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

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
PORT OF SEATTLE,  
  
Defendant.

CAUSE NO. 95-2-05455-2  
  
CONSENT DECREE - FORMER  
SSI PROPERTY

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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), and the Port of Seattle (Port) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendant to undertake the following remedial actions:

- (1) Consolidate a portion of the eastern side of the former West Seattle Landfill over the existing landfill on the western portion of the Site and cover the exposed landfill materials with interim cover material and install interim landfill gas collection trenches.
- (2) Install a low-permeability cover system over the Site.
- (3) Install a final landfill gas collection and treatment system and an alternative cover over the eastern and southern portions of the Site consisting of a synthetic membrane combined with an engineered

1 layer of either Controlled Low Strength Material or  
2 Roller Compacted Concrete.

3 (4) Operate and Maintain the above installations  
4 Ecology has determined that these actions are necessary to  
5 protect public health and the environment.

6 B. A full remedial investigation of groundwater at the  
7 Site has not been performed. The remedial actions required in  
8 this Decree do not address groundwater.

9 C. The complaint in this action is being filed  
10 simultaneously with this Decree. An answer has not been  
11 filed, and there has not been a trial on any issue of fact or  
12 law in this case. However, the parties wish to resolve the  
13 issues raised by Ecology's complaint. In addition, the  
14 parties agree that settlement of these matters without  
15 litigation is reasonable and in the public interest and that  
16 entry of this Decree is the most appropriate means of  
17 resolving these matters.

18 D. In signing this Decree, Defendant agrees to its  
19 entry and agrees to be bound by its terms.

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

26 F. This Decree shall not be construed as proof of  
liability or responsibility for any releases of hazardous

1 substances or cost for remedial action nor an admission of any  
2 facts; provided, however, that the Defendant shall not  
3 challenge the jurisdiction of Ecology in any proceeding to  
4 enforce this Decree.

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

8 II. JURISDICTION

9 A. This Court has jurisdiction over the subject matter  
10 and over the parties pursuant to Chapter 70.105D RCW, the  
11 Model Toxics Control Act (MTCA).

12 B. Authority is conferred upon the Washington State  
13 Attorney General by RCW 70.105D.040(4)(a) to agree to a  
14 settlement with any potentially liable person if, after public  
15 notice and hearing, Ecology finds the proposed settlement  
16 would lead to a more expeditious cleanup of hazardous  
17 substances. RCW 70.105D.040(4)(b) requires that such a  
18 settlement be entered as a consent decree issued by a court of  
19 competent jurisdiction.

20 C. Ecology has determined that a release or threatened  
21 release of hazardous substances has occurred at the Site which  
22 is the subject of this Decree.

23 D. The Port is a potentially liable party at the Site  
24 under RCW 70.105D.020(8).

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

1 F. Defendant has agreed to undertake the actions  
2 specified in this Decree and consents to the entry of this  
3 Decree under the MTCA.

4 III. PARTIES BOUND

5 This Decree shall apply to and be binding upon the  
6 signatories to this Decree (parties), their successors and  
7 assigns. The undersigned representative of each party hereby  
8 certifies that he or she is fully authorized to enter into  
9 this Decree and to execute and legally bind such party to  
10 comply with the Decree. Defendant agrees to undertake all  
11 actions required by the terms and conditions of this Decree  
12 and not to contest state jurisdiction regarding this Decree.  
13 No change in ownership or corporate status shall alter the  
14 responsibility of the Defendant under this Decree. Defendant  
15 shall provide a copy of this Decree to all agents, contractors  
16 and subcontractors retained to perform work required by this  
17 Decree and shall ensure that all work undertaken by such  
18 contractors and subcontractors will be in compliance with this  
19 Decree.

18 IV. DEFINITIONS

19 Except for as specified herein, all definitions in WAC 173-  
20 340-200 apply to the terms in this Decree.

21 A. Site: The Site, referred to as the Former SSI  
22 Property, is located in West Seattle, South of S.W. Florida  
23 Street and east of Harbor Avenue S.W. The Site is more  
24 particularly described in Exhibit A to this Decree which is a  
25 detailed Site diagram and a legal description.

1 B. Parties: Refers to the Washington State Department  
2 of Ecology and the Port.

3 C. Defendant: Refers to the Port.

4 D. Consent Decree or Decree: Refers to this Consent  
5 Decree and each of the exhibits to the Decree. All Exhibits  
6 are integral and enforceable parts of this Consent Decree. In  
7 the event of conflict between this Decree and any Exhibit,  
8 this Decree shall control. The terms "Consent Decree" or  
9 "Decree" shall include all Exhibits to the Consent Decree.

10 E. Soil: Refers to surface and subsurface solid  
11 materials at the Site, including slag, soil/slag mixtures,  
12 municipal solid waste materials, and debris. Soil does not  
include groundwater.

13 V. STATEMENT OF FACTS

14 Ecology makes the following Findings of Fact, without  
15 admission of such facts by the Port of Seattle.

16 1. The Former Seattle Steel, Inc. (SSI) Property is  
17 approximately 42 acres in size. This property is located in  
18 Seattle, and is bounded on the north by SW Florida Street; on  
19 the east by Burlington Northern Railroad tracks; and on the  
20 west by Harbor Avenue SW. The south boundary extends  
21 approximately 800 feet south of the abandoned Hanford Street.  
22 A diagram of the Site is attached as Exhibit A. The Site was  
23 largely built over mudflat areas and out from the end of a  
24 peninsula in a series of separate fill operations beginning in  
25

1 the 1930's. The fill material is generally wood waste with  
2 construction debris including slag and municipal solid waste.

