

Norseland
FS2627

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MAR 31 1994

DEPT OF ECOLOGY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

NO.

94 2 00725 6

v.

ORDER ENTERING
CONSENT DECREE

KITSAP COUNTY, a political
subdivision of the State of
Washington c/o Kitsap County
Commissioners; THE PORT OF
BREMERTON, a municipal
corporation of the State of
Washington.

Having reviewed the Consent Decree signed by the parties to
this matter, the Joint Motion for Entry of the Consent Decree,
the Affidavit of Steven J. Thiele, and the file herein, it is
hereby

* * *

1 ORDERED AND ADJUDGED that the Consent Decree in this matt
2 is Entered and that the Court shall retain jurisdiction over t
3 Consent Decree to enforce its terms.

4 DATED this 31 day of March, 1994.

5
6 
7 J U D G E

8 Presented by:

9 CHRISTINE O. GREGOIRE
10 Attorney General

11 
12 STEVEN J. THIELE, WSBA #20275

13 Approved for Entry:

14 Telephonic approval 3/22/94
15 RONALD FRANZ, WSBA # 4247
16 Attorney for Kitsap County

17 Telephonic approval 3/22/94
18 GORDON L. WALGREN, WSBA #4222
19 Attorney for Port of Bremerton

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

v.

Kitsap County, a political subdivision
of the State of Washington
c/o Kitsap County Commissioners
614 Division Street
Port Orchard, Washington 98366

The Port of Bremerton, a municipal
corporation of the State of Washington
c/o Port of Bremerton, Board of
Commissioners
8850 State Highway 3 Southwest
Port Orchard, Washington 98366

No. 94-2-00725-6

CONSENT DECREE

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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 of Kitsap County and the Port of Bremerton (Defendants) 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 Defendants to perform a State Remedial Investigation/Feasibility Study (RI/FS) of the Norseland Mobile Estates Site pursuant to WAC 173-340-350.

Ecology has determined that this action is necessary to protect public health and the environment.

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

C. In signing this Decree, Defendants agree to its entry and agree to be bound by its terms.

D. The United States Department of the Navy (Navy) and the City of Bremerton are also Potentially Liable Persons (PLPs) for the Norseland Site. Ecology is entering into an Agreed Order with the Navy which provides for performance of a State Remedial Investigation/Feasibility Study at the Norseland Mobile Estates Site.

E. The Defendants and the Navy have agreed to jointly perform this RI/FS under a separate agreement among themselves. Exhibit A of this Consent Decree and of the Agreed Order between Ecology and the Navy regarding the Norseland Site are identical. The Norseland Public Participation Plan referenced in this Decree

is the same as the Norseland Public Participation Plan referenced in the Agreed Order between Ecology and the Navy.

F. For the purposes of this Decree, the term Participating PLPs refers to Kitsap County, the Port of Bremerton, and the Navy. The term Nonparticipating PLP refers to the City of Bremerton.

G. By entering into this Decree, the parties do not intend to discharge nonsettling persons or entities from any liability they may have with respect to matters alleged in the Complaint. The parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree or for any other costs, expenses, or losses incurred as a consequence of environmental problems at the Site.

F. This Decree shall not be construed as an admission of liability or of any facts, or have any effect in the nature of collateral or equitable estoppel, res judicata, issue preclusion, or similar legal action; provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

II. JURISDICTION

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

B. Authority is conferred upon the Washington State Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances.

RCW 70.105D.040(4)(b) requires that such a settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

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

D. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(8), of Ecology's determination that the Defendants are potentially liable persons for the Site and that there has been a release or threatened release of hazardous substances at the Site. The Defendants had an opportunity to comment on the notices given. Ecology has not determined that the named Defendants are the only entities liable pursuant to RCW 70.105D.040.

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

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

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site, referred to variously as Norseland Mobile Estates and as the Norseland Site is located at 8651 State Highway 3 Southwest, Port

Orchard, Washington. The Site is more particularly described in Exhibit A to this Decree.

B. Parties: Refers to the Washington State Department of Ecology, Kitsap County, and the Port of Bremerton.

C. Defendants: Refers to Kitsap County, and the Port of Bremerton.

D. Consent Decree or Decree: Refers to this Consent Decree and Exhibit A of this Decree. Exhibit A is an integral and enforceable part of this Consent Decree.

E. Potentially Liable Persons (PLPs): For the purposes of this Decree, the terms Potentially Liable Persons and PLPs refer to Kitsap County, the Port of Bremerton, the City of Bremerton, and the United States Department of the Navy.

