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FILED
FEB 08 2003
THOMAS F. FALLOUSET
SPOKANE COUNTY CLERK

**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO. 03-2-00422-1

ORDER ENTERING CONSENT
DECREE

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby
ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that,
subject to the Bankruptcy Court's Order of November 26, 2002 authorizing Kaiser to enter into
a Consent Decree with Ecology and Avista and allowing a limited lifting of the automatic stay
imposed by Section 362 of the Bankruptcy Code, and subject to all terms and conditions of the
Consent Decree, the Court shall retain jurisdiction over the Consent Decree to enforce its
terms.

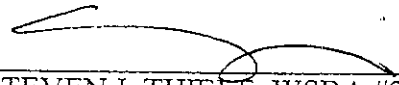
DATED this 5th day of Feb, 2003.



JUDGE/COMMISSIONER
Spokane County

1 Presented by:

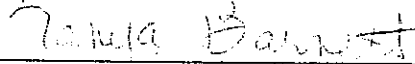
2 CHRISTINE O. GREGOIRE
3 Attorney General

4 
5 STEVEN J. THIELE, WSBA #20275
6 Assistant Attorney General
7 Attorneys for Plaintiff
8 Department of Ecology
9 (360) 586-4619

10 Dated: January 29, 2003


11 Approved as to form,
12 notice of presentation waived:

13 BROWN REAVIS & MANNING PLLC

14 
15 TANYA BARNETT, WSBA #17491
16 Attorneys for Defendant
17 Avista Development, Inc
18 (360) 786-5247

19 Dated: January 29, 2003

20 HELLER EHRMAN WHITE & MCAULIFFE

21 
22 R. PAUL BEVERIDGE, WSBA # 16732
23 MADELINE KASS, WSBA # 18952
24 Attorneys for Defendant
25 Kaiser Aluminum & Chemical Corporation
26 (206) 447-0900

Dated: JANUARY 28, 2003

~CBS/Spokane River
SIC JIAB6
Project # 8686

RECEIVED
JAN 22 2003
ATTORNEY GENERAL'S OFFICE
Ecology Division

COPY
ORIGINAL FILED
JAN 17 2003
THOMAS R. FALLQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO **03200422-1**
SUMMONS

v

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

TO: AVISTA DEVELOPMENT, INC.
AND TO: KAISER ALUMINUM & CHEMICAL CORPORATION

A lawsuit has been started against you in the above-entitled Court by the State of Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

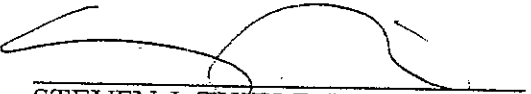
In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and by serving a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where the Plaintiff is entitled to what has been asked for because you have not responded. If you serve a notice of

1 appearance on the undersigned person, you are entitled to notice before a default judgment
2 may be entered.

3 **THIS SUMMONS** is issued pursuant to Rule 4 of the Washington Superior Court
4 Civil Rules.

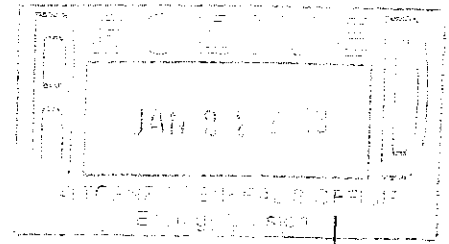
5 DATED this 10th day of January, 2003.

6 CHRISTINE O. GREGOIRE
7 Attorney General

8 

9 STEVEN J. THIELE, WSBA #20275
10 Assistant Attorney General
11 Attorneys for Plaintiff
12 Department of Ecology
13 (360) 586-4619

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JAN 17 2003

THOMAS R. FALLQUIST
SPOKANE COUNTY
CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. **03200422-1**
COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology) alleges as follows:

I. DESCRIPTION OF ACTION

1. This action is brought on behalf of the State of Washington, Department of Ecology, pursuant to RCW 70.105D.050(4) of the Model Toxics Control Act (MTCA), for a remedial action at a location where there have been releases and/or threatened releases of hazardous substances.

2. The Complaint is limited in scope to a Remedial Investigation and Feasibility Study (RI/FS) at the Site. The location, or Site, consists of sediments containing PCBs in the portion of the Spokane River directly upstream of Upriver Dam as further described in paragraph 6 below

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II. JURISDICTION

3. On February 12, 2002, Kaiser filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). This jointly administered bankruptcy case, *In re Kaiser Aluminum Corporation, et al.*, Case No. 02-10429 (JKF), is pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Pursuant to the Bankruptcy Court's Order of November 26, 2002 (attached as Exhibit A) authorizing Kaiser to enter into a Consent Decree with Ecology and Avista Development Inc. and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy Code, this Court has jurisdiction over the subject matter and over the parties under RCW 70.105D, the Model Toxics Control Act (MTCA). Venue is proper in Spokane County, the location of the property at issue.

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III. PARTIES

4. Plaintiff Ecology is an agency of the State of Washington responsible for overseeing remedial action at sites contaminated with hazardous substances under RCW 70.105D.

5. Defendants are Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation.

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IV. FACTUAL ALLEGATIONS

6. The Site consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically influenced by the Upriver Dam between approximately United States Geologic Survey River Mile (RM) 80 (near the Upriver Dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge) in Spokane County, Washington.

7. Ecology has determined that a release or threatened release of a hazardous substance has occurred at the Site.

1 8 Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of the
2 Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on the
3 Spokane River at approximately United States Geologic Survey RM 86

4 9 Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
5 Washington Water Power Company) is successor to Pentzer Development Corporation
6 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
7 located on the Spokane River at approximately RM 87.

