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Lake Hills

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ENGINEERING SERVICES

FS 2235

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

v

KING COUNTY DEPARTMENT OF
METROPOLITAN SERVICES AND CITY OF
BELLEVUE, WASHINGTON

RECEIVED
95-2-24004-6SEA
JUL 31 1995

No. DEPT OF ECOLOGY
CONSENT DECREE FOR A
CLEANUP ACTION

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EXHIBITS

17	Exhibit A	Site Diagram and Legal Description
18	Exhibit B	Cleanup Action Plan (CAP)
19	Exhibit C	Schedule
20	Exhibit D	Interagency Agreement Between the State of Washington, Department of Ecology and the Municipality of Metropolitan dated January 28, 1993
21	Exhibit E	Sample Notice of Completion

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I. INTRODUCTION

A In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), the King County Department of Metropolitan Services (King County), and the City of Bellevue, Washington (Bellevue) (King County and Bellevue are collectively the Defendants) is to provide for remedial action at a facility where there has been a release of hazardous substances. This Decree requires Defendants to implement a final Cleanup Action Plan (CAP) at the former Lake Hills Sewerage Treatment Plant (LHSTP). Ecology has determined that implementation of the CAP is necessary to protect public health and the environment. A remedial investigation and feasibility study (RI/FS) was conducted for the LHSTP by King County, independent of any consent decree with Ecology.

B The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. Ecology and Defendants (the Parties), however, wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C In signing this Decree, Defendants agree to its entry, agree to be bound by its terms, and agree not to challenge Ecology's jurisdiction in any proceeding to enforce this Decree.

D By entering into this Decree, the Parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

E This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts.

F The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the Parties pursuant to Chapter 70 105D RCW, the Model Toxics Control Act (MTCA), and venue is proper in King County.

B. Authority is conferred upon the Washington State Attorney General by RCW 70 105D 040(4)(a) to agree to a settlement with any potentially liable person if, after public notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70 105D 030(2)(d) and the regulations adopted thereunder. RCW 70 105D 040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction, after public notice and hearing.

C. Ecology has determined that a release of hazardous substances has occurred at the Site, as defined in Section IV (Definitions), which is the subject of this Decree.

D. Solely for the purpose of entering into this Consent Decree, Defendants have voluntarily waived their right to notice and comment under RCW 70 105D 020(8) and accepted Ecology's determination that Defendants are potentially liable persons (PLPs) at the Site within the meaning of RCW 70 105D 020(8). Acceptance by Defendants of status as potentially liable persons with respect to this Site is not to be construed as an admission of liability or waiver of any defense that Defendants may have to any claims other than those resolved by this Consent Decree.

E. The actions to be taken pursuant to this Decree are necessary to protect public health, welfare, and the environment.

F. Defendants have agreed to undertake the actions specified in this Decree and consent to the entry of this Decree under MTCA.

III. PARTIES BOUND

A. This Decree shall apply to and be binding upon signatories to this Decree (Parties), their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such Party to comply

1 with the Decree Defendants agree to undertake all actions required of each Defendant under the
2 terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No
3 change in ownership of the Site or in the municipal status of Defendants shall alter Defendants' or
4 their successors' responsibility under this Decree

5 B. Defendants shall make a copy of this Decree available to all contractors and
6 subcontractors retained to perform work required by this Decree and shall condition any contract for
7 such work on compliance with this Decree.

8 IV. DEFINITIONS

9 Except for as specified herein, all definitions in RCW 70 105D 020 and WAC 173-340-200
10 shall control the meaning of the terms in this Decree

11 A. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to
12 the Decree. All exhibits are integral and enforceable parts of this Consent Decree, except that the
13 Parties do not intend in any way to extend or alter the Period of Performance or Termination
14 provisions of the Interagency Agreement attached hereto as Exhibit D

15 B. Days: Refers to calendar days, unless specified otherwise

16 C. Defendants: Refers to the King County Department of Metropolitan Services (King
17 County) and the City of Bellevue, Washington (Bellevue)

18 D. Interagency Agreement: Refers to the Interagency Agreement Between the State of
19 Washington, Department of Ecology and the Municipality of Metropolitan Seattle (Metro) (now the
20 King County Department of Metropolitan Services) entered into on January 28, 1993 and attached to
21 this Decree as Exhibit D

22 E. Notice of Completion: Refers to written notice by the Washington State Department
23 of Ecology to Defendants that the work designated as the cleanup action under this Consent Decree is
24 considered completed, the illustrative form of which is attached as Exhibit E

1 F Parties: Refers to the Washington State Department of Ecology and Defendants.

2 G Site: Refers to those portions of a 19.3-acre parcel located within the City of
3 Redmond, Washington, south of Marymoor Park between West Lake Sammamish Parkway and the
4 Sammamish River where hazardous substances have come to be located. The former Lake Hills
5 Sewerage Treatment Plant (LHSTP) was located on this parcel. The Site is more particularly
6 described, without prejudice, in Exhibit A to this Decree, which includes a detailed map, site diagram
7 and legal description of the 19.3-acre parcel (the LHSTP property).