D. Participating PLPs: For the purposes of this Decree, the term Participating PLPs refers to Kitsap County, the Port of Bremerton, and the Navy.

E. Nonparticipating PLP: For the purposes of this Decree, the term Nonparticipating PLP refers to the City of Bremerton.

V. STATEMENT OF FACTS

Ecology makes the following finding of facts without any express or implied admissions by Defendants.

1. The Navy generated, transported, and disposed of waste material in a landfill on the Norseland Site in the 1950's (See Ecology Files, Norseland/SIT8.7).

2. Kitsap County owned the property currently known as Norseland Mobile Estates from 1948 until 1963. From 1951 to 1961 Kitsap County leased the Site, or portions thereof, to Puget Service Company for use as a garbage disposal Site. In 1962 a lease for the Site was entered into by Kitsap County, a municipal corporation, the lessor, and Omar B. and Shirley M. Nesham, the lessees. The lease was signed by the Kitsap County Airport Board on behalf of Kitsap County.

(See letter from Ron Franz dated July 16, 1993, with attached copy of lease, in Norseland file SIT1.2). The Neshams developed the first phase of Norseland Mobile Estates.

3. The City of Bremerton contracted Puget Service Company to collect and transport all waste from property owned or operated within the City to the landfill operated by Puget Service Company on the Norseland Site. Hence, the City of Bremerton arranged for waste disposal at the Site. This disposal began in 1951 and continued until 1961, and possibly later. Hazardous substances released at the Site are consistent with substances found in waste streams from municipal property owners.

4. The Port of Bremerton acquired the property from Kitsap County in 1963 and currently owns the Site.

5. The Port of Bremerton, through lease and approved assignment of lease, has leased the Site to a succession of mobile home park operators. The successive mobile home park operators owned/own the mobile home park improvements at the Site, but not the real property.

6. The land surrounding this Site is used primarily for commercial and industrial purposes, and has been since development of the mobile home park began in 1962. The Port of Bremerton operates a wastewater treatment plant less than one-half mile north of the Site. This plant services the Port's Industrial Park, located northeast of Norseland Mobile Estates, and airport, located across State Highway 3, southeast of Norseland Mobile Estates. The Olympic View Landfill is located within one mile to the northwest of the Site. The City of Bremerton sprays a forested area with wastewater treatment plant sludge within one mile of the Site. Each of these activities represents a potential source of odors in the vicinity of the Site. Exhibit A contains a map showing the location of some of these potential odor sources with respect to the Norseland Site.

7. Olympic View Sanitary Landfill holds a permit from the Bremerton/Kitsap County Health District to receive soil contaminated with up to

34 by weight petroleum hydrocarbons for use as daily and intermediate cover material. Olympic View Sanitary Landfill also accepts sewage sludge under permit from the Bremerton/Kitsap County Health District.

8. In September 1991 Ecology received reports that transitory odors at the mobile home park were detected by residents and that various health effects were attributed to the odors by some mobile home park residents.

9. In February and March 1992 the Washington State Department of Health conducted a health survey of residents at Norseland Mobile Estates. Washington State Department of Health recommended continued investigation and characterization of the Site to attempt to identify compounds which could be causing the reported odors and alleged health effects. (See "Norseland Mobile Estates Health Survey" by Washington State Department of Health dated June 1992 in Ecology file Norseland/SIT2.4)

10. The Port of Bremerton and Kitsap County conducted an independent study to investigate complaints of odors and environmental concerns at Norseland Mobile Estates. Hazardous substances were detected in soil vapors in the subsurface and in ambient air at Norseland. The investigation concluded that ample evidence exists which indicates portions of Norseland Mobile Estates have been used for waste management and disposal activities and that it is likely that both off-site and on-site odor sources exist. (See "Final Report for the Site Investigation at Norseland Mobile Estates, Port Orchard, Washington", prepared by Science Applications International Corporation (SAIC) for the Port of Bremerton, dated July 1992 in Ecology file Norseland/SIT2.5.)

11. Interviews of residents by Ecology personnel in October 1992 indicated that transitory odor episodes were continuing. Odor levels and frequency were reported to be increasing. Some residents continued to report health effects which they attributed to the odors.