8 10 Kaiser Trentwood discharges industrial effluent wastewater to the Spokane River in
9 Washington. The discharge is permitted under the provisions of the State of Washington
10 Water Pollution Control Law and the federal Water Pollution Control Act.

11 11 Avista's predecessor Pentzer discharged industrial effluent wastewater to the
12 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
13 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

14 12 Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and water
15 of the upper Spokane River, upstream of RM 80, which approximately marks the location of
16 Upriver Dam.

17 13 Ecology has given notice to Avista and Kaiser of Ecology's determination as
18 provided in RCW 70.105D 020(12), that they are potentially liable persons as current or past
19 owners and/or operators (defined in 70.105D 020(12)) of the Site, and that there has been a
20 release and/or threatened release of hazardous substances at the Site.

21 V. CAUSES OF ACTION

22 14 Plaintiff realleges paragraphs 1 through 13, above.

23 15 Ecology alleges that the Defendants will be responsible for remedial action at the
24 Site pursuant to WAC 173-340

1 VI. PRAYER FOR RELIEF

2 WHEREFORE, Ecology respectfully requests that the Court order Defendants to
3 perform a RI/FS at the Site.

4 DATED this 10th day of January, 2003.

5 CHRISTINE O. GREGOIRE
6 Attorney General

7 

8 STEVEN J. THIELE, WSBA #20275
9 Assistant Attorney General
10 Attorney for Plaintiff
11 State of Washington
12 Department of Ecology
13 (360) 586-4619

ORIGINAL

Re items

Bench Filed
on 11/24/02

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Jointly Administered
	:	Case No. 02-10429 (JKF)
KAISER ALUMINUM CORPORATION,	:	
a Delaware corporation, <u>et al.</u> ,	:	Chapter 11
	:	
Debtors.	:	Re: [Docket No. 1261], Agenda Item No. 1

ORDER AUTHORIZING KAISER ALUMINUM & CHEMICAL CORPORATION
TO (A) ENTER INTO A CONSENT DECREE WITH THE STATE OF
WASHINGTON DEPARTMENT OF ECOLOGY AND AVISTA
DEVELOPMENT, INC. AND (B) ENTER INTO A RELATED AGREEMENT

This matter coming before the Court on the motion for an order authorizing Kaiser Aluminum & Chemical Corporation to (a) enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc. and (b) enter into a related agreement with Avista Development Inc. (the "Motion"), filed by Kaiser Aluminum & Chemical Corporation ("KACC"), one of the above-captioned debtors and debtor in possession (collectively, the "Debtors"); the Court having reviewed the Motion and all pleadings related thereto; the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) notice of the Motion was sufficient under the circumstances; (d) the relief requested in the Motion is reasonable, in the best interest of KACC's estate and is appropriate under Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 363(b) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause of the relief granted herein;

IT IS HEREBY ORDERED THAT:

The Motion is Granted.

#1394
11/26/02

2. Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

3. KACC is authorized to enter into a consent decree with the State of Washington Department of Ecology and Avista Development, Inc substantially and materially in the form of the Consent Decree and the automatic stay is lifted for the limited and sole purpose of filing and entry of the consent decree in the State Court.

4. KACC is authorized to enter into a PLP agreement with Avista Development, Inc. substantially and materially in the form of the PLP Agreement.

5. KACC is authorized to enter into any other agreements, perform any activities, and expend any resources necessary to implement the Remedial Investigation and Feasibility Study and otherwise comply with any other requirements of the Consent Decree.

Dated: 11/26, 2002


UNITED STATES BANKRUPTCY JUDGE

COPY
ORIGINAL FILED
FEB 06 2003
SUPERIOR COURT
SPOKANE COUNTY, WA

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

DECLARATION OF
JOHN L. ROLAND

I, JOHN L. ROLAND, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge

2. I am employed as a hydrogeologist at the Washington State Department of Ecology (Ecology), Eastern Regional Office, Toxics Cleanup Program. I am the project coordinator and am knowledgeable on matters relating to the site involving the area of the Spokane River directly upstream of the Upriver Dam.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations which led to the Consent Decree that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a).

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5. Ecology received three letters during the public comment period. Ecology considered the comments and determined that no changes to the Consent Decree were necessary based on those comments. The public comments and Ecology's responses to those comments are attached to this declaration as Attachment A.

6. Ecology has determined that no additional public comment period under WAC 173-340-600(9)(e) is required.

7. Ecology has determined that the proposed remedial action will lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e).

8. I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 27th day of January, 2003.



JOHN L. ROLAND

Environ Threat/Spoils/Rem PCBs/Clean Up/Final Remed Decree

FEB 11 2003
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ORIGINAL FILED
FEB 06 2003
SUPERIOR COURT
SPOKANE COUNTY, WN

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**STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

I. INTRODUCTION

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, Avista Development, Inc., and Kaiser Aluminum & Chemical Corporation (the Defendants) bring this motion seeking entry of the attached Consent Decree (Decree). This motion is based upon the pleadings filed in this matter

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Decree. The Decree fully disposes of all issues in this matter. See attached Affidavit of John Roland.

III. FACTS

The Decree between the Defendants and Ecology resolves the claims raised in Ecology's Complaint by providing for an investigation of known and suspected contamination along a portion of the Spokane River directly upstream of Upriver Dam (the Site) arising from

1 a release or threatened release of hazardous substances, and a study of remedial alternatives for
2 the Site. The Decree promotes the public interest by expediting cleanup activities at the Site.

3 **IV. AUTHORITY**

4 RCW 70.105D.040(4)(a) authorizes the attorney general to agree to a settlement with
5 any potentially liable person if Ecology finds that the proposed settlement would lead to a
6 more expeditious cleanup of hazardous substances in compliance with cleanup standards under
7 RCW 70.105D.030(2)(e) and with any remedial orders issued by Ecology.

