year. This requirement shall apply upon the effective date of this Consent Decree. It is not intended to prevent Recomp from removing ash from the Disposal Facility at a faster rate.

## COMMENT

**Specific language should be added to the Consent Decree requiring Recomp to cover the ash pile.**

## RESPONSE

Ecology's focus in negotiating this Consent Decree has always been on removing the ash pile from Recomp's facility, and seeing to it that the ash was disposed of at an environmentally-protective site. This is why the work to be performed section of the Decree requires Recomp to remove the ash to an approved facility in accordance with an established schedule, with date-certain annual milestones for removing specific volumes of the ash. Management of the ash pending removal has never been an issue in these negotiations. Ecology believes that expanding the scope of the Decree at this time to include ash management will frustrate Ecology's primary purpose, which is to have Recomp begin removing the ash as soon as possible. Although the Consent Decree will not address this issue, Recomp may be required to cover the pile through a separate process.

## COMMENT

**The Consent Decree should state that test data, monitoring data, and closure reports will not be considered confidential business information.**

## RESPONSE

The Consent Decree provision regarding confidential business information was intended simply to recognize Recomp's right under state law to request confidentiality for certain eligible documents. The parties included a sentence in this provision stating that Recomp expressly consented to the disclosure of groundwater monitoring results and designated samples, in order to allay any concerns that the confidential business information provision might be used to shield environmental data submitted under the terms of the Decree. Ecology agrees with the commenter that this sentence, as drafted, is too narrow. To clarify that confidentiality will not be sought for such information, Ecology and Recomp have agreed to amend Paragraph 47 so that it reads as follows:

Recomp may request that all or part of the information submitted pursuant to this Decree be kept confidential as provided in RCW 43.21A.160. Recomp expressly consents to the disclosure of all environmental monitoring data and closure reports submitted to Ecology under the terms of this Decree. Ecology will consider Recomp's request as set forth in RCW 43.21A.160. If Ecology grants Recomp's request, the information covered by such a claim will be disclosed by Ecology only to the extent permitted by and pursuant to the procedures specified in Ch. 42.17 RCW.

## **COMMENT**

**The wording in section XVIII-57 should be changed from "may require Recomp to pay the stipulated penalties" to "shall require..."**

## **RESPONSE**

Ecology prefers to retain discretion with regard to the assessment of penalties. The word "shall" would bind Ecology to penalize Recomp for infractions of the Consent Decree that may be minor or trivial. Furthermore, if a stipulated penalty were automatically assessed under the Consent Decree, it would preclude Ecology from issuing higher, nonstipulated penalties for the same violation, as Ecology has reserved the right to do in Paragraphs 50 and 60 of the Decree. Ecology believes that the decision whether to assess penalties, and if so, whether to assess stipulated penalties, or nonstipulated penalties in a higher amount, should be made after the department has had an opportunity to evaluate the violation, and the circumstances under which it occurred.

## **COMMENT**

**The financial assurance fund for the removal of the ash pile is not adequately funded and should be addressed in the Consent Decree.**

## **RESPONSE**

Recomp's financial assurance documents are reviewed and, if necessary, revised annually. The adequacy of the financial assurance fund is based on the projected costs of clean closure of the facility or portions of the facility. If the fund is found to be inadequate, Ecology must require that the fund be adjusted to reflect realistic closure costs. Ecology will conduct the review of these documents in accordance with the regular schedule for doing so, and any necessary revisions will be made at that time.

## **COMMENT**

**The penalty amount set out in section XVIII is too low and should be increased to at least \$1,000 per day.**

## **RESPONSE**

As explained above in response to another comment, Ecology believes it must retain flexibility to determine whether to assess a penalty and, if so, in what amount. The benefit of including agreed-upon penalties in the Consent Decree is that it eliminates a potential point of disagreement if Ecology were to assess a penalty. Because Recomp has agreed that the amounts set forth in the Decree are appropriate in all cases, there would be no dispute about

the penalty's reasonableness in the event of an appeal of a stipulated penalty. However, the amounts stipulated in the Decree may not be adequate for every violation that may occur. For this reason, Ecology has reserved the right to impose higher, nonstipulated penalties instead of the stipulated amounts set forth in the Decree.