8 V. STATEMENT OF FACTS

9 A Ecology makes the following finding of facts without any express or implied
10 admissions by Defendants and without prejudice to Defendants' right to deny or otherwise challenge
11 these findings of fact.

12 1. The site is comprised of four general areas from west to east: the treatment
13 area, two lagoons, two graded areas, and the undeveloped area bordered on the east by the
14 Sammamish River, see Exhibit A. The LHSTP was constructed on the western quarter of the Site in
15 1956-58. Primary treatment operation began in 1958 by the Lake Hills Sewer District (District). In
16 1964, Metro assumed operation of the LHSTP under agreement with the District. Metro upgraded
17 the treatment system to secondary treatment. The upgrade included construction of two lagoons and
18 two graded areas, both located east of the treatment area, and a spray evaporation field east of the
19 Sammamish River. The lagoons were used for evaporation and containment of the sludge and were
20 in operation from 1965 to 1967. The lagoons were deepened in 1967 and the removed material
21 (sludge and sediment) was placed in the graded areas. Use of the lagoons ceased in 1967.

22 2. In 1970, the District and City of Bellevue entered into an agreement whereby
23 Bellevue agreed to maintain and operate all sewage collection and transmission facilities owned or
24 managed by the District, including LHSTP, subject to the terms of the 1964 agreement with Metro.
25 In 1973, the District executed a quit claim deed transferring the LHSTP property to Bellevue. Metro
26

1 discontinued operation of the LHSTP in late 1973 at which time the plant was closed and Bellevue
2 took full possession of the site

3 3 Title to the LHSTP property was acquired by a nonprofit corporation in 1979
4 and transferred to a private party in 1986. In 1994, the property was purchased by King County
5 Office of Open Space for passive recreational use, subject to an existing agreement that Metro and
6 Bellevue cleanup the Site

7 4 The LHSTP used a lagoon treatment system to settle out suspended solids and
8 contaminants from the wastewater. These solids and contaminants settled to the bottom of the
9 lagoons and are called sludge. When the lagoons were deepened (spring-summer 1967) the removed
10 sludge was deposited in the two graded areas. Although use of the lagoons ceased in 1967, the
11 LHSTP continued operation, and newly generated sludge was stored in the thickener tank and
12 transported off-site. Wastewater from the secondary treatment clarifiers and filtering was pumped
13 across the Sammamish River and discharged onto the spray fields. The spray fields are a separate
14 property and not the subject of this Consent Decree.

15 5 The LHSTP structures, lagoons and residual sludge are present on site. Sludge
16 and contaminants are present in several locations: the two lagoons, the south graded area, sediments
17 in some of the clarifier and holding tanks, and isolated spillage or leakage locations in and around the
18 treatment area. The sludge contains polychlorinated biphenyls (PCBs). Maximum concentrations of
19 PCBs detected per location are 250 mg/kg at the north lagoon, 79 mg/kg at the south lagoon, 2.4
20 mg/kg at the south graded area, and 0.21 mg/kg at the treatment area. The MTCA method B cleanup
21 level for PCB is 0.13 mg/kg.

22 6 The second contaminant of concern, mercury, was detected at the four gravel
23 filters in concentrations ranging from 3.4 to 370 mg/kg (ppm). The MTCA method A cleanup level is
24 1.0 mg/kg. Mercury was used as a lubricant in the rotational device at the base of the filters, and it is
25 believed to be contained in the rotational device base. The base is underlain by concrete and
26

1 surrounded by asphalt restricting the migration of any mercury The estimated extent of mercury
2 contamination is limited to the four filter bases

3 7. Metals (arsenic, beryllium, cadmium, chromium and lead) excluding mercury
4 were detected in the sludge, site soils and sediment at and above their respective MTCA cleanup
5 level However, the occurrence of these metals excluding mercury is consistent with regional
6 background conditions in King County and Western Washington No cleanup requirements specific
7 to metals will be ordered at this Site excluding mercury Note, cleanup of PCBs will also address
8 cleanup of metals at LHSTP as the occurrence and distribution of PCBs and metals are similar
9 throughout the site

10 8 No known surface water or ground water contamination has been detected on
11 the Site, including surface lagoon water and river water.

12 B. Based on these facts, Ecology has determined that a release of hazardous substances at
13 the Site requires remedial action to protect public health and the environment This Decree sets forth
14 remedial measures necessary to protect public health and the environment and to clean up the Site in
15 compliance with the cleanup standards under RCW 70.105D

16 VI. WORK TO BE PERFORMED

17 A. This Decree contains a program designed to protect public health, welfare and the
18 environment from the known or threatened release of hazardous substances at, on, or from the Site
19 Defendants shall perform the remedial actions specified in detail in the Cleanup Action Plan
20 (Exhibit B) which includes the Schedule (Exhibit C) Exhibits B and C are integral and enforceable
21 parts of this Decree Defendants hereby commit to implement the CAP pursuant to Exhibits B and C
22 The work to be performed pursuant to such Exhibits is consistent with all requirements of MTCA

23 B. The work will generally consist of the following:

24 1 Demolish the concrete and wooden structures of the former sewage treatment
25 plant facilities from above ground to a depth of 3 feet below ground surface, reuse and recycle
26

1 materials where feasible, and dispose of off-site demolition debris. Grout or cap below ground piping
2 left in place at or below three feet depth. Fill below ground structures and level ground surface.