3 2. The majority of the former SSI Property is occupied  
4 by the former West Seattle Landfill which operated from 1939  
5 to 1966. Existing refuse on the Site is approximately 30 to 35  
6 feet thick. The Site was later used by steel mill operations  
7 for support operations which included miscellaneous waste  
8 storage and disposal. The entire landfill is now covered by  
9 approximately three to five feet of steel mill slag. Slag and  
10 debris piles exist over this covering of slag throughout the  
11 Site. The Site has been used for industrial purposes and is  
12 zoned for industrial use by the City of Seattle, which is a  
13 city that has conducted land use planning under Chapter 36.70A  
14 RCW.

15 3. The northern portion of the Site has been leased by  
16 the Purdy Company, a scrap-metal processing facility, since  
17 1977. The Purdy Company operation is located on 10 acres of  
18 fill between Harbor Avenue SW and the Buckley Railyard. This  
19 scrap-metal processing facility remains in operation and shall  
20 continue operations until early 1995.

21 4. The Port of Seattle is the current owner of the Site.

22 5. The Port intends to redevelop the Site and other  
23 adjacent properties for industrial use as a container shipping  
24 facility.

1           6. Site investigations have been conducted at the  
2 subject property since 1969 that provide information on Site  
3 characteristics and the nature and extent of contamination at  
4 the property, and that aid in the formation of design plans  
5 for future development. More than thirty investigations that  
6 studied groundwater, surface water, surface and subsurface  
7 soil conditions have been completed at or near the Site. In  
8 addition, beginning in 1993, the Port conducted investigations  
9 which included surface and subsurface soil sampling,  
10 groundwater well installation and sampling at the Site.  
11 Aquifer testing and monitoring groundwater level changes in  
12 response to tidal fluctuations in Elliott Bay have also been  
13 conducted. A full investigation of groundwater has not been  
14 conducted. All pertinent information collected from all  
15 investigations has been presented in the RI/FS documents.

16           7. The primary hazardous substances that exceed MTCA  
17 Method C (or when no Method C cleanup level exists, Method A)  
18 soil cleanup levels at the Site are: total petroleum  
19 hydrocarbons (TPH), polychlorinated biphenyls (PCBs), lead and  
20 cadmium. In the soil gas, chemicals of primary concern are:  
21 methane, hydrogen sulfide, and volatile organic compounds.  
22 Additional exceedences of MTCA Method B cleanup levels are  
23 documented in the Remedial Investigation Report. Limited  
24  
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1 information is available on the volumes and types of specific  
2 materials disposed of in the landfill.

3 8. The work to be performed is a cleanup of soil  
4 contamination to protect human health and the environment.  
5 The cleanup will be compatible with industrial development of  
6 the Site currently planned by the Port. The work to be  
7 performed is to excavate a portion of the old landfill on the  
8 eastern half of the Site and to layer the excavated material  
9 over the old landfill on the western portion of the Site. The  
10 consolidated materials will contain a portion of the total on-  
11 Site materials within a defined engineered area enclosed by  
12 berms, over which a temporary, or interim, cover will be  
13 placed. Subsequent actions under this Decree include  
14 installation of a final landfill cover that meets the  
15 requirements of WAC 173-304-460 and installation of the final  
16 landfill gas collection and treatment systems.

17 9. As documented in the RI/FS and CAP, reuse,  
18 destruction or detoxification of all the hazardous substances  
19 at the Site is not practicable due to the high cost of such  
20 reuse, destruction or detoxification, and the lack of  
21 additional environmental benefit in comparison to the on-Site  
22 isolation and containment remedy proposed for most of the  
23 hazardous substances by the Port. The Port's remedy will be  
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1 backed up by long-term monitoring and institutional controls,  
2 as required by WAC 173-340-360(8)(b).

3 10. The Port of Seattle is an "owner or operator" as  
4 defined at RCW 70.105D.020(6) of a "facility" as defined at  
5 RCW 70.105D.020(3).

6 11. The Site in an "industrial property" as defined at  
7 RCW 70.105D.020(13). The hazardous substances remaining in  
8 soil at the Site after the remedial action will not pose a  
9 threat to human health or the environment in adjacent  
10 nonindustrial areas.

11 12. The substances found at the facility as described  
12 above are "hazardous substances" as defined at RCW  
13 70.105D.020(5).

14 13. Based on the presence of these hazardous substances  
15 at the facility and all factors known to Ecology, there is a  
16 release or threatened release of hazardous substances from the  
17 facility, as defined at RCW 70.105D.020(10).

18 14. By letter dated May 26, 1994, Ecology notified the  
19 Port of Seattle of its status as a "potentially liable person"  
20 under RCW 70.105D.040 after notice and opportunity for  
21 comment.

22 15 Pursuant to RCW 70.105D.030(1) and 70.105D.050,  
23 Ecology may require potentially liable persons to investigate  
24 or conduct other remedial actions with respect to the release

1 or threatened release of hazardous substances, whenever it  
2 believes such action to be in the public interest.