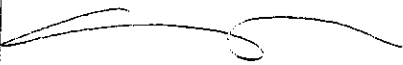
8 Ecology has found that the attached Consent Decree meets these statutory
9 requirements, and believes it is appropriate for the Court to approve the attached Decree.

10 **V. CONCLUSION**

11 The parties request that the Court approve and enter the attached Decree in full
12 resolution of the matters involved in this action. Subject to the Bankruptcy Court's Order of
13 November 26, 2002 authorizing Kaiser to enter into a Consent Decree with Ecology and Avista
14 and allowing a limited lifting of the automatic stay imposed by Section 362 of the Bankruptcy
15 Code, and subject to all terms and conditions of the Consent Decree, the parties also request
16 that the Court retain jurisdiction over this action until the work required by the Consent Decree
17 is completed, at which time the parties anticipate seeking dismissal of this action. See attached
18 Bankruptcy Court Order of November 2002.


19 DATED this 21st day of January, 2003.

20
21 CHRISTINE O. GREGOIRE
22 Attorney General

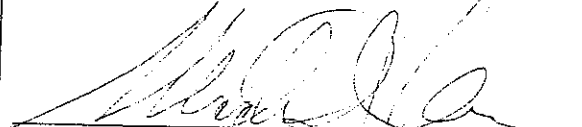
23 
24 STEVEN J. THIELE, WSBA #20275
25 Assistant Attorney General
26 Attorneys for Plaintiff
Department of Ecology
(360) 586-4619

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BROWN REAVIS & MANNING PLLC


TANYA BARNETT, WSBA #17491
Attorneys for Defendant
Avista Development, Inc.
(360) 786-5247

HELLER EHRMAN WHITE & MCAULIFFE


R. PAUL BEVERIDGE, WSBA # 16732
MADELINE KASS, WSBA # 18952
Attorneys for Defendant
Kaiser Aluminum & Chemical Corporation
(206) 447-0900

SE 508089 v6
1/28/03 3:54 PM (11289 0003)

ORDER AUTHORIZING KAISER TO ENTER INTO CONSENT DECREE
WITH DEPT OF ECOLOGY AND AVISTA (November 2002)

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STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AVISTA DEVELOPMENT, INC., and
KAISER ALUMINUM & CHEMICAL
CORPORATION,

Defendants.

NO. 03-2-00422-1
CONSENT DECREE

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21		Exhibit E - Public Participation Plan	
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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (the Department) and of Avista Development, Inc.
4 and Kaiser Aluminum & Chemical Corporation (the Respondents) is to provide for remedial
5 action at a location where there has been a release of hazardous substances. This Decree
6 requires the Respondents to undertake the remedial actions specified in Section VI of this
7 Decree and in Exhibit A to the Decree. The work to be performed is a focused remedial
8 investigation (RI) to evaluate the extent of polychlorinated biphenyls (PCBs) in sediments
9 deposited along a portion of the Spokane River directly upstream of Upriver Dam and
10 elsewhere defined in Exhibit B, and a focused feasibility study (FS) to evaluate potential
11 cleanup actions in this area of the river as may be needed to address PCBs. A site diagram
12 depicting the Site is attached to this Decree as Exhibit B. In accordance with WAC 173-340-
13 350(6), the work scope is intended to generate timely information by requiring accelerated
14 investigative actions. The Department has determined that these actions are necessary to
15 protect public health and the environment.

16 B. The parties to this Decree acknowledge that the United States Environmental
17 Protection Agency (USEPA) under the authority of CERCLA (i.e. Superfund) is investigating
18 hazardous substance contamination in the Coeur d' Alene basin and the upper Spokane River,
19 focusing on metals contamination associated with historic mining operations in Idaho. USEPA
20 has designated the Spokane River as part of Operable Unit 3 in its Record of Decision (ROD).
21 Remedy selection and evaluation in Washington addressed by the USEPA in the ROD
22 encompasses the river from the Idaho state line downstream to Upriver Dam, including the
23 entire Upriver Dam PCB Sediment Site. Metals-related contamination associated with historic
24 mining operations has been determined to be broadly distributed within Operable Unit 3,
25 including areas at the Site. The USEPA ROD (September 2002) proposed capping or dredging
26 as remedy alternatives to reduce metals risks in sediments immediately behind Upriver Dam

1 The USEPA also concluded that further investigation and coordination with the State of
2 Washington is appropriate before selection of the final remedy.

3 C. The parties to this Decree acknowledge that the Department is developing a
4 Total Maximum Daily Load (TMDL) to address PCBs in the Spokane River. The
5 development of the TMDL requires estimates of the current and future loads from background,
6 point source NPDES, storm-water and historic sediment sources to establish future Waste Load
7 Allocations (WLA). TMDL field work and river studies (potentially including outfall, surface
8 water, and other sampling) are scheduled to occur in the summer 2003. Completion of a draft
9 PCB TMDL Report is expected in the summer of 2004.

10 D. The parties agree that the Work to be Performed pursuant to this Decree will be
11 coordinated to the extent possible with the EPA Basin Cleanup and other ongoing information
12 collection efforts.

13 E. A complaint in this action was filed on January 17, 2003 prior to filing of this
14 Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law
15 in this case. However, the parties wish to resolve the issues raised by the Department's
16 complaint. In addition, the parties agree that settlement of these matters without litigation is
17 reasonable and in the public interest and that entry of this Decree is the most appropriate means
18 of resolving these matters.

19 F. In signing this Decree, Avista agrees to its entry and agrees to be bound by its
20 terms. In signing this Decree, Kaiser agrees to its entry and agrees to be bound by its terms,
21 subject to the terms of the order of the United States Bankruptcy Court (District of Delaware)
22 (the Bankruptcy Court) entered on November 26, 2002, approving such agreement by Kaiser.