3 2 Remediate mercury contaminated material at filter base, recycle elemental
4 mercury, and dispose contaminated materials off-site at hazardous waste landfill.

5 3 Conduct baseline survey at selected lagoon and wetland sites

6 4 Dewater the two lagoons, excavate PCB contaminated sediment and soils for
7 off-site disposal with material greater than 50 mg/kg (ppm) going to a TSCA permitted landfill and
8 material greater than 0.13 and less than 50 mg/kg going to a solid waste landfill.

9 5 Reconfigure the lagoons, place a below water cap for aquatic restoration,
10 decrease shoreline slope for public safety, maintain open-water character, minimize disturbance to
11 shoreline and surrounding wetlands, refill lagoons, and conduct wetland restoration.

12 6 Excavate PCB contaminated soils at South Graded Area for off-site disposal
13 with material greater than 0.13 and less than 50 mg/kg going to a solid waste landfill, and reconfigure
14 area for wetland restoration.

15 7 Grout in place outfall pipe adjacent to Sammamish River

16 8 Conduct wetland restoration

17 9 Conduct compliance monitoring and wetland and habitat restoration
18 monitoring for 3 to 5 years. If restoration is unsuccessful, monitoring may be extended for an
19 additional five years.

20 C Ecology and Defendants, through their project coordinators may agree to minor
21 modifications to the work to be performed without a formal amendment of this Consent Decree, upon
22 Ecology's written agreement that the modification is minor. Any disagreement as to what constitutes
23 a minor modification shall be addressed through the dispute resolution procedures described in
24 Section XV (Resolution of Disputes) of this Decree.

1 D Except for emergency situations, each of the Defendants agree not to perform any
2 remedial actions outside the scope of this Decree at the Site, unless the parties agree that the remedial
3 action is unrelated to and will not interfere with the remedial action required under this Decree

4 E All work conducted under this Decree shall be done in accordance with Chapter 173-
5 340 WAC unless otherwise provided herein.

6 VII. GRANT FUNDING

7 Pursuant to RCW 70 105D 070(3)(a) and Ch. 173-322 WAC, Ecology has made the
8 following determinations:

9 1 Defendants are local governments required, pursuant to this Consent Decree,
10 to undertake remedial action at the Site;

11 2 Defendants are prepared to proceed promptly to accomplish the remediation
12 set forth in Exhibit B according to the schedule set forth in Exhibit C, and expenses in implementing
13 the remediation are eligible for a local government grant; and

14 3 Implementing this Consent Decree will lead to a more expeditious cleanup of
15 hazardous substances at the Site in compliance with the cleanup standards of RCW
16 70 105D 030(2)(d)

17 VIII. DESIGNATED PROJECT COORDINATORS

18 The project coordinator for Ecology is:

19 Maura S O'Brien
20 Department of Ecology
21 Northwest Regional Office
22 3190 160th Avenue S E
23 Bellevue, WA 98008-5452
24 Phone: (206) 649-7249

25 The project coordinator for Metro is:

26 Mike Kuenzi
King County Department of Metropolitan Services
821 Second Avenue, M/S 117
Seattle, WA 98104
Phone: (206) 684-2147

1 The project coordinator for Bellevue is:

2 Larry Southwick
3 Bellevue Utilities Department
301 - 116th Ave. S E , Suite 300
4 P O Box 90012
Bellevue, WA 98009-9012
Phone: (206) 455-6922

5 Each project coordinator shall be responsible for overseeing the implementation of the Parties'
6 respective responsibilities under this Decree. The Ecology project coordinator will be Ecology's
7 designated representative at the Site. To the maximum extent possible, communications between
8 Ecology and Defendants and all documents, including reports, approvals, and other correspondence
9 concerning the activities performed pursuant to the terms and conditions of this Decree, shall be
10 directed through the project coordinators. The project coordinators may designate, in writing,
11 working level staff contacts for all or portions of the implementation of the remedial work required by
12 this Decree. Any Party may change its respective project coordinator. Written notification shall be
13 given to the other Parties at least ten (10) calendar days prior to the change.

14 **IX. PERFORMANCE**

15 All work performed by Defendants pursuant to this Decree shall be under the direction and
16 supervision, as necessary, of an appropriate professional with experience and expertise in hazardous
17 waste site investigation and cleanup. Defendants shall notify Ecology in writing as to the identity of
18 such professionals, and of any contractors and subcontractors to be used in carrying out the terms of
19 this Decree, prior to the initiation of their work under this Decree.