3 16. Based on the foregoing facts, Ecology believes the  
4 remedial action required by this Decree is in the public  
5 interest.

6 17. The work performed under this Decree is interim  
7 action pursuant to WAC 173-340-430. This Decree does not  
8 constitute final Site cleanup.

9 VI. WORK TO BE PERFORMED

10 This Decree contains a program designed to protect public  
11 health, welfare and the environment from the known release, or  
12 threatened release, of hazardous substances or contaminants  
13 at, on, or from the Site and to implement the CAP attached as  
14 Exhibit B.

15 Based on the foregoing Facts and Determinations, the Port  
16 of Seattle shall take the following remedial actions and these  
17 actions shall be conducted in accordance with Chapter 173-340  
18 WAC unless otherwise specifically provided for herein.

19 A. Scope of Work. The Port, through its contractor(s)  
20 and subcontractors(s) as necessary, shall accomplish the  
21 following work:

22 1. Submittal Requirements. Prior to implementing  
23 cleanup work, the Port shall submit Design Documents that meet  
24 the requirements of WAC 173-340-400, 173-340-410, and 173-340-

1 820, to be approved by Ecology The Design Documents shall  
2 consist of the following: (1) an engineering design report,  
3 (2) construction plans and specifications, (3) an operations  
4 and maintenance plan, (4) a compliance monitoring plan, and  
5 (5) a sampling and analysis plan. Specific elements of the  
6 design that must be included are measures to limit and control  
7 generation of fugitive dust and volatile air emissions,  
8 procedures to control runoff and erosion and otherwise protect  
9 the environment from temporary soil and other stockpiles on  
10 Site, and air monitoring during slag and refuse handling  
11 operations. The operations and maintenance plan shall include  
12 procedures for inspecting and maintaining the covers to be  
13 constructed over the landfill and other hazardous substances  
14 remaining on the Site. It shall also include activities to  
15 ensure that Site security is maintained. The compliance  
16 monitoring plan shall contain a sampling and analysis plan  
17 that meets the requirements of WAC 173-340-820 and shall  
18 provide that all analyses of soil and water performed pursuant  
19 to this Decree be conducted by a laboratory accredited under  
20 Chapter 173-50 WAC. Upon approval, the Design Documents shall  
21 become integral and enforceable parts of this Decree, and  
22 shall be complied with by the Port.

23 2. Health and Safety. The Port shall prepare a Site  
24 Safety and Health Plan in accordance with the most recent  
25

1 OSHA, WISHA, Department of Ecology and EPA guidance as well as  
2 applicable regulations, to be reviewed by Ecology. Specific  
3 elements that must be included in the plan are decontamination  
4 of vehicles, equipment, and materials coming into contact with  
5 hazardous substances.

6 3. Site Security. The Port shall provide security at  
7 the Site to discourage entry by unauthorized persons. Site  
8 security shall include maintenance of current fencing,  
9 installation of any additional fencing needed to establish  
10 site perimeter security and signs. Security measures shall be  
11 maintained during the duration of this Decree, unless  
12 otherwise agreed to by Ecology.

13 4. Berm Construction. The Port shall construct a  
14 landfill berm approximately 10 feet high on the east side of  
15 the Site parallel to Harbor Avenue to create a new landfill  
16 cell to contain the old landfill material to be excavated.  
17 The western berm will act as a visual barrier for the adjacent  
18 Harbor Avenue corridor and may assist in noise control for the  
19 work to be performed. Prior to placing excavated material  
20 into the consolidated landfill, additional low berms three to  
21 five feet high will be constructed to enclose the north,  
22 south, and east sides of the consolidated landfill. Slag and  
23 construction rubble shall be sorted and stockpiled on Site.  
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1 These materials shall be used as support material to construct  
2 the berm and/or placed within the consolidated landfill.

3 5. Landfill Consolidation. The Port shall excavate  
4 approximately eight acres of the landfill on the east half of  
5 the Site to an average depth of approximately eight feet and  
6 consolidate the excavated material over the existing landfill  
7 on the western portion of the Site. In some areas, the  
8 excavation depth will be approximately 15 feet below the  
9 existing slag cover. The excavated material will include  
10 slag, slag mixed with demolition debris, demolition debris,  
11 and municipal landfilled material from the former West Seattle  
12 Landfill. The municipal landfilled material shall be  
13 consolidated on the western portion of the Site.

14 6. During excavation of landfilled material, the Port  
15 shall implement environmental monitoring to screen for the  
16 presence of material that may exceed dangerous waste  
17 regulatory criteria, to protect Site workers, the public, and  
18 the environment. Monitoring shall include visual observations  
19 of excavated materials and continuous monitoring of volatile  
20 emissions from soils with direct reading instruments.

21 7. In order to protect Site workers and surrounding  
22 residents, an air monitoring program will be implemented to  
23 monitor for possible off-Site emissions during landfill  
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1 consolidation. This program will include time-weighted  
2 sampling and laboratory analysis.

