

HQ
F/S 106 & 107

DEPARTMENT OF ECOLOGY

DATE: November 27, 2007

TO: Debbie Iness, Fiscal

FROM: Katherine Scott, TCP *Katherine Scott*

SUBJECT: **Moses Lake City Wellfield Consent Decree No. CV-05-0182-FVS, Project Numbers 106 & 107**
The site is located in and near the City of Moses Lake, Grant County.

I have attached Consent Decree No. CV-05-0182-FVS effective April 12, 2007. Please set up a cost recovery project file. Please note Section VI, Consideration/Payment of Costs on page 9. The city agrees to pay Ecology \$31,452.23 for past oversight costs at this site. The city was to have made this payment within 30 days of the Court entry of the decree.

Please address invoices to:

MOSES LAKE CITY
Joseph Gavinski, City Mgr
City Manager
City of Moses Lake
~~South 321 Balsam Street~~ *321 S BALSAM ST*
PO Box 1579
Moses Lake, WA 98837-0244

Ecology's Site Manager (Project Coordinator) is:

Barry Rogowski, HQ – TCP (360) 407-7236
Project # 8522, SIC J1AP7

If you have any questions regarding this project, please call me at 407-7213

Attachments

Moses Lake City Wellfield
SIC JIAA

Project # 8522

F/S 106 (Site name: Moses Lk WF)

F/S 107 (Site name: Moses Lk WF Skyline)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

CITY OF MOSES LAKE, a Washington
municipal corporation,

Defendant.

No. CV-05-0182-FVS

ORDER GRANTING JOINT MOTION
FOR ENTRY OF CONSENT DECREE

The parties having jointly moved for entry of a consent decree,
the consent decree being signed by the parties, and the Court being
fully advised on this matter,

IT IS HEREBY ORDERED that the Joint Motion for Entry of Consent
Decree, Ct. Rec. 28, is **GRANTED**.

IT IS SO ORDERED. The District Court Executive is hereby
directed to enter this order, furnish copies to counsel, and **CLOSE THE
FILE.**

DATED this 12th day of April, 2007.

s/ Fred Van Sickle
Fred Van Sickle
United States District Judge

MICHAEL L. DUNNING, WSBA #29452
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
Attorney for Plaintiff
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF MOSES LAKE, a
Washington municipal corporation,

Defendant.

NO. 05-CV-182-FVS

CONSENT DECREE BETWEEN
WASHINGTON STATE
DEPARTMENT OF ECOLOGY
AND CITY OF MOSES LAKE

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Exhibit A - Site Diagram

I. INTRODUCTION

A. This Consent Decree (Decree) is entered into by the State of Washington, Department of Ecology (Ecology) and the City of Moses Lake (City) to provide for the payment of Ecology's past costs at a facility where there has been a release or threatened release of hazardous substances and to reach a final settlement between the Parties that resolves the City's liability as described herein. This Decree requires the City to pay Ecology's past oversight costs.

B. A Complaint in this action was filed by Ecology on June 17, 2005, pursuant to Section 107(a) of the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607, and the Model Toxics Control Act (MTCA), Chapter 70.105D, Revised Code of Washington (RCW), seeking recovery of costs for removal and/or remedial action incurred by Ecology in responding to a release or threat of release of hazardous substances at or in connection with the Moses Lake Wellfield Contamination Superfund Site (Site), located in and near the City of Moses Lake, Grant County, Washington. An answer has not been filed in this matter, and there has not been a trial on any issue of fact or law in this case. The Parties wish to resolve the issues raised by Ecology's Complaint. In

1 addition, the Parties agree that settlement of these matters without litigation is
2 reasonable and in the public interest, and that entry of this Decree is the most
3 appropriate means of resolving these matters.

4 C. In signing this Decree, the Parties agree to its entry and agree to be
5 bound by its terms.

6 D. The Decree and its requirements resolve the City's alleged liability
7 to Ecology under CERCLA Section 107(a). It does not purport to resolve the
8 City's alleged liability, if any, to the United States.

9 E. By entering into this Decree, the Parties do not intend to discharge
10 non-settling Parties from any liability they may have with respect to matters
11 alleged in the Complaint. The Parties retain the right to seek reimbursement, in
12 whole or in part, from any liable persons for sums expended under this Decree.