20 **X. ACCESS**

21 A. Ecology or any Ecology authorized representatives shall have the authority to enter
22 and freely move about the LHSTP property at all reasonable times for the purposes of, among other
23 things: inspecting records, operation logs, and contracts related to the work being performed
24 pursuant to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree;
25 conducting such tests or collecting samples as Ecology may deem necessary; using a camera, sound
26 recording, or other documentary type equipment to record work done pursuant to this Decree; and

1 verifying the data submitted to Ecology by Defendants. While Ecology reserves its right to enter and
2 inspect the site as set forth in the previous sentences. Ecology will in most cases provide Defendants
3 48 hours advance notice prior to entering the Site. Without limitation on Ecology's rights under this
4 section, Ecology will use best efforts to provide Defendants five (5) working days advance notice of
5 sampling activity.

6 B. Upon request, Ecology shall split any samples taken during an inspection unless
7 Defendants fail to make available a representative or sample containers for the purpose of splitting
8 samples.

9 C. Ecology, in exercising its rights under this section, shall comply with approved health
10 and safety plans. Ecology shall make the results of all sampling, laboratory reports, videos, and/or
11 test results generated by it or on its behalf, collected for purposes of this Consent Decree, available to
12 Defendants upon request unless an exemption from disclosure is available under Chapter 42.17 RCW.

13 **XI. SAMPLING, DATA REPORTING AND AVAILABILITY**

14 A. With respect to the implementation of this Decree, Defendants shall make the quality-
15 assured results of all sampling, laboratory reports, and/or test results generated by Defendants, or on
16 their behalf, available to Ecology and shall include these quality-assured results in progress reports
17 submitted in accordance with Section XII (Progress Reports) of this Decree. Defendants shall make
18 any raw data and quality assurance data pertaining to the Site available to Ecology upon request
19 within ten working days.

20 B. If requested by Ecology, Defendants shall allow split or duplicate samples to be taken
21 by Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to
22 the implementation of this Decree. Defendants will provide Ecology with notice at least five (5)
23 working days in advance of any sample collection activity and will give reasonable notice of
24 emergency sampling. Defendants shall comply with approved health and safety plans for the Site.
25
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XII. PROGRESS REPORTS

Defendants shall submit to Ecology written monthly progress reports that describe the actions taken during the previous month to implement the requirements of this Decree. The report shall include the following:

- A. A list of on-site activities that have taken place during the month;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule (Exhibit C) during the current month and any planned deviations in the upcoming month;
- D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- E. A list of deliverables for the upcoming month if different from the schedule; and

All progress reports shall be submitted by the tenth day of the month in which they are due. The first progress report shall be due within ten (10) days after the first full month following the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be mailed to Ecology's project coordinator

XIII. RETENTION OF RECORDS

In accordance with WAC 173-340-850, Defendants shall preserve, during the pendency of this Decree and for ten (10) years from the date of issuance of the Notice of Completion described in Section XXVI (Duration of Decree), all records, reports, documents, and underlying data in their possession relevant to the implementation of this Decree and Defendants shall insert in contracts with project contractors a similar record retention requirement. Upon request of Ecology, each Defendant shall make all nonarchived records in its possession available to Ecology and allow access for review. All archived records shall be made available to Ecology within a reasonable period of time.

1 **XIV. TRANSFER OF INTEREST IN PROPERTY**

2 Any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in
3 any portion of the LHSTP property shall not preclude or adversely impact the continued operation
4 and maintenance of any containment system, treatment system, or monitoring system installed or
5 implemented pursuant to this Decree, until Defendants receive a determination by Ecology that
6 continued operation and maintenance of such system is unnecessary to carry out the terms of the
7 Decree

8 Prior to transfer of any legal or equitable interest in all or any portion of the LHSTP property,
9 during the effective period of this Decree, Defendant King County shall serve a copy of this Decree
10 upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the
11 property; and, at least thirty (30) days prior to any transfer, Defendant King County shall notify
12 Ecology of said contemplated transfer

13 **XV. RESOLUTION OF DISPUTES**

14 A In the event a dispute arises as to an approval, disapproval, proposed modification or
15 other decision or action by Ecology's project coordinator, the parties shall use the dispute resolution
16 procedure set forth below

17 1 Upon receipt of the Ecology project coordinator's decision the Defendant
18 seeking dispute resolution has fourteen (14) days within which to notify Ecology's project coordinator
19 of its objection to the decision

20 2 The Parties' project coordinators and the Site Management Unit Supervisor or
21 Ecology section supervisor and Defendant and Defendants' agents shall then confer in a good faith
22 effort to resolve the dispute. If the Parties cannot resolve the dispute within fourteen (14) days,
23 Ecology's project coordinator shall issue a written decision signed by the Site Management Unit
24 Supervisor or Ecology section supervisor

1 3 The Defendant seeking dispute resolution may then request Ecology to review
2 the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
3 within seven (7) days of receipt of Ecology's Site Management Unit Supervisor or Section Supervisor
4 decision.