3 8. Based on the RI/FS, all Soils tested to date on Site  
4 are suitable for placement in the landfill. The design  
5 documents shall include contingency provisions for special  
6 handling of drums or other containers that may contain liquid  
7 dangerous or hazardous wastes. If liquids are encountered  
8 that potentially exceed dangerous waste criteria, they shall  
9 be removed and stockpiled separately and tested for dangerous  
10 waste designation purposes. If the liquid materials designate  
11 as dangerous waste, the dangerous waste will be disposed of at  
12 a facility that has received a Part B permit under the Federal  
13 Resource Conservation and Recovery Act and that is in  
14 compliance with its permit and appropriate regulations. The  
15 dangerous waste shall be managed in accordance with applicable  
16 state and federal laws. If, during excavation of the  
17 landfill, the Port discovers other materials that may be  
18 dangerous waste, it shall notify Ecology within 24 hours of  
19 discovery, and shall separately stockpile and designate the  
20 materials. After designation of the materials, and prior to  
21 removing the materials from the stockpiled area, the Port  
22 shall inform Ecology of how the Port proposes to manage the  
23 materials. Ecology shall make the final decision on how the  
24 materials will be managed.

1           9. The soil, slag and debris shall be sorted into  
2 materials of different particle size for use on Site. The  
3 Soil shall be used as interim cover over exposed landfilled  
4 material, stockpiled for use as future fill on the Site,  
5 placed in the landfill, or taken off Site for recycling.

6           10. As they are placed in the consolidated landfill,  
7 excavated landfilled materials will be covered at the end of  
8 each working day. This daily cover will help to control birds  
9 and pests, odors, fires, blowing litter, and scavenging. The  
10 east excavation area shall also be covered daily. The daily  
11 cover will be protective and can be soil, slag, a spray-on  
12 foam or similar system, to be determined during design. The  
13 Port shall have the option of disposing of landfilled material  
14 that is not dangerous waste off Site in municipal landfills or  
15 taking the material off Site to recycling centers.

16           11. Landfill Gas Collection. The Port shall install  
17 interim landfill gas collection trenches along portions of the  
18 perimeter of the landfill and shall vent the soil gas to the  
19 atmosphere following treatment by carbon adsorption in  
20 accordance with the substantive requirements of clean air  
21 laws, as noted in Appendix B of the CAP. The Port shall  
22 install a final gas collection system under the final landfill  
23 cover. Landfill gas shall be collected by a vacuum pump and  
24 discharged to the atmosphere. The design for both the interim



1 and final landfill gas collection system shall be submitted to  
2 Ecology as part of the engineering design report.

3 12. Interim and Final Cover. The Port shall place an  
4 interim cover over exposed landfilled materials. The interim  
5 cover will contain granular capping material, which shall  
6 consist of either granular slag or imported material. The  
7 interim cover design shall be submitted to Ecology as part of  
8 the engineering design report. The interim cover shall remain  
9 in place until a methane collection system and landfill cover  
10 are installed as part of the final landfill closure. The  
11 interim cover will allow the continued passive methane venting  
12 that occurs on the Site today.

13 13. The Port shall construct a low-permeability cover  
14 system over the Site. The cover system will be designed and  
15 constructed as described in the CAP. On the eastern and  
16 southern sides of the Site, future use will be primarily as a  
17 rail yard in support of marine industrial activities in the  
18 areas. In this rail yard area, an alternative cover will be  
19 implemented. This alternative will consist of a synthetic  
20 membrane combined with either a layer of Controlled Low  
21 Strength Material or a Roller Compacted Concrete engineered  
22 layer; or pile-supported reinforced concrete. In order to  
23 support the load of rail yard operations, the engineered layer  
24 will be overlain by a ballast layer. The western portion of

1 the Site will be covered with asphalt or concrete pavement or  
2 other approved surface treatments. The landfill cover system  
3 will be either clay or a synthetic membrane under the  
4 pavement. The design of the final covers shall be submitted  
5 to Ecology as part of the engineering design report and shall  
6 include an evaluation of load-bearing capabilities, inspection  
7 and maintenance, erosion control and surface water control.

8 14. A storm water collection system will be installed to  
9 channel precipitation to outfalls maintained by the Port of  
10 Seattle. This system will be designed to meet the  
11 requirements of WAC 173-304-460 and shall be submitted to  
12 Ecology as part of the engineering design report.

13 B. Schedule of Work. The schedule for performance of the  
14 work identified above is as follows:

15 1. Design Documents and Health & Safety Plan: Submit to  
16 Ecology within 90 days of the effective date of the Decree.  
17 Ecology shall use its best efforts to review and comment on  
18 the documents within 21 days. Within 30 days of receipt of  
19 Ecology's comments on the plan, the Port shall submit to  
20 Ecology addenda to the documents, or revised documents, which  
21 shall incorporate Ecology's comments. The documents may be  
22 submitted in separate volumes or sections, as appropriate, to  
23 coincide with the phases of work to be performed. The Port  
24 shall have the option of performing the work in phases; in

1 which case, separate Design Documents will be prepared for  
2 each phase. The Port, its contractor(s), or subcontractor(s)  
3 shall not start cleanup work until Ecology has approved the  
4 Design Documents for each phase of work.

5 2. The first phase of work at the Site shall include:  
6 processing and relocation of solid materials piles; refuse  
7 consolidation; installation of an interim cover; and  
8 installation of an interim landfill gas collection system.  
9 This first phase of work shall be completed within eight  
10 months of the effective date of this Decree.

11 3. The second phase of work at the Site shall include  
12 installation of the final landfill cover, final landfill gas  
13 collection system, and the stormwater collection system. This  
14 second phase of the work shall be completed within three years  
15 of the effective date of this Decree.