#### **COMMENT**

**A consent decree with Recomp will violate Ecology's stated purpose to protect the environment and human health. An order should be issued instead.**

#### **RESPONSE**

By entering into a consent decree, Ecology hopes to ensure the safe removal and permanent disposal of Recomp's ash from its temporary disposal facility. Ash currently held at Recomp's Ferndale facility would be transported to a regional monofill specifically designed to contain incinerator ash. Ecology views the actions required in the Consent Decree as a means of protecting the environment and human health. Furthermore, Ecology believes that a Consent Decree offers a distinct advantage over an order: it can be enforced more quickly, since the Consent Decree will already have been entered with and approved by the court.

#### **COMMENT**

**Why isn't the U.S. Environmental Protection Agency (EPA) involved in the Consent Decree?**

#### **RESPONSE**

Ecology is authorized by the EPA to regulate the management of solid and hazardous waste in the State of Washington. In addition, Ecology and Recomp have consulted with officials from the EPA concerning the Consent Decree. The EPA has stated that it agrees with Ecology that it is in the best interest of the State, the public, and the environment to have the ash removed from Recomp's facility and sent to a monofill specifically designed, constructed, and operated for the purpose of incinerator ash disposal. EPA has not expressed a desire to be a party to the Consent Decree.

#### **COMMENT**

**The "Finding of Facts" section should reflect that Recomp burns both solid and medical waste and should identify where the medical wastes come from.**

## RESPONSE

Ecology and Recomp have agreed to amend the first sentence of Paragraph 13 so that it reads as follows:

Recomp's incinerator treats municipal and other non-dangerous solid waste, including medical waste, and recovers energy for sale to Puget Power.

Ecology does not believe that the source of the medical waste is relevant to any issues addressed in the Consent Decree.

## COMMENT

**The "ash permit" referred to in Paragraph 13 should be identified as the "temporary ash storage permit."**

## RESPONSE

Ecology has changed this reference so that it accurately reflects the title of the permit. The fourth sentence of Paragraph 13 has been amended to read as follows:

The Disposal Facility is operated in accordance with a Special Incinerator Ash Disposal Permit granted under Ch. 70.138 RCW and Ch. 173-306 WAC.

## COMMENT

**Screening processes to remove batteries, ferrous metals and household hazardous waste were not observed during a plant tour. This issue should be addressed in the Consent Decree. The statement in Paragraph 13 that Recomp does "substantial" recycling should be deleted.**

## RESPONSE

The Consent Decree imposes requirements only on ash that was generated prior to May 1994, not on any currently-generated ash. Therefore, the Decree is not the appropriate document to address screening of current waste streams. Recomp's Ash Management Plan addresses the removal of wastes that may increase the ash toxicity. In general, most recyclable or toxic materials are removed from the waste stream before they reach Recomp's facility. Several source separation programs, such as the household hazardous waste collections and battery collection program, have been established for citizens to drop-off their waste at designated collection centers. Recycling of many materials is accomplished through the curbside collection programs. In addition, Recomp is equipped with material recovery equipment that can magnetically remove ferrous metals should they reach the facility.

## **COMMENT**

**What has Recomp done to ensure that radioactive waste is not part of the medical waste being incinerated? Does Recomp receive waste from Canada and if so, how does the facility ensure that the generators comply with Washington law?**

## **RESPONSE**

The Whatcom County Health Department has jurisdiction over the operating permits for the Recomp solid waste facility. The type of waste received at the facility is governed by its solid waste permit. Recomp does receive medical waste from Canada. Ecology recognizes the concerns with incinerating medical waste that may be contaminated with radioactive materials and has forwarded this question to the Whatcom County Health Department. It should be noted that as the owner of the facility, Recomp is responsible for complying with applicable Washington law in accepting any waste at its facility.

## **COMMENT**

**As part of Recomp's NPDES permit the company must submit an engineering report to Ecology by March 1, 1996. Will Ecology consider the findings of the report before finalizing the Consent Decree and is it possible that the comment period could be extended for further public comment?**

## **RESPONSE**

Ecology's Water Quality Program has reviewed the engineering report submitted as part of Recomp's NPDES permitting process. The design of the report was specific to the requirements of the permit application and generally does not govern the issue of ash removal and disposal. It should be noted that the Consent Decree affects Recomp's obligations only under the Special Incinerator Ash Act; Recomp may be required to take additional actions under the terms of other laws, including Washington's clean water act, chapter 90.48 RCW. Paragraph 49 of the Consent Decree expressly reserves Ecology's right to take further action as necessary to respond to conditions at Recomp's facilities. Since the NPDES permit and Consent Decree are separate and distinct issues, Ecology will not be extending the comment period.