5 4 Upon request, Ecology's Program Manager shall conduct a review of the
6 dispute and shall issue a written decision regarding the dispute within thirty (30) days of the
7 Defendant's request for review. The Program Manager's decision shall be Ecology's final decision on
8 the disputed matter.

9 5 If Ecology's final written decision is unacceptable to a Defendant or if Ecology
10 fails to issue a final decision within thirty (30) days of receipt of the request for review, each
11 Defendant has the right to submit the dispute to this Court for resolution. The parties agree that one
12 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
13 under this Decree.

14 B The Court shall review any action or decision of Ecology within the scope of RCW
15 70.105D.060 on the basis of whether such action or decision was arbitrary and capricious. All other
16 actions or decisions of Ecology shall be reviewed on a standard to be determined by the Court.

17 C The parties agree to only utilize the dispute resolution process in good faith and agree
18 to expedite, to the extent possible, the dispute resolution process whenever it is used.

19 D Each Party shall bear its own attorney's fees, expert witness fees and other legal costs
20 resulting from using the judicial review provisions of this dispute resolution procedure, unless the
21 Court finds any Party has acted in bad faith or for purposes of delay, in which case the Court may
22 award sanctions.

23 E Implementation of these dispute resolution procedures shall not provide a basis for
24 delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
25 extension or the Court so orders.
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1 An extension shall only be granted for such period of time as is reasonable under the
2 circumstances. A requested extension shall not be effective until approved by Ecology or the Court.
3 Ecology shall act upon any written request for extension in a timely fashion and, to the extent
4 possible, within seven (7) days of the request. It shall not be necessary to formally amend this Decree
5 pursuant to Section XVI (Amendment of Consent Decree) when a schedule extension is granted
6 pursuant to this Section.

7 B The burden shall be on the Defendant seeking the extension to demonstrate to the
8 satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and
9 that good cause exists for granting the extension. Good cause includes, but is not limited to, the
10 following:

11 1 Circumstances beyond the reasonable control and despite the due diligence of
12 the Defendant including delays caused by unrelated third parties or Ecology, such as (but not limited
13 to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendant;

14 2 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
15 other unavoidable casualty;

16 3 Delays resulting from changes in permit terms or conditions, or a delay in
17 issuing or refusal to grant a permit needed to implement the requirements of this Decree, provided the
18 Defendant filed a timely application for the permit;

19 4 Judicial review of the issuance, nonissuance, or reissuance of a permit
20 necessary for the continuation of work;

21 5 Other circumstances deemed in written notice by Ecology to be exceptional,
22 extraordinary, or otherwise necessary to protect the environment or public interest; or

23 6 Endangerment as described in Section XVIII (Endangerment)

24 However, neither increased costs of performance of the terms of the Decree nor changed
25 economic circumstances shall be considered circumstances beyond the reasonable control of
26 Defendants

1 C. Ecology may extend the schedule for a period not to exceed ninety (90) days, except
2 where a longer extension is needed as a result of:

3 1 Delays in the issuance of a necessary permit that was applied for in a timely
4 manner; or

5 2 Other circumstances deemed exceptional or extraordinary by Ecology; or

6 3 Endangerment as described in Section XVIII (Endangerment).

7 Ecology shall give Defendants written notice in a timely fashion of any extensions granted
8 pursuant to this Section.

9 **XVIII. ENDANGERMENT**

10 A In the event Ecology determines that activities implementing or in noncompliance with
11 this Decree, or any other circumstances or activities, are creating or have the potential to create a
12 danger to the health or welfare of the people on the Site or in the surrounding area or to the
13 environment, Ecology may order Defendants to stop further implementation of this Decree for such
14 period of time as needed to abate the danger or may petition the Court for an order, as appropriate.

15 B During any stoppage of work under this section, the obligations of Defendants with
16 respect to the work under this Decree that is ordered to be stopped shall be suspended and the time
17 periods for performance of that work, as well as the time period for any other work dependent upon
18 the work that is stopped, shall be extended, pursuant to Section XVII (Extension of Schedule) of this
19 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

20 C In the event any Defendant determines that activities that the Defendant has
21 undertaken in furtherance of this Decree or any other circumstances or activities are creating an
22 endangerment to the people on the Site or in the surrounding area or to the environment, Defendants
23 may stop implementation of such activities required under this Decree for such period of time
24 necessary for Ecology to evaluate the situation and determine whether Defendants should proceed
25 with implementation of the Decree or whether the work stoppage should be continued until the
26 danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible, but no

1 later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with
2 documentation of the basis for the work stoppage. If Ecology disagrees with Defendants'
3 determination, it may order Defendants to resume implementation of this Decree. If Ecology concurs
4 with the work stoppage, Defendants' obligations shall be suspended and the time period for
5 performance of that work, as well as the time period for any other work dependent upon the work
6 that was stopped, shall be extended, pursuant to Section XVII (Extension of Schedule) of this
7 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

8 D Any disagreements pursuant to the clause shall be resolved through the dispute
9 resolution procedures in Section XV (Resolution of Disputes)