13 F. By entering into this Decree, the City does not admit any liability
14 under CERCLA or any other law. This Decree shall not be construed as proof
15 of liability or responsibility for any releases of hazardous substances or cost for
16 remedial action nor an admission of any facts; provided, however, that the City
17 shall not challenge the authority of the Attorney General and Ecology to
18 enforce this Decree.

19 G. The Parties agree, and this Court finds, that this Decree has been
20 negotiated by the Parties in good faith, that settlement in this matter will avoid
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1 prolonged and complicated litigation, and that this Decree is fair, reasonable,
2 and in the public interest.

3 H. The Court is fully advised of the reasons for entry of this Decree,
4 and good cause having been shown:

5 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND
6 DECREED as follows:

7 II. JURISDICTION

8 A. This Court has jurisdiction over the subject matter and over the
9 Parties pursuant to 28 U.S.C. § 1331 and pursuant to CERCLA, 42 U.S.C.
10 § 9601, *et. seq.*, and also has personal jurisdiction over the City.

11 B. This Decree has been subject to public notice and comment.

12 C. Authority is conferred to the State of Washington under CERCLA
13 Section 107(a) to recover its past costs.

14 D. The City has agreed to undertake the actions specified in this
15 Decree and consents to the entry of this Decree under CERCLA Section 107(a).

16 III. PARTIES BOUND

17 This Decree shall apply to and be binding upon the Parties to this Decree,
18 their successors and assigns. The undersigned representative of each party
19 hereby certifies that he or she is fully authorized to enter into this Decree and to
20 execute and legally bind such party to comply with the Decree. The City agrees
21 to undertake all actions required by the terms and conditions of this Decree. No
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1 change in ownership or corporate status shall alter the City's responsibility
2 under this Decree.

3 IV. DEFINITIONS

4 A. Site: The Site, referred to as the Moses Lake Wellfield
5 Contamination Superfund Site, is generally located near the City of Moses Lake
6 in Grant County, Washington. The Site is more particularly described in
7 Exhibit A to this Decree, which is a detailed Site diagram. The Site constitutes a
8 facility as defined by CERCLA, 42 U.S.C. § 9601(9).

9 B. Parties: Refers to the Washington State Department of Ecology
10 and the City of Moses Lake.

11 C. City: Refers to the City of Moses Lake.

12 D. Consent Decree or Decree: Refers to this Consent Decree and
13 each of the exhibits to the Decree. All exhibits are integral and enforceable
14 parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall
15 include all exhibits to the Consent Decree.

16 V. STATEMENT OF FACTS

17 Ecology makes the following findings of fact without any express or
18 implied admissions by the City.

19 A. The United States occupied the Site from the early 1940s through
20 1966, and used the Site as a military airfield, known as Larson Air Force Base
21
22

1 (LAFB). The United States stationed military aircraft, including B-52 bombers,
2 at LAFB.

3 B. On June 30, 1967, the federal government deeded the water and
4 sewer facilities that serviced LAFB's housing area and airport to the City.

5 C. The City's wells and real property are located within and near the
6 Site.

7 D. The City is the owner and operator of a Water Utility, which
8 supplies drinking water to residents and businesses in Moses Lake.

9 E. The City's Water Utility has divided its distribution facilities into
10 six zones. The northern distribution zone, known as "the Larson Zone," serves
11 approximately 5,000 people. The Larson Zone consists of six wells (ML-21,
12 ML-22, ML-23, ML-24, ML-28, and ML-29), which were drilled by the United
13 States government in the 1940s and 1950s.

14 F. Trichlorethylene (TCE) is a common chlorinated solvent. The
15 federal and state maximum contaminant level (MCL) is five parts per billion
16 (ppb).

17 G. TCE is a "hazardous substance" under CERCLA, 42 U.S.C.
18 § 9601(14), 40 C.F.R. § 116.4.

19 H. In February 1988, the City sampled 17 of its drinking water wells
20 for volatile organic compounds. This sampling and subsequent analyses
21 confirmed the presence of TCE in some of the City's wells located within the
22

1 Larson System wells at levels in excess of the federal and state MCL of five
2 ppb.

3 I. During 1988 and 1989, Ecology and the Washington State
4 Department of Social and Health Services (DSHS) sampled City wells within
5 the Larson Zone and several nearby small system wells. Ecology and DSHS
6 identified groundwater contamination in the Moses Lake Larson System
7 Wellfield area. Specifically, sampling and analysis revealed the presence of
8 TCE in the City's wells ML-21, ML-22, and ML-28 at concentrations above the
9 MCL of 5 ppb (the tests showed levels that ranged between 5 to 14 ppb).