16 4. If the Port does not perform the work in phases, all  
17 cleanup work shall be completed within three years of the  
18 effective date of this Decree.

19 5. All cleanup work described herein, except  
20 confirmational monitoring and long-term operation and  
21 maintenance activities, shall be completed within three years  
22 of the effective date of the Decree.

23 C. The parties anticipate that the long-term monitoring,  
24 operation, and maintenance activities required under this  
25

1 Decree will eventually be included in a master consent decree  
2 for all properties being cleaned up under MTCA or CERCLA that  
3 are owned or leased by the Port in the immediate area and are  
4 being used as part of the container shipping terminal  
5 facility.

6 D. Defendant agrees not to perform any remedial actions  
7 outside the scope of this Decree, other than minor  
8 modifications approved by the Ecology Project Coordinator,  
9 unless the parties agree to amend the scope of work to cover  
10 these actions. All work conducted under this decree shall be  
11 done in accordance with ch. 173-340 WAC unless otherwise  
12 provided herein.


13 E. Defendant agrees to record the deed restriction shown  
14 in Exhibit C with the King County Auditor's Office within 30  
15 days of the effective date of this Decree and to provide  
16 Ecology and the Attorney General's Office with proof of such  
17 recording.

18 VII. DESIGNATED PROJECT COORDINATORS

19 The project coordinator for Ecology is:

20 Glynis Carrosino  
21 Washington Department of Ecology  
22 Northwest Regional Office  
3190 160th Avenue S.E.  
Bellevue, WA 98008-5452

23 The project coordinator for Defendant is:

24  Elizabeth Stetz  
25 Port of Seattle

P.O. Box 1209  
Seattle, WA 98111  
(206) 728-3191

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and the Defendant and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

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

#### VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup.

Any construction work must be under the supervision of a professional engineer. Defendant shall notify Ecology in

1 writing as to the identity of such engineer(s) or  
2 hydrogeologist(s) or others, and of any contractors and  
3 subcontractors to be used in carrying out the terms of this  
4 Decree, in advance of their involvement at the Site.

#### 5 IX ACCESS

6 Ecology or any Ecology authorized representatives shall  
7 have the authority to enter and freely move about all property  
8 at the Site at all reasonable times for the purposes of, inter  
9 alia: inspecting records, operation logs, and contracts  
10 related to the work being performed pursuant to this Decree;  
11 reviewing Defendant's progress in carrying out the terms of  
12 this Decree; conducting such tests or collecting such samples  
13 as Ecology may deem necessary; using a camera, sound  
14 recording, or other documentary type equipment to record work  
15 done pursuant to this Decree; and verifying the data submitted  
16 to Ecology by the Defendant. All parties with access to the  
17 Site pursuant to this paragraph shall comply with approved  
18 health and safety plans.

#### 19 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

20 With respect to the implementation of this Decree,  
21 Defendant shall make the results of all sampling, laboratory  
22 reports, and/or test results generated by it, or on its behalf  
23 available to Ecology and shall submit these results in  
24 accordance with Section XI of this Decree.

25 If requested by Ecology, Defendant shall allow split or  
26 duplicate samples to be taken by Ecology and/or its authorized  
representatives of any samples collected by Defendant pursuant

1 to the implementation of this Decree. Defendant shall notify  
2 Ecology at least five (5) working days in advance of any  
3 sample collection or work activity at the Site. Ecology  
4 shall, upon request, allow split or duplicate samples to be  
5 taken by Defendant or its authorized representatives of any  
6 samples collected by Ecology pursuant to the implementation of  
7 this Decree provided it does not interfere with the  
8 Department's sampling. Without limitation on Ecology's rights  
9 under Section IX, Ecology shall endeavor to notify Defendant  
10 prior to any sample collection activity.

11 XI. PROGRESS REPORTS

12 Defendant shall submit to Ecology written monthly  
13 progress reports which describe the actions taken during the  
14 previous month to implement the requirements of this Decree.  
15 The progress reports shall include the following:

16 A. A list of on-Site activities that have taken place  
17 during the month;

18 B. Detailed description of any deviations from required  
19 tasks not otherwise documented in project plans or amendment  
20 requests;

21 C. Description of all deviations from the schedule  
22 during the current month and any planned deviations in the  
23 upcoming month;

24 D. For any deviations in schedule, a plan for  
25 recovering lost time and maintaining compliance with the  
26 schedule;

1 E. All raw data (including laboratory analysis)  
2 received by the Defendant during the past month and an  
3 identification of the source of the sample; and

4 F. A list of deliverables for the upcoming month if  
5 different from the schedule.

6 All progress reports shall be submitted by the fifteenth  
7 day of the month in which they are due after the effective  
8 date of this Decree. Unless otherwise specified, progress  
9 reports and any other documents submitted pursuant to this  
10 Decree shall be sent by certified mail, return receipt  
11 requested, to Ecology's project coordinator.

#### 12 XII. RETENTION OF RECORDS

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

#### 24 XIII. TRANSFER OF INTEREST IN PROPERTY

25 No voluntary or involuntary conveyance or relinquishment  
26 of title, easement, leasehold, or other interest in any  
portion of the Site shall be consummated without provision for



1 continued operation and maintenance of any containment system,  
2 treatment system, and monitoring system installed or  
3 implemented pursuant to this Decree.