10 **XIX. OTHER ACTIONS**

11 A Ecology reserves its right to institute remedial action(s) at the Site and subsequently
12 pursue cost recovery, and Ecology reserves its right to issue orders and/or penalties or take any other
13 enforcement action pursuant to available statutory authority under the following circumstances:

14 1 Where Defendants fail, after first notice, to comply with any of their respective
15 requirements under this Decree, and after written notice (second notice) of default, fails to come into
16 compliance;

17 2 In the event or upon the discovery of a release or threatened release of
18 hazardous substances not addressed by this Decree, which Defendants, after notice, fail to address;

19 3 Upon Ecology's determination that action beyond the terms of this Decree is
20 necessary to abate an emergency situation that threatens public health or the environment provided,
21 however, that Ecology will first give Defendants notice and opportunity to perform such remedial
22 action unless the threat is so immediate as to not permit the giving of notice; or

23 4 Upon the occurrence or discovery of a situation beyond the scope of this
24 Decree as to which Ecology has the authority to perform any remedial action or to issue an order
25 and/or penalty, or to take any enforcement action. This Decree is limited in scope to the geographic
26

1 Site described in Exhibit A and to those contaminants that Ecology knows to be at the Site when this
2 Decree is entered.

3 B With the exceptions set forth in paragraph A, in consideration of the Defendants'
4 performance of the terms and conditions of this Decree, Ecology agrees that, during the period of
5 performance of the terms and conditions of this Decree, compliance with this Decree shall stand in
6 lieu of any and all administrative, legal, and equitable remedies available to Ecology to respond to the
7 release or threatened release of hazardous substances addressed by this Consent Decree

8 C Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
9 resources resulting from the release or threatened release of hazardous substances from the Site.

10 D Ecology reserves the right to take any enforcement action whatsoever, including a cost
11 recovery action, against potentially liable persons not party to this Decree

12 **XX. INDEMNIFICATION**

13 A To the extent permitted by law, each Defendant agrees to indemnify and save and hold
14 the State of Washington, its employees, and agents harmless from any and all claims or causes of
15 action for death or injuries to persons or for loss or damage to property arising from or on account of
16 acts or omissions of each Defendant, respectively, its officers, employees, agents, or contractors in
17 entering into and implementing this Decree. However, Defendants shall not indemnify the State of
18 Washington nor save nor hold its employees and agents harmless from any claims or causes of action
19 arising out of the intentional or negligent acts or omissions of the State of Washington, or the
20 employees or agents of the State, in implementing the activities pursuant to this Decree

21 B To the extent permitted by law, Ecology agrees to indemnify and save and hold
22 Defendants, their agents and employees harmless from any and all claims or causes of action for death
23 or injuries to persons or for loss or damage to property arising from or on account of acts or
24 omissions of Ecology, its employees, agents, or contractors in entering into and implementing this
25 Decree. However, Ecology will not indemnify Defendants for the reckless or willful misconduct of
26 any Ecology contractors. In addition, Ecology shall not indemnify Defendants nor save nor hold their

1 employees and agents harmless from any claims or causes of action arising out of the intentional or
2 negligent acts or omissions of Defendants, or the employees and agents of Defendants in
3 implementing the activities pursuant to this Decree

4 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

5 All actions carried out by Defendants pursuant to this Decree shall be done in accordance with
6 all applicable federal, state, and local requirements, including requirements to obtain necessary
7 permits, except as provided in paragraph B of this section

8 B Pursuant to RCW 70 105D 090(1), the substantive requirements of chapters 70.94,
9 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local
10 government permits or approvals for the remedial action under this Decree that are known to be
11 applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action
12 Plan, and are binding and enforceable requirements of the Decree

13 Defendants have a continuing obligation to determine whether additional permits or approvals
14 addressed in RCW 70 105D 090(1) would otherwise be required for the remedial action under this
15 Decree. In the event either Defendants or Ecology determine that additional permits or approvals
16 addressed in RCW 70 105D 090(1) would otherwise be required for the remedial action under this
17 Decree, it shall promptly notify the other party of this determination. Ecology shall determine
18 whether Ecology or Defendants shall be responsible to contact the appropriate state and/or local
19 agencies. If Ecology so requires, Defendants shall promptly consult with the appropriate state and/or
20 local agencies and provide Ecology with written documentation from those agencies of the
21 substantive requirements those agencies believe are applicable to the remedial action. Ecology shall
22 make the final determination on the additional substantive requirements that must be met by
23 Defendants and on how Defendants must meet those requirements. Ecology shall inform Defendants
24 in writing of these requirements. Once established by Ecology, the additional requirements shall be
25 enforceable requirements of this Decree. Defendants shall not begin or continue the remedial action
26 potentially subject to the additional requirements until Ecology makes its final determination.

1 Ecology shall ensure that notice and opportunity for comment is provided to the public and
2 appropriate agencies prior to establishing the substantive requirements under this section.