VI. ECOLOGY DETERMINATIONS

1. The Navy is a "generator" as defined at RCW 70.105D.040(1)(c).
2. The City of Bremerton arranged for disposal of hazardous substances as defined at RCW 70.105D.040(1)(c).
3. Kitsap County is a former "owner" as defined by RCW 70.105D.040(1)(b) of a "facility" as defined in RCW 70.105D.020(3).
4. The Port of Bremerton is an "owner" as defined at RCW 70.105D.020(6) and RCW 70.105D.040(1)(a) of a "facility" as defined in RCW 70.105D.020(3).
5. The facility is known as Norseland Mobile Estates and is located at 8651 State Highway 3 Southwest, Port Orchard, Washington 98366.
6. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
7. Based on the presence of these hazardous substances at the facility and all factors known to the Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).
8. By letters dated August 3, 1992, Ecology notified Kitsap County and the Port of Bremerton of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment. By letters dated January 12, 1993, Ecology notified the Navy and the City of Bremerton of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment.
9. Pursuant to RCW 70.105D.030(1) and .050, Ecology reserves the authority to require potentially liable persons to investigate or conduct other remedial actions under subsequent decrees or orders with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
10. Based on the foregoing facts, Ecology believes the RI/FS required by this Decree is in the public interest.

VII. WORK TO BE PERFORMED

This Decree contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site. The Participating PLPs have done or shall do the following:

1. Conduct a historical records search, conduct interviews of Norseland residents, perform an initial soil gas survey, and perform ambient air sampling in the nature of a preliminary site investigation to evaluate the nature and source of odors reported at the Site.
2. Perform a second soil gas survey using Petrex soil gas samplers. The survey shall include five locations potentially associated with past landfill operations.
3. Perform a title search in order to clarify the ownership history of the Site from 1940 to present.
4. Obtain all available aerial photographs in order to assist in ascertaining historical uses of the Site. Provide interpretation of such photographs.
5. Prepare a work plan for a State Remedial Investigation/Feasibility Study (RI/FS) of the nature and extent of contamination in groundwater, surface water, soil, sediments, and air at Norseland Mobile Estates and determine on-site sources of contaminants. The RI/FS shall be conducted in accordance with the scope and contents specified in WAC 173-340-350(5) and (6).
6. The RI/FS shall delineate the nature and extent of landfill material underlying the Site using an appropriate combination of test pits, borings, geophysical surveys, and/or other appropriate methods.
7. The RI/FS shall include air quality investigations sufficient to evaluate the nature and extent of intermittent odors at the Site and to evaluate on-site sources of such odors. The RI/FS shall assess the relative contribution of on-site sources to odors at Norseland Mobile Estates.

8. Delineation of the nature and extent of potential lead contamination in blue clay and of petroleum-contaminated soils identified during the Site hazard assessment are specifically excluded from the RI/FS required under this Decree (See "Site Hazard Assessment, Norseland Site, 8651 State Highway 3 Southwest, Port Orchard, Washington", by Washington Department of Ecology, Northwest Regional Office, Toxics Cleanup Program, in Ecology File Norseland/SIT2.3). Areas in which these soils occur shall be investigated if necessary to delineate the nature and extent of underlying landfill material.

9. The RI/FS shall include installation and sampling of monitoring wells to assess groundwater quality.

10. The need for surface water and/or sediment sampling to assess water and sediment quality shall be evaluated during the course of the RI/FS.

11. The RI/FS may be performed in phases, with a separate work plan prepared for each phase. The first work plan submitted shall contain a draft outline for the final RI/FS report, specify the portions of the RI/FS report for which investigations are being conducted, be attached as Exhibit A of this Consent Decree, and be an integral part of this Consent Decree. Subsequent work plans shall be prepared for Ecology approval. Upon approval by Ecology such work plans shall be performed under this Consent Decree. All work plans shall contain a schedule and specify deliverable items. Deliverable items shall include monthly progress reports, data packages containing quality assured data collected during the investigations as specified in Section XI of this Decree, and reports describing the results of investigations conducted under the work plan. Draft interim reports shall be prepared at the end of each phase and submitted to Ecology for Ecology approval. A final RI/FS report will be prepared at the completion of the final work plan describing the results of investigations conducted under all work plans and incorporating the findings presented in all interim reports. The final report shall stand alone as a comprehensive report of the RI/FS. The final RI/FS report shall follow the draft outline contained

in the work plan as revised during the course of work. Revision of the outline shall require approval of Ecology's project coordinator. Draft interim reports shall follow relevant portions of the draft outline and be prepared in such a manner that they may be readily incorporated into the final report.

12. Draft interim reports shall be made available for public review in accordance with the Norseland Public Participation Plan. Subsequent work plans and the final report shall be subject to public comment and hearings in accordance with the Norseland Public Participation Plan. Modifications to work plans that Ecology determines are not significant will not be subject to public comment.