23 G. By entering into this Decree, the parties do not intend to discharge non-settling
24 parties from any liability they may have with respect to matters alleged in the complaint. The
25 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
26 sums expended under this Decree.

1 H. This Decree shall not be construed as proof of liability or responsibility for any
2 releases of hazardous substances or cost for remedial action nor an admission of any facts;
3 provided, however, that the Respondents shall not challenge the jurisdiction of the Department
4 in any proceeding to enforce this Decree

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

8 **II. JURISDICTION**

9 A This Court has jurisdiction over the subject matter and over the parties pursuant
10 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), provided however, nothing
11 in this Consent Decree shall deprive the Bankruptcy Court of jurisdiction derived under Title
12 11 or Title 28 of the United States Code.

13 B. The Department has determined that a release or threatened release of
14 hazardous substances has occurred at the Site which is the subject of this Decree.

15 C. The Department has given notice to the Respondents, as set forth in RCW
16 70.105D 020(15), of the Department's determination that the Respondents are potentially liable
17 persons for the Site and that there has been a release or threatened release of hazardous
18 substances at the Site.

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

21 E. The Respondents have agreed to undertake the actions specified in this Decree
22 and consent to the entry of this Decree under the MTCA.

23 **III. PARTIES BOUND**

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

1 party to comply with the Decree. The Respondents agree to undertake all actions required by
2 the terms and conditions of this Decree, and not to contest state jurisdiction regarding this
3 Decree. No change in ownership or corporate status shall alter the responsibility of the
4 Respondents under this Decree.

5 IV. DEFINITIONS

6 Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and
7 Chapter 173-340 WAC shall control the meanings of the terms used in this Decree.

8 A. Site: The Site, also referred to as the Upriver Dam PCB Sediments Site,
9 consists of the areal extent of PCB-contaminated sediments upstream of and hydraulically
10 influenced by the Upriver Dam between approximate river mile (RM) 80 (near the Upriver
11 dam) and RM 85 (upstream of the dam near the Centennial Trail footbridge). The Site is
12 further described in Exhibit B to this Decree, which is a detailed site diagram.

13 B. Parties: Refers to the State of Washington Department of Ecology (the
14 Department) and the Respondents, collectively.

15 C. Respondents: Refers collectively to Avista Development, Inc. and Kaiser
16 Aluminum & Chemical Corporation.

17 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
18 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
19 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

20 E. Day or Days: Refers to a calendar day(s) unless otherwise specified. In
21 computing any period of time under this Decree, if the last day falls on a Saturday, Sunday, or
22 a state or federal holiday, the period shall run until the end of the next day which is not a
23 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
24 occurrence of an act or event shall begin on the day after the act or event.

25 F. Section: Refers to a portion of this Consent Decree identified by a Roman
26 numeral.

1 V. STATEMENT OF FACTS

2 The Department makes the following finding of facts without any express or implied
3 admissions by the Respondents.

4 A. Kaiser Aluminum & Chemical Corporation (Kaiser) is owner and operator of
5 the Kaiser Trentwood Works (Trentwood) in Spokane, Washington. Trentwood is located on
6 the Spokane River at approximately Unites States Geologic Survey RM 86 (See Site Diagram,
7 attached as Exhibit B to this Decree). On February 12, 2002, Kaiser filed a voluntary petition
8 for relief under Chapter 11 of the United States Bankruptcy Code. Kaiser's Chapter 11 case is
9 pending before the Bankruptcy Court.

10 B. Avista Development, Inc. (Avista) (a subsidiary of Avista Corporation, formerly
11 Washington Water Power Company) is successor to Pentzer Development Corporation
12 (Pentzer). Pentzer is the past owner and operator of the Spokane Industrial Park, which is
13 located on the Spokane River at approximately RM 87 (See Site Diagram, attached as Exhibit
14 B to this Decree).

15 C. Kaiser Trentwood discharges industrial effluent wastewater to the Spokane
16 River in Washington. The discharge is permitted under the provisions of the State of
17 Washington Water Pollution Control Law and the federal Water Pollution Control Act.

18 D. Avista's predecessor Pentzer discharged industrial effluent wastewater to the
19 Spokane River in Washington prior to 1994, under the provisions of the State of Washington
20 Water Pollution Control Law and the federal Water Pollution Control Act, or predecessor laws.

21 E. Polychlorinated biphenyls, or PCBs, have been found in fish, sediment, and
22 water of the upper Spokane River, upstream of RM 80, which approximately marks the
23 location of Upriver Dam

24 F. PCBs and metals have been documented in fish in the Spokane River. A health
25 advisory has been issued by the Spokane Regional Health District and state Department of
26

1 Health advising individuals not to eat sport fish caught from the Spokane River between
2 Upriver Dam and the Idaho border

3 G PCBs have been documented in effluent waters and solids associated with
4 Kaiser Trentwood and Spokane Industrial Park.

5 H. PCBs have been documented in groundwater underlying Kaiser Trentwood.

6 I. Ground water beneath the Spokane River near Upriver Dam occurs in the
7 Spokane Valley-Rathdrum Prairie Aquifer. In 1978 the United States Environmental
8 Protection Agency (EPA) designated this aquifer as a "Sole Source" Aquifer. The aquifer
9 serves as the main drinking water supply for at least 400,000 people in the City and County of
10 Spokane.