3 C Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
4 exemption from complying with the procedural requirements of the laws referenced in RCW
5 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the
6 State to administer any federal law, the exemption shall not apply and Defendants shall comply with
7 both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1),
8 including any requirements to obtain permits.

9 **XXII. OVERSIGHT COSTS**

10 A Consistent with the Interagency Agreement attached hereto as Exhibit D, Defendants
11 shall reimburse Ecology for the costs Ecology incurs to provide "compensable services" to implement
12 this Decree

13 B "Compensable services" shall include, but not be limited to, work related to
14 preparation, negotiation, oversight and administration of this Consent Decree, including the review
15 and approval of the remedial investigation and feasibility study and cleanup action plan developed for
16 the Site, and discussion and processing of any remedial action grant application associated with work
17 to be done under the Decree

18 C Costs incurred in providing compensable services to implement this Decree shall
19 include costs of direct activities and agency indirect costs of direct activities. Costs of direct activities
20 shall include: (1) the full costs of the staff person hired to fulfill the obligations of the Interagency
21 Agreement and the cost of equipment necessitated by the hiring of such person, pursuant to the terms
22 of that Agreement; (2) the costs of salary and employee benefits of other Ecology staff who work to
23 implement the Decree; and (3) laboratory costs and contractual costs attributed to this Decree.
24 Indirect costs shall be calculated by multiplying direct salary and employee benefit charges by the
25 current agency-approved indirect rate, which will be expressed as a percentage.
26

1 D Ecology will submit an invoice to Defendant King County quarterly pursuant to the
2 terms of the Interagency Agreement.

3 E The Interagency Agreement shall govern expenses not typically billed to a specific site
4 (i.e., training, leave and holiday time, non-site meetings, and other non-site expenses incurred to
5 retain staff).

6 F Any disputes regarding oversight costs for the Site shall be subject to dispute
7 resolution pursuant to Section XV (Resolution of Disputes) of this Decree.

8 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that any Defendant has failed without good cause to implement any
10 material requirement of this Decree, Ecology may, after notice to the Defendants, order Defendants
11 to suspend implementation of this Consent Decree. The Parties shall then attempt in good faith to
12 resolve any dispute pursuant to Section XV (Resolution of Disputes). If the dispute remains
13 unresolved and is submitted to Court for resolution, Ecology may, after notice to Defendants,
14 perform any or all portions of the work required under this Decree that remain incomplete. If
15 Ecology's position is upheld by the Court and Ecology performs all or portions of the remedial action
16 because of one or more of the Defendants' failure to comply with Defendants' respective obligations
17 under this Decree, any such Defendant(s) refusing to comply shall reimburse Ecology for the costs of
18 doing such work in accordance with Section XXII, provided that such Defendant(s) is not obligated
19 under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the
20 scope of this Decree.

21 **XXIV. FIVE YEAR REVIEW**

22 If remedial actions, including groundwater monitoring, continue at the Site beyond the Notice
23 of Completion, the Parties agree to review the progress of remedial action at the Site, and to review
24 the data accumulated as a result of site monitoring as often is necessary and appropriate under the
25 circumstances. At least once every five years the Parties shall meet to discuss the status of the Site
26

1 and the need, if any, of further remedial action at the Site. This provision shall remain in effect for the
2 duration of the decree.

3 **XXV. PUBLIC PARTICIPATION**

4 Ecology shall maintain the responsibility for public participation at the Site but shall use its
5 best efforts to coordinate all public participation with Defendants. However, Defendants shall
6 cooperate with Ecology and, if agreed to by Ecology, Defendants shall do the following:

7 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
8 action, such as the submission of engineering design reports. Ecology will finalize (including editing
9 if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's
10 presentations and meetings;

11 B. Notify Ecology's project coordinator at least three (3) days prior to the issuance of all
12 press releases and fact sheets, and before major meetings with the interested public and local
13 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press releases
14 and fact sheets, and before major meetings with the interested public and local governments;

15 C. Participate in public presentations on the progress of the remedial action at the Site.
16 Participation may be through attendance at public meetings to assist in answering questions, or as a
17 presenter;

18 D. In cooperation with Ecology, arrange and/or continue information repositories to be
19 located at Ecology's Northwest Regional Office in Bellevue and public libraries in Redmond and
20 Bellevue. At a minimum, copies of all public notices, fact sheets, and press releases; all quality
21 assured groundwater, surface water, soil sediment, and air monitoring data; remedial actions plans,
22 supplemental remedial planning documents, and all other similar documents relating to performance
23 of the remedial action required by this Decree shall be promptly placed in these repositories.

24 **XXVI. DURATION OF DECREE**

25 This Decree shall remain in effect and the remedial action program described in the Decree
26 shall be maintained and continued until Defendants have received written Notice of Completion from

1 Ecology or the Court determines that the requirements of this Decree have been satisfactorily
2 completed.

3 **XXVII. COMPLETION AND ACCEPTANCE OF CLEANUP WORK**

4 A. Defendants shall request that Ecology make a final inspection upon completion of the
5 on-site construction, excavation and extraction work, but not any long term monitoring as described
6 in Exhibit B. Ecology shall promptly inspect the work to determine if such work has been completed
7 in accordance with this Decree. The inspection shall occur within thirty (30) days of the request
8 unless the Parties agree to a later date.