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

10 XIV. RESOLUTION OF DISPUTES

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

15 (1) Upon receipt of the Ecology project coordinator's  
16 decision, the Defendant has fourteen (14) days within which to  
17 notify Ecology's project coordinator of its objection to the  
decision.

18 (2) The parties' project coordinators shall then confer  
19 in an effort to resolve the dispute. If the project  
20 coordinators cannot resolve the dispute within fourteen (14)  
21 days, Ecology's project coordinator shall issue a written  
22 decision.

23 (3) Defendant may then request Ecology management review  
24 of the decision. This request shall be submitted in writing  
25

1 to the Toxics Cleanup Program Manager within seven (7) days of  
2 receipt of Ecology's project coordinator's decision.

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

8 B. If Ecology's final written decision is unacceptable  
9 to Defendant, Defendant has the right to submit the dispute to  
10 the Court for resolution. The parties agree that one judge  
11 should retain jurisdiction over this case and shall, as  
12 necessary, resolve any dispute arising under this Decree. In  
13 the event Defendant presents an issue to the Court for review,  
14 the Court shall review the action or decision of Ecology on  
15 the basis of whether such action or decision was arbitrary and  
16 capricious and render a decision based on such standard of  
17 review.

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

24 Implementation of these dispute resolution procedures  
25 shall not provide a basis for delay of any activities required  
26 in this Decree, unless Ecology agrees in writing to a schedule  
extension or the Court so orders.

1                   XV. AMENDMENT OF CONSENT DECREE

2           This Decree may only be amended by a written stipulation  
3 among the parties to this Decree that is entered by the Court  
4 or by order of the Court. Such amendment shall become  
5 effective upon entry by the Court. Agreement to amend shall  
6 not be unreasonably withheld by any party to the Decree.

7           Defendant shall submit any request for an amendment to  
8 Ecology for approval. Ecology shall indicate its approval or  
9 disapproval in a timely manner after the request for amendment  
10 is received. If the amendment to the Decree is substantial,  
11 Ecology will provide public notice and opportunity for  
12 comment. Reasons for the disapproval shall be stated in  
13 writing. If Ecology does not agree to any proposed amendment,  
14 the disagreement may be addressed through the dispute  
15 resolution procedures described in Section XIV of this Decree.

16                   XVI. EXTENSION OF SCHEDULE

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

24           An extension shall only be granted for such period of  
25 time as Ecology determines is reasonable under the  
26 circumstances. A requested extension shall not be effective  
until approved by Ecology or the Court. Ecology shall act

1 upon any written request for extension in a timely fashion.  
2 It shall not be necessary to formally amend this Decree  
3 pursuant to Section XV when a schedule extension is granted.

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

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

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

16 (3) Endangerment as described in Section XVII.

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

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

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

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

1 (3) Endangerment as described in Section XVII.

2 Ecology shall give Defendant written notification in a  
3 timely fashion of any extensions granted pursuant to this  
4 Decree.

5 XVII. ENDANGERMENT

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

22 In the event Defendant determines that activities  
23 undertaken in furtherance of this Decree or any other  
24 circumstances or activities are creating an endangerment to  
25 the people on the Site or in the surrounding area or to the  
26 environment, Defendant may stop implementation of this Decree  
for such period of time necessary for Ecology to evaluate the

1 situation and determine whether Defendant should proceed with  
2 implementation of the Decree or whether the work stoppage  
3 should be continued until the danger is abated. Defendant  
4 shall notify Ecology's project coordinator as soon as  
5 possible, but no later than twenty-four (24) hours after such  
6 stoppage of work, and thereafter provide Ecology with  
7 documentation of the basis for the work stoppage. If Ecology  
8 disagrees with Defendant's determination, it may order  
9 Defendant to resume implementation of this Decree. If Ecology  
10 concurs with the work stoppage, the Defendant's obligations  
11 shall be suspended and the time period for performance of that  
12 work, as well as the time period for any other work dependent  
13 upon the work which was stopped, shall be extended, pursuant  
14 to Section XVI of this Decree, for such period of time as  
15 Ecology determines is reasonable under the circumstances. Any  
16 disagreements pursuant to this section shall be resolved  
17 through the dispute resolution procedures in Section XIV.

#### 18 XVIII. OTHER ACTIONS

19 Ecology reserves its rights to institute remedial  
20 action(s) at the Site and subsequently pursue cost recovery,  
21 and Ecology reserves its rights to issue orders and/or  
22 penalties or take any other enforcement action pursuant to  
23 available statutory authority under the following  
24 circumstances:

25 (1) Where Defendant fails, after notice, to comply with  
26 any requirement of this Decree;

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

3 (3) Upon Ecology's determination that action beyond the  
4 terms of this Decree is necessary to abate an emergency  
5 situation which threatens public health or welfare or the  
6 environment; or

7 (4) Upon the occurrence or discovery of a situation  
8 beyond the scope of this Decree as to which Ecology would be  
9 empowered to perform any remedial action or to issue an order  
10 and/or penalty, or to take any other enforcement action. This  
11 Decree is limited in scope to the geographic Site described in  
12 Exhibit A and to those contaminants in Soils which Ecology  
13 knows to be at the Site when this Decree is entered.

14 Ecology reserves all rights regarding the injury to,  
15 destruction of, or loss of natural resources resulting from  
16 the release or threatened release of hazardous substances from  
17 the Site.