11 J. In certified correspondences dated June 1, 2001, the Department notified Kaiser
12 and Avista of a preliminary finding of potential liability for PCBs in sediments behind Upriver
13 Dam and requested comment on those findings. Also by certified correspondences dated June
14 1, 2001, Ecology notified the Liberty Lake Sewer District of a preliminary finding of potential
15 liability for PCBs in sediments behind Upriver Dam based on Liberty Lake's discharge of
16 PCBs from its municipal wastewater treatment plant to the Spokane River. Liberty Lake
17 subsequently declined to enter into consent decree negotiations with Ecology.

18 K. Collectively the signing Respondents have formed a work group and have
19 designated two project coordinators to implement the Work to be Performed. By execution of
20 this Decree, the Respondents agree to be bound by the terms thereof and not to contest the
21 same.

22 VI. WORK TO BE PERFORMED

23 This Decree contains a program designed to protect public health, welfare, and the
24 environment from the known release, or threatened release, of hazardous substances or
25 contaminants at, on, or from the Site.
26

1 A The Respondents shall furnish all personnel, materials and services necessary
2 for, or incidental to, the planning, initiation, completion, and reporting upon the Scope of
3 Work, attached as Exhibit A. The work to be performed is the completion of the Remedial
4 Investigation (RI) and the Feasibility Study (FS) described in the attached Scope of Work.

5 B. The Scope of Work and each element thereof are designed and shall be
6 implemented and completed in accordance with the Model Toxics Control Act (Chapter
7 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all
8 applicable federal, state, and local laws and regulations.

9 C. As provided in the agreed upon schedule, attached as Exhibit C, the
10 Respondents shall commence work and thereafter complete all tasks in Attachment A in the
11 time frames and framework indicated unless the Department grants an extension in accordance
12 with Section XV.

13 D. The Respondents agree not to perform any remedial actions at the Site that are
14 outside the scope of this Decree unless the parties agree to amend the scope of work to cover
15 these actions.

16 **VII. DESIGNATED PROJECT COORDINATORS**

17 The project coordinator for the Department is:

18 John L. Roland
19 Department of Ecology
20 Eastern Regional Office
4601 N. Monroe
Spokane, WA 99205-1295

21 The project coordinators for the Respondents are:

22 Patrick J. Blau
23 Kaiser Aluminum & Chemical Corp.
PO Box 15108
24 Spokane, WA 99215-5108

25 Douglas K. Pottratz
Avista Corporation
26 PO Box 3727
Spokane, WA 99220-3727

1 Each project coordinator shall be responsible for overseeing the implementation of this
2 Decree. The Department project coordinator will be the Department's designated
3 representative at the Site. To the maximum extent possible, communications between the
4 Department and the Respondents and all documents, including reports, approvals, and other
5 correspondence concerning the activities performed pursuant to the terms and conditions of
6 this Decree, shall be directed through the project coordinators. The project coordinators may
7 agree to minor modifications to the work to be performed without formal amendments to this
8 Decree. Minor modifications will be documented in writing by the Department.

9 Any party may change its respective project coordinator. Written notification shall be
10 given to the other parties at least ten (10) calendar days prior to the change.

11 VIII. PERFORMANCE

12 All work performed pursuant to this Decree shall be under the direction and
13 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
14 experience and expertise in hazardous waste site investigation and cleanup. Any construction
15 work must be under the supervision of a professional engineer. The Respondents shall notify
16 the Department in writing as to the identity of such engineer(s) or hydrogeologist(s), or others
17 and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in
18 advance of their involvement at the Site. The Respondents shall provide a copy of this Decree
19 to all agents, contractors and subcontractors retained to perform work required by this Decree
20 and shall require that all work undertaken by such contractors and subcontractors will be in
21 compliance with this Decree.

22 IX. ACCESS

23 The Department or any Department-authorized representative shall have the authority
24 to enter and freely move about portions of the Site over which the Respondents have control
25 and all associated field investigation operations at all reasonable times for the purposes of,
26 inter alia: inspecting records, operation logs, and contracts related to the work being performed

1 pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree;
2 conducting such tests or collecting samples as the Department or the project coordinator may
3 deem necessary; using a camera, sound recording, or other documentary type equipment to
4 record work done pursuant to this Decree; and verifying the data submitted to the Department
5 by the Respondents. By signing this Decree, the Respondents agree that this Decree constitutes
6 reasonable notice of access, and agree to allow access to site-related field operations at all
7 reasonable times for purposes of overseeing work performed under this Decree. Without
8 limitation on the Department's rights under this Section IX, the Department agrees to endeavor
9 to notify Respondents at least 2 days in advance of intended access.

10 The Department and the Respondents acknowledge that Avista and Kaiser do not own
11 any of the properties that compose the Site. The Respondents will use reasonable efforts to
12 obtain access to the Site. If necessary, the Department will exercise its authority under Chapter
13 70 105D RCW to ensure access to the Site or to facilitate remedial action at the Site.

14 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

15 With respect to the implementation of this Decree, the Respondents shall make the
16 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
17 available to the Department and shall submit these results in accordance with Section XI of this
18 Decree.

19 In accordance with WAC 173-340-840(5), sampling data shall be submitted according
20 to the Department's sampling data submittal requirements as set forth in Exhibit D to this
21 Decree. In addition, in accordance with the Department's Sediment Quality Information
22 System software (SEDQUAL) needs, sediment or bioassay sampling data shall be submitted to
23 Ecology in a electronic format compatible for entry into the SEDQUAL database using the
24 system's *data entry templates*.

25 If requested by the Department, the Respondents shall allow split or duplicate samples
26 to be taken by the Department and/or its authorized representatives of any samples collected by

1 Respondents pursuant to the implementation of this Decree Respondents shall notify the
2 Department fourteen (14) working days in advance of any planned field sample collection or
3 work activity at the Site. No sampling, analysis, or field activities shall be performed within
4 the Site boundaries by the Respondents unless approved by the Department. The Department
5 shall, upon request, allow split or duplicate samples to be taken by Respondents or its
6 authorized representatives of any samples collected by the Department pursuant to the
7 implementation of this Decree provided it does not interfere with the Department's sampling.
8 Without limitation on the Department's rights under Section IX, the Department shall endeavor
9 to notify Respondents at least fourteen (14) days prior to any scheduled sample collection
10 activity. This will not apply to emergencies or time-critical actions.