9 B. Ecology shall provide Defendants with a Notice of Completion substantially similar to
10 Exhibit E in writing within fifteen (15) days of the initial inspection, or within sixty (60) days of
11 completing the inspection if sampling is required, that the work has been satisfactorily completed. In
12 the alternative, Ecology shall specify any additional corrective work it believes to be needed.
13 Defendants shall notify Ecology of the completion of any necessary corrective work. Ecology shall
14 reinspect if it deems it necessary within ten (10) days of the notification from Defendants.

15 C. This procedure shall be used, in combination with the dispute resolution procedures
16 set forth in Section XV (Resolution of Disputes) if necessary, until it has been determined that the
17 work has been satisfactorily completed, and a Notice of Completion is issued. Within ten (10) days of
18 determining that the work has been satisfactorily completed, Ecology shall issue a written Notice of
19 Completion to Defendants.

20 **XXVIII. CLAIMS AGAINST THIRD PARTIES**

21 Defendants expressly reserve their right to recover any costs incurred in implementing this
22 Decree from any other potentially liable person not a party to this Consent Decree.
23
24
25
26

1 **XXIX. CLAIMS AGAINST THE STATE**

2 Defendants hereby agree that they will not seek to recover any costs accrued in implementing
3 the remedial action required by this Decree from the State of Washington or any of its agencies; and
4 further, that Defendants will make no claim against the State Toxics Control Account or the Local
5 Toxics Control Account for any costs incurred in implementing this Decree.

6 Nothing in this Decree shall impair Defendants' right to obtain grant funding from the Local
7 Toxics Control Account under RCW 70 105D 070(3) and ch. 173-322 WAC for any eligible portion
8 of the work required by this Decree. The submission of an application for such grant funding shall
9 not be deemed to be the filing of a "claim" for the purposes of this Section.

10 **XXX. EFFECTIVE DATE**

11 This Decree is effective upon the date it is entered by the Court.

12 **XXXI. COVENANT NOT TO SUE**

13 In consideration of Defendants' compliance with the terms and conditions of this Decree, the
14 State of Washington covenants not to institute legal or administrative actions against Defendants
15 regarding contamination covered by this Decree. Compliance with this Decree shall stand in lieu of
16 any and all administrative, legal, and equitable remedies and enforcement actions available to the state
17 against Defendants for the release or threatened release of hazardous substances covered by the terms
18 of this Decree.

19 This covenant is strictly limited in its application to the Site specifically defined in Exhibit A
20 and to those hazardous substances of which Ecology has notice.

21 The State of Washington may exercise its full legal authority to address releases of hazardous
22 substances at the Site, notwithstanding the covenant not to sue set forth above in the event factors
23 not known at the time of this Decree are discovered and present previously unknown threats to
24 human health or the environment.

1 **XXXII. CONTRIBUTION PROTECTION**

2 Defendants shall not be liable for claims of contribution by other persons not signatories to the
3 Decree regarding matters addressed in this Decree. The percentage of response costs paid by
4 Defendants under this Decree shall in no way constitute an admission as to an appropriate allocation
5 of liability, if any, at the Site. This section shall apply but is not limited to successors in interest who
6 assume obligations under this Decree

7 **XXXIII. RESERVATION OF RIGHTS**

8 By agreeing to entry of this Decree, Defendants and Ecology agree to abide by its terms.
9 While the Parties believe that the recitals contained in this Decree are accurate, the execution and
10 performance of the Decree is not, however, an admission by Defendants of any fact or liability for any
11 purpose other than as a foundation for the entry of this Decree. Defendants' performance under the
12 Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may
13 be asserted in the event of further administrative proceedings or litigation not associated with, or
14 related to, this Decree. Nor is the execution or performance of the Decree agreement by Defendants
15 to take any action at the Site other than that described in this Decree. Defendants expressly reserve
16 their rights to seek to recover any cost incurred in implementing this Decree from any other
17 potentially liable person

18 **XXXIV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

19 This Decree has been the subject of public notice and comment under RCW
20 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more
21 expeditious cleanup of hazardous substances at the Site, in compliance with applicable cleanup
22 standards

1 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the
2 option of either Party and the accompanying Complaint shall be dismissed without costs and without
3 prejudice. In such an event, no Party shall be bound by the requirements of this Decree

4 Mary E. Burg
5 Mary Burg
6 Toxics Cleanup Program

2 August 1995
Date

7 Carol J. Smith

5/22/95
Date

9
10 King County

11 Kim Saunders

5/23/95
Date

13 City of Bellevue

14
15 THIS DECREE is approved and IT IS SO ORDERED this 23 day of August, 1995

17 SUPERIOR COURT JUDGE
18 King County Superior Court