13. Although a phased approach may be used by the Defendants, Ecology intends the RI/FS investigations to be conducted in a timely and expeditious manner. Ecology expects the Defendants to exercise good faith in designing a thorough Phase I work plan.

14. Defendants agree not to perform any remedial actions outside the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Decree shall be done in accordance with Ch. 173-340 WAC unless otherwise provided herein.

15. Ecology will not take enforcement action against the Defendants to require those remedial actions specified in this Decree so long as the Defendants comply with the provisions of this Decree.

VIII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Name:	David L. South
Address:	Toxics Cleanup Program Washington State Department of Ecology 3190 160th Avenue SE Bellevue, Washington 98008-5452
Telephone:	(206) 649-7200
FAX:	(206) 649-7098

The project coordinator for the Defendants is:

Name: Jeff Frettingham
Address: Solid Waste Specialist, Closed Landfill Oversight
Kitsap County Public Works, Solid Waste Division
614 Division Street, MS-27
Port Orchard, Washington 98366-4686
Telephone: (206) 895-3931
FAX: (206) 895-4926

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 Defendants 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.

IX. 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. Defendants shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any

contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

X. ACCESS

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

XI. SAMPLING, DATA REPORTING, AND AVAILABILITY

With respect to the implementation of this Decree, Defendants shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology and shall submit these results in accordance with Section XII of this Decree.

Data shall be submitted on computer disk where applicable. Data submitted on computer disk shall be compatible with Ecology data import requirements for the computer program PARADOX. A hard copy of data submitted on computer disk also shall be submitted. These submittals shall be provided to Ecology in accordance with Section XII of this Decree.

If requested by Ecology, Defendants shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance of any sample

collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants or their authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section X, Ecology shall endeavor to notify Defendants prior to any sample collection activity.

XII. PROGRESS REPORTS

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

- A. A list of on-site activities that have taken place during the month;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule specified in the work plan governing the activities during the reporting month and any planned deviations in the upcoming month;
- D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- E. All validated data (including laboratory analysis) received by the Defendants during the past month and an identification of the source of the samples; and
- F. A list of deliverables for the upcoming month if different from the schedule.

All progress reports shall be submitted by the fifteenth day of the month in which they are due after the effective date of this Decree.

XIII. RETENTION OF RECORDS

Defendants shall preserve, during the pendency of this Decree and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVI, all records, reports, documents, and underlying data, or the electronic equivalent, in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors and subcontractors a similar record retention requirement. Upon request of Ecology, Defendants shall make all non-archived records available to Ecology and allow access for review. All archived records shall be made available to Ecology within a reasonable period of time.

XIV. TRANSFER OF INTEREST IN THE SITE

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port of Bremerton without provision for continued operation and maintenance of any containment system, treatment system, monitoring systems, and institutional controls installed or implemented pursuant to this Decree.

Prior to transfer by the Port of Bremerton of any legal or equitable interest in all or any portion of the Site, and during the effective period of this Decree, Port of Bremerton shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the Site; and, at least thirty (30) days prior to any transfer, the Port of Bremerton shall notify Ecology of said contemplated transfer.

XV. RESOLUTION OF DISPUTES

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

Defendants have fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision. The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

B. If Ecology's final written decision is unacceptable to Defendants, Defendants have the right to submit the dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Defendants present an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review.

C. The parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

XVI. AMENDMENT OF CONSENT DECREE

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

Defendants shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received. If the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does not

agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XV of this Decree.

Amendments proposed by Ecology are subject to this same procedure.

XVII. EXTENSION OF SCHEDULE

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

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

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

(1) Circumstances beyond the reasonable control and despite the due diligence of Defendants including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays in gaining site access due to third party actions or delays by Ecology in reviewing, approving, or modifying documents submitted by Defendants; or

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

(3) Endangerment as described in Section XVIII.

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

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

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

(2) Delays in gaining site access due to third party actions, or

(3) Other circumstances deemed exceptional or extraordinary by Ecology; or

(4) Endangerment as described in Section XVIII.

Ecology shall give Defendants written notification in a timely fashion of any extensions granted pursuant to this Decree.

XVIII. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendants to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Defendants with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Defendants determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an

endangerment to the people on the Site or in the surrounding area or to the environment; Defendants may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Defendants should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the Defendants' determination, it may order Defendants to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Defendants' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XVII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved through the dispute resolution procedures in Section XV.