11 **XI. PROGRESS REPORTS**

12 Respondents shall submit to the Department written progress reports as provided in the
13 Scope of Work, Exhibit A to this Decree.

14 **XII. RETENTION OF RECORDS**

15 Respondents shall preserve, during the pendency of this Decree and for ten (10) years
16 from the date this Decree is no longer in effect as provided in Section XXV, all records,
17 reports, documents, and underlying data in their possession relevant to the implementation of
18 this Decree and shall insert in contracts with project contractors and subcontractors a similar
19 record retention requirement. Upon request of the Department, Respondents shall make all
20 non-archived records available to the Department and allow access for review. All archived
21 records shall be made available to the Department within a reasonable period of time.

22 **XIII. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed
24 modification or other decision or action by the Department or the Department's project
25 coordinator, the parties shall utilize the dispute resolution procedure set forth below.
26

1 (1) Upon receipt of the Department's or Department project coordinator's decision,
2 the Respondents have fourteen (14) days within which to notify the Department's project
3 coordinator of their objection to the decision or action

4 (2) The parties' project coordinators shall then confer in an effort to resolve the
5 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, the
6 Department's project coordinator shall issue a written decision.

7 (3) Respondents may then request the Department management review of the
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
9 within seven (7) days of receipt of the Department's project coordinator's decision.

10 (4) The Department's Program Manager shall conduct a review of the dispute and
11 shall issue a written decision regarding the dispute within thirty (30) days of the Respondents'
12 request for review. The Program Manager's decision shall be the Department's final decision
13 on the disputed matter.

14 B. If the Department's final written decision is unacceptable to the Respondents,
15 they have the right to submit the dispute to this Court (the Court) for resolution. The parties
16 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve
17 any dispute arising under this Decree. In the event the Respondents present an issue to the
18 Court for review, the Court shall review any investigative or remedial action or decision of the
19 Department on the basis of whether such action or decision was arbitrary and capricious and
20 render a decision based on such standard of review.

21 C. The parties agree to only utilize the dispute resolution process in good faith and
22 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
23 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
24 the other party may seek sanctions.

1 D. Implementation of these dispute resolution procedures shall not provide a basis
2 for delay of any activities required in this Decree, unless the Department agrees in writing to a
3 schedule extension or the Court so orders.

4 XIV. AMENDMENT OF CONSENT DECREE

5 Except for minor modifications agreed to pursuant to Section VII and extensions
6 granted in accordance with Section XV, this Decree may only be amended by a written
7 stipulation among the parties to this Decree that is entered by the Court or by order of the
8 Court. If the stipulation includes more costly remedial action by Kaiser, the stipulation must
9 be approved by the Bankruptcy Court prior to entry unless at the time the stipulation is entered
10 the Bankruptcy Court no longer has jurisdiction over Kaiser. Any other stipulation by Kaiser
11 may require approval by the Bankruptcy Court prior to entry. All amendments shall become
12 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
13 any party to the decree.

14 Any party may propose an amendment to the Decree. A party that receives a request
15 for amendment shall indicate its approval or disapproval in a timely manner after the request
16 for amendment is received. If the amendment to the Decree is substantial, the Department will
17 provide public notice and opportunity for comment. Reasons for the disapproval shall be
18 stated in writing. If any party does not agree to any proposed amendment, the disagreement
19 may be addressed through the dispute resolution procedures described in Section XIII of this
20 Decree

21 XV. EXTENSION OF SCHEDULE

22 A. An extension of schedule shall be considered when a request for an extension is
23 submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for
24 which the extension is requested, and good cause exists for granting the extension. All
25 extensions shall be requested in writing. The request shall specify the reason(s) the extension
26 is needed.

1 An extension shall be granted for such period of time as the Department determines is
2 reasonable under the circumstances. A requested extension shall not be effective until
3 approved by the Department or the Court. The Department shall act upon any written request
4 for extension in a timely fashion. It shall not be necessary to formally amend this Decree
5 pursuant to Section XIV when a schedule extension is granted.

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

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

14 (2) Acts of God or war, including fire, flood, blizzard, extreme temperatures, storm,
15 earthquake, terrorist attack, or other unavoidable casualty;

16 (3) Endangerment as described in Section XVI; or

17 (4) Other circumstances agreed to by the Department to be exceptional or
18 extraordinary.

19 However, neither increased costs of performance of the terms of the Decree nor
20 changed economic circumstances shall be considered circumstances beyond the reasonable
21 control of the Respondents.

22 C. The Department may extend the schedule for a period not to exceed ninety (90)
23 days, except where an extension is needed as a result of:

24 (1) Delays in the issuance of a necessary permit which was applied for in a timely
25 manner; or

26 (2) Other circumstances deemed exceptional or extraordinary by the Department; or

1 (3) Endangerment as described in Section XVI.

2 The Department shall give the Respondents written notification in a timely fashion of
3 any extensions granted pursuant to this Decree.