10 J. From 1990 through 1991, the City undertook several investigative
11 and remedial measures to respond to the contamination of the City's wells by
12 TCE and as a means of protecting the public's drinking water supply.

13 K. Upon notification that the TCE levels exceeded the MCL of five
14 ppb the City removed the contaminated wells (ML-21, ML-22, and ML-28)
15 from service.

16 L. As an emergency measure to protect its citizens from groundwater
17 contamination, three of the City's wells (ML-21, ML-22, and ML-28) either
18 had to be abandoned and replaced or rehabilitated through casing and drilling to
19 a deeper uncontaminated zone in the Wanapum aquifer in order to obtain
20 uncontaminated water. These actions allowed the City to supply its citizens
21 with uncontaminated drinking water.
22

1 M. In 1991, Ecology listed LAFB on its Affected Media and
2 Contaminants Report as a C1 Site, a confirmed hazardous substance site.

3 N. In 1992, the EPA listed the Site on the National Priorities List
4 (NPL) for Uncontrolled Hazardous Waste Sites as "The Moses Lake Wellfield
5 Contamination Superfund Site." The Site includes a number of City wells and
6 adjacent real property.

7 O. Since the discovery of TCE in the City's wells in 1988, EPA and
8 the United States Corps of Engineers (Corps) have conducted extensive
9 investigations at the Site.

10 P. The Corps has published a Remedial Investigation (RI). The RI
11 identifies several plumes of TCE in the groundwater extending from LAFB
12 approximately four miles to Moses Lake, and extending across 2,560 acres.

13 Q. In 2006, the City undertook sampling of property at the Site for the
14 purposes of site characterization and identification of potential sources of
15 contamination. The results of that sampling were provided to the Corps and to
16 Ecology. The City incurred costs associated with this sampling in the amount
17 of \$150,184.

18 VI. CONSIDERATION/PAYMENT OF COSTS

19 As consideration for entering into this Decree and settlement of its
20 CERCLA Section 107(a) claim, Ecology credits the City for its expenditure of
21 \$150,184, representing the cost of the sampling undertaken for the purposes of
22

1 site characterization and identification of potential sources of contamination in
2 October 2006. In addition to these credited costs, this Decree requires the
3 payment of Ecology's past oversight costs. The City agrees to pay Ecology the
4 amount of \$31,452.23 as reimbursement of Ecology's past oversight costs at the
5 Site. The City's payment of Ecology's past costs resolves and settles its
6 liability to Ecology under CERCLA Section 107(a). The City shall provide
7 payment to Ecology within 30 days of the Court's entry of this Decree.

8 Payment shall be made to:

9 Department of Ecology
10 Attn: Cashiering Section
11 P.O. Box 5128
12 Lacey, WA 98509-5128

13 **VII. DESIGNATED PROJECT COORDINATORS**

14 The project coordinator for Ecology is:

15 Barry Rogowski
16 Toxics Cleanup Program
17 Washington State Department of Ecology
18 300 Desmond Drive SE
19 P.O. Box 47600
20 Olympia, WA 98504-7600

21 The project coordinator for the City is:

22 Joseph Gavinski
City Manager
City of Moses Lake
South 321 Balsam Street
P.O. Drawer 1579
Moses Lake, WA 98837-0244

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the City 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. Any Party may change its respective project coordinator. Written notification shall be given to the other Party at least ten (10) calendar days prior to the change.

VIII. AMENDMENT OF CONSENT DECREE

This Decree may only be amended by a written stipulation among the Parties 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 the Decree shall not be unreasonably withheld by any Party.

The City 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 represents a substantial change, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree

1 to any proposed amendment, the disagreement may be addressed through the
2 Court.

3 **IX. COVENANT NOT TO SUE**

4 A. Covenant Not to Sue: In consideration of the City's compliance
5 with the terms and conditions of this Decree, Ecology covenants not to institute
6 legal or administrative actions against the City under CERCLA Section 107(a)
7 regarding the release or threatened release of hazardous substances covered by
8 this Decree.