18 Ecology reserves the right to take any enforcement action  
19 whatsoever, including a cost recovery action, against  
20 potentially liable persons not party to this Decree.

21 XIX. INDEMNIFICATION

22 Defendant agrees to indemnify and save and hold the State  
23 of Washington, its employees, and agents harmless from any and  
24 all claims or causes of action for death or injuries to  
25 persons or for loss or damage to property arising from or on  
26 account of acts or omissions of Defendant, its officers,  
employees, agents, or contractors in entering into and

1 implementing this Decree. However, the Defendant shall not  
2 indemnify the State of Washington nor save nor hold its  
3 employees and agents harmless from any claims or causes of  
4 action arising out of the negligent acts or omissions of the  
5 State of Washington, or the employees or agents of the State,  
6 in implementing the activities pursuant to this Decree.

7 XX. COMPLIANCE WITH APPLICABLE LAWS

8 All actions carried out by Defendant pursuant to this  
9 Decree shall be done in accordance with all applicable  
10 federal, state, and local requirements, including requirements  
11 to obtain necessary permits. Pursuant to RCW 70.105D.090(1),  
12 the known and applicable substantive requirements of Chapters  
13 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and any  
14 laws requiring or authorizing local government permits or  
15 approvals for remedial action, have been included in the CAP  
16 and are incorporated by reference here as binding and  
17 enforceable requirements in this Decree. In the event Ecology  
18 determines or Defendant becomes aware that additional permits  
19 addressed in RCW 70.105D.090(1) are required for the remedial  
20 action in the CAP, Defendant will be required to consult with  
21 the appropriate state or local jurisdictions and provide  
22 Ecology with written documentation from those jurisdictions of  
23 substantive requirements those agencies believe are applicable  
24 to the remedial actions, prior to conducting the remedial  
25 actions. Ecology shall make the final determination on the  
26 additional substantive requirements that must be met by



1 Defendant and on how Defendants must meet those requirements.  
2 The additional requirements shall become enforceable  
3 requirements of the work to be performed under this Decree.  
4 Ecology shall ensure that public notice and opportunity for  
5 comment is provided.

6 Pursuant to RCW 70.105D.090(2), in the event that  
7 Ecology determines that the exemption from complying with the  
8 procedural requirements of the laws referenced in RCW  
9 70.105D.090(1), would result in the loss of approval from a  
10 federal agency necessary for the state to administer any  
11 federal law, such exemption shall not apply and Defendant  
12 shall be required, after notification by Ecology, to comply  
13 with both the procedural and substantive requirements of the  
14 laws referenced in RCW 70.105D.090(1).

14 XXI. REMEDIAL AND INVESTIGATIVE COSTS

15 The Defendant agrees to pay costs incurred by Ecology  
16 pursuant to this Decree except for costs paid by the Port  
17 pursuant to the Interagency Agreement between Ecology and the  
18 Port dated May 28, 1991, and any amendments to that agreement.  
19 The costs required to be paid under this Decree shall include  
20 work performed by Ecology or its contractors for, or on, the  
21 Site under Ch. 70.105D RCW both prior to and subsequent to the  
22 issuance of this Decree for investigations, remedial actions,  
23 and Decree preparation, negotiations, oversight and  
24 administration (except for any such costs incurred prior to  
25 entry of this Decree that are not remedial actions of Ecology

1 under MTCA). Ecology costs shall include costs of direct  
2 activities and support costs of direct activities as defined  
3 in WAC 173-340-550(2). The Defendant agrees to pay the  
4 required amount within ninety (90) days of receiving from  
5 Ecology an itemized statement of costs that includes a summary  
6 of costs incurred, an identification of involved staff, and  
7 the amount of time spent by involved staff members on the  
8 project. A general statement of work performed will be  
9 provided upon request. Itemized statements shall be prepared  
10 quarterly. Failure to pay Ecology's costs within ninety (90)  
11 days of receipt of the itemized statement will result in  
12 interest charges.

#### 12 XXII. IMPLEMENTATION OF REMEDIAL ACTION

13 If Ecology determines that Defendant has failed without  
14 good cause to implement the remedial action, Ecology may,  
15 after notice to Defendant, perform any or all portions of the  
16 remedial action that remain incomplete. If Ecology performs  
17 all or portions of the remedial action because of the  
18 Defendant's failure to comply with its obligations under this  
19 Decree, Defendant shall reimburse Ecology for the costs of  
20 doing such work in accordance with Section XXI, provided that  
21 Defendant is not obligated under this section to reimburse  
22 Ecology for costs incurred for work inconsistent with or  
23 beyond the scope of this Decree.

#### 23 XXIII. FIVE YEAR REVIEW

24 As remedial action, including groundwater monitoring,  
25 continues at the Site, the parties agree to review the

1 progress of remedial action at the Site, and to review the  
2 data accumulated as a result of Site monitoring as often as is  
3 necessary and appropriate under the circumstances. At least  
4 every five years the parties shall meet to discuss the status  
5 of the Site and the need, if any, of further remedial action  
6 at the Site. Ecology reserves the right to require further  
7 remedial action at the Site under appropriate circumstances.  
8 This provision shall remain in effect for the duration of the  
9 Decree.