4 XVI. ENDANGERMENT

5 In the event the Department determines that activities implementing or in compliance
6 with this Decree, or any other circumstances or activities, are creating or have the potential to
7 create a danger to the health or welfare of the people on the Site or in the surrounding area or
8 to the environment, the Department may order the Respondents to stop further implementation
9 of this Decree for such period of time as needed to abate the danger or may petition the Court
10 for an order as appropriate. During any stoppage of work under this section, the obligations of
11 the Respondents with respect to the work under this Decree which is ordered to be stopped
12 shall be suspended and the time periods for performance of that work, as well as the time
13 period for any other work dependent upon the work which is stopped, shall be extended,
14 pursuant to Section XV of this Decree, for such period of time as the Department determines is
15 reasonable under the circumstances.

16 In the event the Respondents determine that activities undertaken in furtherance of this
17 Decree or any other circumstances or activities are creating an endangerment to the people on
18 the Site or in the surrounding area or to the environment, the Respondents may stop
19 implementation of this Decree for such period of time necessary for the Department to evaluate
20 the situation and determine whether the Respondents should proceed with implementation of
21 the Decree or whether the work stoppage should be continued until the danger is abated. The
22 Respondents shall notify the Department's project coordinator as soon as possible, but no later
23 than twenty-four (24) hours after such stoppage of work, and thereafter provide the Department
24 with documentation of the basis for the work stoppage. If the Department disagrees with the
25 Respondents' determination, it may order the Respondents to resume implementation of this
26 Decree. If the Department concurs with the work stoppage, the Respondents' obligations shall

1 be suspended and the time period for performance of that work, as well as the time period for
2 any other work dependent upon the work which was stopped, shall be extended, pursuant to
3 Section XV of this Decree, for such period of time as the Department determines is reasonable
4 under the circumstances.

5 **XVII. OTHER ACTIONS**

6 A. The Department reserves its rights to institute remedial action(s) at the Site and
7 subsequently pursue cost recovery, and the Department reserves its rights to issue orders
8 and/or seek penalties or take any other enforcement action pursuant to available statutory
9 authority under the following circumstances:

10 (1) Where the Respondents fail, after notice, to comply with any requirement of this
11 Decree;

12 (2) In the event or upon the discovery of a release or threatened release not
13 addressed by this Decree;

14 (3) Upon the Department's determination that action beyond the terms of this
15 Decree is necessary to abate an emergency situation which threatens public health or welfare or
16 the environment; or

17 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree
18 as to which the Department would be empowered to perform any remedial action or to issue an
19 order and/or seek a penalty, or to take any other enforcement action. This Decree is limited in
20 scope to the geographic Site described in Exhibit B and to those contaminants which the
21 Department knows to be at the Site when this Decree is entered

22 The Department reserves all rights regarding the injury to, destruction of, or loss of
23 natural resources resulting from the release or threatened release of hazardous substances from
24 the Upriver Dam Sediment Site.

25 The Department reserves the right to take any enforcement action whatsoever,
26 including a cost recovery action, against potentially liable persons not party to this Decree.

1 **XVIII. INDEMNIFICATION**

2 The Respondents agree to indemnify and save and hold the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action for death or
4 injuries to persons or for loss or damage to property arising from or on account of acts or
5 omissions of the Respondents, its officers, employees, agents, or contractors in entering into
6 and implementing this Decree. However, the Respondents shall not indemnify the State of
7 Washington nor save nor hold its employees and agents harmless from any claims or causes of
8 action arising out of either the State of Washington's or any of its agencies' status as
9 potentially liable persons with respect to contamination at the Site or the intentional, reckless,
10 or negligent acts or omissions of the State of Washington, or the employees or agents of the
11 State, in implementing the activities pursuant to this Decree.

12 **XIX. COMPLIANCE WITH APPLICABLE LAWS**

13 A. All actions carried out by the Respondents pursuant to this Decree shall be done
14 in accordance with all applicable federal, state, and local requirements, including requirements
15 to obtain necessary permits, except as provided in paragraph B. of this section.

16 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
17 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
18 local government permits or approvals for the remedial action under this Decree that are
19 known to be applicable at the time of entry of the Decree are binding and enforceable
20 requirements of the Decree.

21 The Respondents have a continuing obligation to determine whether additional permits
22 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
23 action under this Decree. In the event either the Respondents or the Department determines
24 that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
25 required for the remedial action under this Decree, it shall promptly notify the other party of
26 this determination. The Department shall determine whether the Department or the

1 Respondents shall be responsible to contact the appropriate state and/or local agencies. If the
2 Department so requires, the Respondents shall promptly consult with the appropriate state
3 and/or local agencies and provide the Department with written documentation from those
4 agencies of the substantive requirements those agencies believe are applicable to the remedial
5 action. The Department shall make the final determination on the additional substantive
6 requirements that must be met by the Respondents and on how the Respondents must meet
7 those requirements. The Department shall inform the Respondents in writing of these
8 requirements. Once established by the Department, the additional requirements shall be
9 enforceable requirements of this Decree. The Respondents shall not begin or continue the
10 remedial action potentially subject to the additional requirements until the Department makes
11 its final determination.

12 The Department shall ensure that notice and opportunity for comment is provided to the
13 public and appropriate agencies prior to establishing the substantive requirements under this
14 section.

15 C. Pursuant to RCW 70.105D.090(2), in the event the Department determines that
16 the exemption from complying with the procedural requirements of the laws referenced in
17 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
18 necessary for the State to administer any federal law, the exemption shall not apply and the
19 Respondents shall comply with both the procedural and substantive requirements of the laws
20 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

21 **XX. REMEDIAL AND INVESTIGATIVE COSTS**

22 The Respondents agree to pay the remedial action costs (as defined in
23 WAC 173-340-550) incurred by the Department for the Site pursuant to this decree. Kaiser
24 and Avista's obligations regarding remedial action costs incurred by Ecology prior to entry of
25 this Decree shall be determined subsequent to completion of this Decree.