9 This Decree covers the Site specifically identified in Exhibit A and those
10 hazardous substances that Ecology knows are located at the Site as of the date
11 of entry of this Decree. This Decree does not cover any other hazardous
12 substance or area. Ecology retains all of its authority relative to any substance
13 or area not covered by this Decree.

14 This Covenant Not to Sue shall have no applicability whatsoever to:

- 15 (1) Criminal liability.
16 (2) Liability for damages to natural resources.
17 (3) Any Ecology action, including cost recovery, against potentially
18 liable persons not a party to this Decree.

19 If factors not known to Ecology at the time of entry of the settlement
20 agreement are discovered and present a previously unknown threat to human
21 health or the environment, the Court shall amend this covenant not to sue.
22

1 B. Reopeners: Ecology specifically reserves the right to institute legal
2 or administrative action against the City to pursue appropriate cost recovery,
3 pursuant to CERCLA Section 107(a) under the following circumstances:

4 (1) Upon the City's failure to meet the requirements of this Decree;

5 (2) Upon Ecology's determination that remedial action beyond the
6 terms of this Decree is necessary to abate an imminent and substantial
7 endangerment to human health or the environment; or

8 (3) Upon the availability of new information regarding factors
9 previously unknown to Ecology, including the nature or quantity of hazardous
10 substances at the Site, and Ecology's determination, in light of this information,
11 that further remedial action is necessary at the Site to protect human health or
12 the environment.

13 C. Except in the case of an emergency, prior to instituting legal or
14 administrative action against the City pursuant to paragraph B above, Ecology
15 shall provide the City with fifteen (15) calendar days notice of such action.

16 **X. CONTRIBUTION PROTECTION**

17 With regard to claims for contribution against the City, the Parties agree
18 that the City is entitled to protection against claims for contribution for matters
19 addressed in this Decree as provided by 42 U.S.C. § 9613(f)(2). The term
20 "matters addressed" in this Decree refers only to the payment of Ecology's past
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1 response costs as provided in Section VI of this Decree that settles the City's
2 CERCLA liability as to Ecology only.

3 **XI. DURATION OF DECREE**

4 The Decree shall be maintained and continued until the City has received
5 written notification from Ecology that the requirements of this Decree have
6 been satisfactorily completed. This Decree shall remain in effect until
7 dismissed by this Court. Until dismissed, this Court shall retain jurisdiction
8 over this matter for the purpose of enforcing the terms and conditions of this
9 Decree. When dismissed, Section IX, Covenant Not to Sue, and Section X,
10 Contribution Protection, shall survive.

11 **XII. CLAIMS AGAINST THE STATE**

12 The City hereby agrees that it will not seek to recover any costs paid
13 under this Decree pursuant to Section VI from the State of Washington or any
14 of its agencies. However, the City may apply for grant funding from the Local
15 Toxics Control Account for other costs of response it has incurred at the Site.
16 Except as provided above, however, the City expressly reserves its right to seek
17 to recover these response costs incurred from any other potentially responsible
18 or potentially liable person or the Local Toxics Control Account.

19 **XIII. EFFECTIVE DATE**

20 This Decree is effective upon the date it is entered by the Court.
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1 **XIV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

2 This Decree has been the subject of public notice and comment. As a
3 result of this process, Ecology has found that this Decree will lead to a more
4 expeditious cleanup of hazardous substances at the Site in compliance with
5 CERCLA.

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

10 STATE OF WASHINGTON
11 DEPARTMENT OF ECOLOGY

ROBERT M. McKENNA
Attorney General

12 



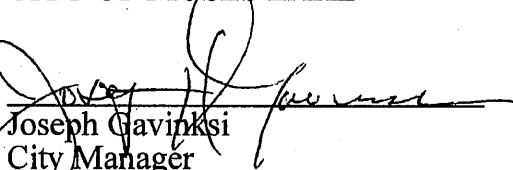
13 James Pendowski
14 Program Manager
15 Toxics Cleanup Program

Michael L. Dunning, WSBA #29452
Assistant Attorney General

16 Date: 2/15/07

Date: 2/15/07

17 CITY OF MOSES LAKE

18 
19 Joseph Gavinski
20 City Manager

21 Date: 2-14-07

22 ENTERED this _____ day of _____ 20__.

UNITED STATES DISTRICT JUDGE