9 XXIV. PUBLIC PARTICIPATION

10 Ecology shall maintain the responsibility for public  
11 participation at the Site. However, Defendant shall  
12 cooperate with Ecology and, if agreed to by Ecology, shall:

13 A. Prepare drafts of public notices and fact sheets at  
14 important stages of the remedial action, such as the  
15 submission of work plans and engineering design reports.  
16 Ecology will finalize (including editing if necessary) and  
17 distribute such fact sheets and prepare and distribute public  
18 notices of Ecology's presentations and meetings;

19 B. Notify Ecology's project coordinator prior to the  
20 preparation of all press releases and fact sheets, and before  
21 major meetings with the interested public and local  
22 governments. Likewise, Ecology shall notify Defendant prior to  
23 the issuance of all press releases and fact sheets, and before  
24 major meetings with the interested public and local  
25 governments;

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

5 D. In cooperation with Ecology, arrange and/or continue  
6 information repositories to be located at the Port's office at  
7 Pier 69, 2711 Alaskan Way, Seattle, WA, 98121 and Ecology's  
8 Northwest Regional Office at 3190 - 160th Ave. S.E., Bellevue,  
9 WA 98008-5452. At a minimum, copies of all public notices,  
10 fact sheets, and press releases; all quality assured ground  
11 water, surface water, soil sediment, and air monitoring data;  
12 remedial actions plans, supplemental remedial planning  
13 documents, and all other similar documents relating to  
14 performance of the remedial action required by this Decree  
15 shall be promptly placed in these repositories.

16 XXV. DURATION OF DECREE

17 This Decree shall remain in effect and the remedial  
18 program described in the Decree shall be maintained and  
19 continued until the Defendant has received written  
20 notification from Ecology that the requirements of this Decree  
21 have been satisfactorily completed.

22 XXVI. CLAIMS AGAINST THE STATE

23 Defendant hereby agrees that it will not seek to recover  
24 any costs accrued in implementing the remedial action required  
25 by this Decree from the State of Washington or any of its  
26 agencies, except that the Defendant may make a claim against  
the Local Toxics Control Account for certain costs incurred in

1 implementing this Decree. Except as provided above, however,  
2 Defendant expressly reserves its right to seek to recover any  
3 costs incurred in implementing this Decree from any other  
4 potentially liable person.

5 XXVII. COVENANT NOT TO SUE UNDER MTCA; REOPENERS

6 In consideration of the Port's compliance with the terms  
7 and conditions of this Decree, Ecology agrees that compliance  
8 with this Decree shall stand in lieu of any and all  
9 administrative, legal, and equitable remedies and enforcement  
10 actions available to Ecology against the Port for the release  
11 or threatened release of hazardous substances covered by the  
12 terms of this Decree.

13 This covenant is strictly limited in its application to  
14 the liability for Soil contamination at the Site specifically  
15 defined in Exhibit A and to those hazardous substances which  
16 Ecology knows to be located in the Soil at the Site as of the  
17 entry of this Decree. This Covenant is not applicable to any  
18 other hazardous substance or area and the state retains all of  
19 its authority relative to such substances and areas.

20 A. Reopeners: In the following circumstances the State  
21 of Washington may exercise its full legal authority to address  
22 releases of hazardous substances at the Site notwithstanding  
23 the Covenant Not to Sue set forth above:

24 1. In the event the Port fails to comply with the terms  
25 and conditions of this Consent Decree, including all exhibits,

1 and, after written notice of noncompliance, fails to come into  
2 compliance;

3 2. In the event new information becomes available  
4 regarding factors previously unknown to Ecology, including the  
5 nature or quantity of hazardous substances at the Site, and  
6 Ecology determines, in light of this information, that further  
7 remedial action is necessary at the Site to protect human  
8 health or the environment, and the Port, after notice, fails  
9 to take the necessary action within a reasonable time;

10 3. In the event conditions at the Site cause an  
11 endangerment to human health or the environment under Section  
12 XVII of this Consent Decree, and the Port, after notice, fails  
13 to eliminate the endangerment within a reasonable time;

14 4. In the event the remedial action conducted at the  
15 Site fails to meet the requirements set forth in the Cleanup  
16 Action Plan and Section VI of this Decree.

17 5. To the extent the Port exacerbates the known,  
18 documented Soil contamination described in this Decree.

19 6. In the event the Port interferes with any remediation  
20 of the Site conducted or required by Ecology.

21 B. Applicability. The Covenant Not to Sue set forth  
22 above shall have no applicability whatsoever to:

23 1. Criminal liability;

24 2. Liability for damages to natural resources;

25 3. Any Ecology action against potentially liable  
26 parties not a party to this Decree;

MAR 10 1995

DEPARTMENT OF  
JUDICIAL ADMINISTRATION

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4. Liability for groundwater contamination on or off the Site.

XXVIII. EFFECTIVE DATE

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

XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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

So ordered this 10 day of March, 1995.

John Busden

Judge

King County Superior Court

1 The undersigned parties enter into this Consent Decree on  
2 the date specified below.

3  
4 THE PORT OF SEATTLE

ATTORNEY GENERAL'S OFFICE

5  
6 By: [Signature]

By: [Signature]

7 Date: 2/17/95

Date: 2/22/95

8  
9 DEPARTMENT OF ECOLOGY

10  
11 By: Mary E. Burns

12 Date: 22 February 1995

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