1 The Respondents agree to pay the required amount within ninety (90) days of receiving
2 from the Department an itemized statement of costs that includes a summary of costs incurred,
3 an identification of involved staff, and the amount of time spent by involved staff members on
4 the project. A general statement of work performed will be provided with the statement of
5 costs. Itemized statements shall be prepared quarterly. Failure to pay the Department's costs
6 within ninety (90) days of receipt of the itemized statement will result in interest charges,
7 unless such costs are disputed by Respondents in accordance with the dispute resolution
8 procedures in Section XIII. Respondents reserve the right to review and approve any charges
9 prior to payment and not to pay any disputed portion of the itemized statement.

10 **XXI. IMPLEMENTATION OF REMEDIAL ACTION**

11 If the Department determines that the Respondents have failed without good cause to
12 implement the remedial action required by this Decree, the Department may, after written
13 notice to the Respondents and a reasonable opportunity for Respondents to cure the failure,
14 perform any or all portions of the remedial action required by this Decree that remain
15 incomplete. If the Department performs all or portions of the remedial action because of the
16 Respondents' failure to comply with its obligations under this Decree, the Respondents shall
17 reimburse the Department for the costs of doing such work in accordance with Section XX,
18 provided that the Respondents are not obligated under this section to reimburse the Department
19 for costs incurred for work inconsistent with or beyond the scope of this Decree.

20 **XXII. PUBLIC PARTICIPATION**

21 The Department shall maintain the responsibility for public participation at the Site.
22 However, the Respondents shall continue to cooperate with the Department and, if requested
23 by the Department, may choose to assist the Department:

24 A. Prepare drafts of public notices and fact sheets at important stages of the
25 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
26 Study reports and engineering design reports. The Department will finalize (including editing

1 if necessary) and distribute such fact sheets and prepare and distribute public notices of the
2 Department's presentations and meetings.

3 B. Participate in public presentations on the progress of the remedial action
4 required by this Decree at the Site. Participation may be through attendance at public meetings
5 to assist in answering questions, or as a presenter.

6 C. In cooperation with the Department, arrange and/or continue information
7 repositories to be located at the Spokane City Library in downtown Spokane and the
8 Department's Eastern Regional Office at North 4601 Monroe Street in Spokane. At a
9 minimum, copies of all public notices, fact sheets, and press releases; all quality assured
10 ground water, surface water, soil sediment, and air monitoring data; remedial action plans,
11 supplemental planning documents, and all other similar documents relating to performance of
12 the remedial actions required by this Decree shall be promptly placed in these repositories.

13 D. The Department shall notify the Respondents before major meetings with the
14 interested public and local governments. The Department shall also endeavor to provide
15 Respondents with an opportunity to review and comment on all press releases, fact sheets, and
16 other materials that will be distributed to the public and local governments prior to issuance.

17 **XXIII. DURATION OF DECREE**

18 This Decree shall remain in effect until the Respondents have received written
19 notification from the Department that the requirements of this Decree have been satisfactorily
20 completed. The Department shall issue such notification within 60 days after the requirements
21 of this Decree have been satisfactorily completed. Thereafter, the parties within thirty (30)
22 days shall jointly request that the Court vacate this Consent Decree.

23 **XXIV. CLAIMS AGAINST THE STATE**

24 The Respondents hereby agree that they will not seek to recover any costs accrued in
25 implementing the remedial actions required by this Decree from the State of Washington or
26 any of its agencies, except to the extent they are potentially liable persons with respect to

1 | contamination at the Site; and further, that the Respondents will make no claim against the
2 | State Toxics Control Account or any Local Toxics Control Account for any costs incurred in
3 | implementing this Decree. Except as provided above, however, the Respondents expressly
4 | reserve their rights to seek to recover any costs incurred in implementing this Decree from any
5 | other potentially liable person.

6 | **XXV. EFFECTIVE DATE**

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

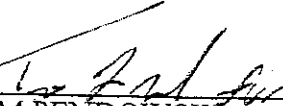
8 | **XXVI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**


9 | This Decree has been the subject of public notice and comment under RCW
10 | 70.105D.040(4)(a). As a result of this process, the Department has found that this Decree will
11 | lead to a more expeditious cleanup of hazardous substances at the Site.

12 | If the Court withholds or withdraws its consent to this Decree, it shall be null and void
13 | at the option of any party and the accompanying Complaint shall be dismissed without costs
14 | and without prejudice. In such an event, no party shall be bound by the requirements of this
15 | Decree.

16 | DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

17 | 
18 | _____
19 | JIM PENDOWSKI
20 | Program Manager
21 | Washington Department of Ecology
22 | Toxics Cleanup Program

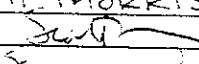

23 | _____
24 | STEVEN J. THIELE, WSBA #20275
25 | Assistant Attorney General
26 | Attorneys for Plaintiff
State of Washington, Department of Ecology

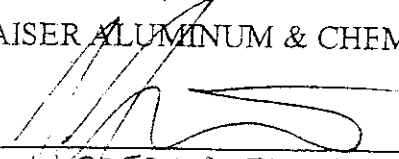
21 | Date: _____

Date: 1/29/03

22 | AVISTA DEVELOPMENT, INC.

KAISER ALUMINUM & CHEMICAL CORP

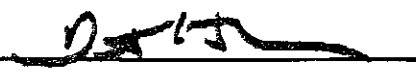
23 | SCOTT MORRIS
24 | By: 
25 | Title: Senior Counsel
26 | Date: 1/23/03


27 | By: JOSEPH A. FISCHER, III
28 | Title: Assistant General Counsel
29 | Date: 01/27/03

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DATED this _____ day of _____ 2003.

2/5



JUDGE
Spokane County Superior Court

Spokane County Superior Court Case No. 03-1-10000-00000-00000