XIX. OTHER ACTIONS

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

- (1) Where Defendants fail, after notice, to comply with any requirement of this Decree;
- (2) In the event or upon the discovery of a release or threatened release not addressed by this Decree;
- (3) Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an emergency situation which threatens public health or welfare or the environment; or

(4) Upon the occurrence or discovery of a situation beyond the scope of this Decree as to which Ecology would be empowered to perform any remedial action or to issue an order and/or penalty, or to take any other enforcement action.

Ecology reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from Norseland Mobile Estates.

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

XX. INDEMNIFICATION

Each party agrees to indemnify and save and hold the other parties, their employees, and their agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of that party's own officers, employees, agents, or contractors in entering into and implementing this Decree.

XXI. COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by Defendants pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

XXII. REMEDIAL AND INVESTIGATIVE COSTS

The Defendants agree to pay remedial action costs incurred by Ecology. Remedial action costs are costs reasonably attributable to the Site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. As used in this Decree, costs of direct activities and support costs of direct activities mean the following:

(a) Costs of direct activities are direct staff costs and other direct costs. Direct staff costs are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of Ecology staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.

(b) Support costs of direct activities are agency support costs and program support costs, each expressed as a multiplier of the direct staff costs and described as follows:

(i) Agency support costs are the costs of facilities, communications, personnel, fiscal, and other state-wide and agency-wide services. The multiplier used shall be the agency indirect rate approved by the agency's federal cognizant agency (which, as of July 1, 1993, was the United States Department of the Interior) for each fiscal year.

(ii) Program support costs are the costs of administrative time spent by site managers and other staff that work directly on sites and the cost of management, clerical, policy, computer, financial, and other support provided by other program staff to site managers and other staff that work directly on sites. The multiplier used shall be calculated by dividing actual support costs by the direct staff costs of all hours charged to site related work. The multiplier shall be revised at least biennially and any changes published in at least two publications of the *Site Register*. The multiplier shall not exceed 1.0 (one).

(c) Request for payment. When Ecology requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.

(d) Interest charges. A minimum of twelve percent interest shall accrue on all remedial action costs not paid within ninety days of the billing date, or within another longer time period designated by Ecology.

XXIII. CONTRIBUTION

The Defendants shall not be liable for claims from others regarding matters addressed in this Decree pursuant to RCW 70.105D.040(4)(d).

XXIV. IMPLEMENTATION OF REMEDIAL INVESTIGATION/FEASIBILITY STUDY

If Ecology determines that Defendants have failed without good cause to implement the work under this decree, Ecology may, after notice to Defendants, perform any or all portions of the work that remain incomplete. If Ecology performs all or portions of the work because of the Defendants' failure to comply with its obligations under this Decree, Defendants shall reimburse Ecology for the costs of doing such work in accordance with Section XXII, provided that Defendants are not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

XXV. PUBLIC PARTICIPATION

Public Participation will be accomplished by implementing the Norseland Public Participation Plan. Ecology shall maintain the responsibility for implementing the Public Participation Plan in accordance with WAC 173-340-600(8)(g).

RCW 70.105D.030(2)(a) requires that, at a minimum, this Decree be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this

Decree after consulting with the Participating PLPs should public comment disclose facts or considerations which indicate to Ecology that the Decree is inadequate or improper in any respect. Should Ecology modify the Decree or Order as a result of public participation, the Defendants reserve the right to withdraw from the Decree.

XXVI. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendants have received written notification from Ecology that the requirements of this Decree have been satisfactorily completed.

XXVII. CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies. Further, the Defendants will make no claim against the State Toxics Control Account or any Local Toxics Control Account. Except, however, the Defendants are not prohibited from applying to the State or other entities for grant monies for which they are eligible to fund the work. Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person.

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

Norseland Site RI/FS Consent Decree

Decree will lead to a more expeditious cleanup of Site.

If the Court refuses to enter this Decree, it option of any party and the accompanying Complaint costs and without prejudice. In such an event, no requirements of this Decree.

For the Washington State Department of Ecology:

Carol Fleskes Date
Program Manager
Toxics Cleanup Program

Christine
Assistant

For the Port of Bremerton:

Mary Ann Huntington 10-12-93
Mary Ann Huntington Date
President and Commissioner

Fred S.
Secy

Dick Feek 10-12-93
Dick Feek Date
Commissioner

Approved as to form:

Gordon Walgren 10-12-93
Gordon Walgren Date
Port Attorney

For Kitsap County:

NOT PRESENT

Billie Eder Date
Chairperson
Chris Endresen 10-18-93
Chris Endresen Date
Commissioner

Win Grant
Commissioner

Holly
Clerk of

Approved as to form:

Reinhold Schuetz
Reinhold Schuetz Date
Deputy Prosecuting Attorney