

Lakepointe Develop aka Kenmore Industrial Park

SIT 8.1.8

O'Brien, Maura (ECY)

From: MacDonald, Diana (ATG)
Sent: Wednesday, October 13, 2010 1:31 PM
To: Fitz, Andy (ATG); O'Brien, Maura (ECY)
Cc: Wang, Ching-Pi (ECY); Scott, Sarian (ATG); Merryman, Dawn (ECY)
Subject: RE: Signed amendment from KIP
Attachments: Amendment.pdf; Order.pdf

Attached is the Stipulated Amendment and Order signed by the court on October 12. Please let me know if I can be of further assistance.

Diana MacDonald
(360) 586-4620
dianam@atg.wa.gov

Please do not print this message unless necessary.

From: Fitz, Andy (ATG)
Sent: Tuesday, October 12, 2010 10:01 AM
To: O'Brien, Maura (ECY)
Cc: Wang, Ching-Pi (ECY); MacDonald, Diana (ATG)
Subject: RE: Signed amendment from KIP

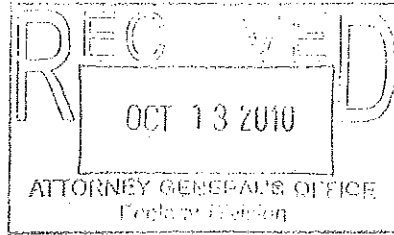
We just filed it with the court this morning (via electronic filing). Diana or I will let you know as soon as it's entered and send you a copy of the final document.

From: O'Brien, Maura (ECY)
Sent: Tuesday, October 12, 2010 9:58 AM
To: Fitz, Andy (ATG)
Cc: Wang, Ching-Pi (ECY)
Subject: Signed amendment from KIP

Hello,
Just checking if you have received the signed amendment for the Kenmore Industrial Park invoice agreement?
Fiscal and I need to complete this issue this month.

Maura

Maura S. O'Brien, PG/HG #869
Professional Geologist/Hydrogeologist
Toxics Cleanup Program - NWRO
Department of Ecology
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FILED
KING COUNTY, WASHINGTON
OCT 12 2010
SUPERIOR COURT CLERK

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PIONEER TOWING COMPANY, INC.,

Defendant.

No. 01-2-22187-6 SEA

ORDER ENTERING STIPULATED
AMENDMENT NO. 1 TO CONSENT
DECREE [PROPOSED]

Having reviewed the Joint Motion to Enter Stipulated Amendment No. 1 to Consent Decree, the Stipulated Amendment No. 1 to Consent Decree signed by the parties to this matter, the file herein, and being fully advised on the matter, it is hereby

ORDERED AND ADJUDGED that the Stipulated Amendment No. 1 to Consent Decree in this matter is entered and that the Court shall retain jurisdiction of the Consent Decree and Amendment to enforce its terms.

SIGNED this 12th day of October 2010.

Superior Court Judge/Commissioner
Pro Tem

1 Presented by:

2 ROBERT M. MCKENNA
Attorney General

3 

4 _____
5 ANDREW A. FITZ, WSBA #22169
6 Senior Counsel
7 Attorneys for Plaintiff
8 Washington State Department of Ecology
9 (360) 586-6752

BEVERIDGE LAW PS



PER ELECTRONIC NOTIFICATION
R. Paul Beveridge, WSBA #16732
Attorney for Defendants
(206) 325-3051

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FILED
KING COUNTY, WASHINGTON
OCT 12 2010
SUPERIOR COURT CLERK

ATTORNEY GENERAL'S OFFICE
Ecology Division

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PIONEER TOWING COMPANY, INC.,

Defendant.

No. 01-2-22187-6 SEA

STIPULATED AMENDMENT NO. 1
TO CONSENT DECREE (KENMORE
INDUSTRIAL PARK SITE)

This stipulated amendment (Amendment) to Consent Decree No. 01-2-22187-6 SEA is issued pursuant to the authority of RCW 70.105D, the Model Toxics Control Act (MTCA).

I. STATEMENT OF CURRENT CONDITIONS

A. Consent Decree No. 01-2-22187-6 SEA (Decree) was signed by the Court and entered on August 14, 2001. The Decree was a negotiated settlement between the Washington State Department of Ecology (Ecology) and Pioneer Towing Company Inc. (Pioneer Towing).

B. In the time since the Decree was entered, a dispute has arisen between Ecology and Pioneer Towing concerning the reimbursement of oversight costs claimed by Ecology to be owed under the Decree, Section XXII (Remedial and Investigative Costs), for two distinct time periods. The first period relates to costs claimed by Ecology for the period

1 prior to and up to the date of entry of the Decree (i.e., September 1991 to August 14, 2001).
2 The second period relates to costs claimed by Ecology for the period from January 1, 2009,
3 to June 30, 2010. The parties have agreed to resolve this dispute as reflected in the
4 Amendment below.

5 II. STIPULATED AMENDMENT TO CONSENT DECREE

6 Based on the foregoing, the parties stipulate and agree that the Decree should be
7 amended pursuant to the provisions of Section XV (Amendment of Consent Decree; Adding
8 Parties to the Decree) as follows:

9 A. All the terms of the Decree as entered on August 14, 2001, remain in effect
10 unless expressly amended herein.

11 B. Section XXII. REMEDIAL AND INVESTIGATIVE COSTS, shall be
12 amended to add a new second and third paragraph as follows:

13 Pioneer Towing shall satisfy its obligation to reimburse costs for work performed by
14 Ecology or its contractors for, or on, the Site under Ch. 70.105D RCW and prior to the
15 issuance of this Decree (i.e., September 1991 to August 14, 2001), through the payment of
16 \$68,739.00, subject to the following conditions:

17 1. Payment must be made in full within thirty (30) days of redevelopment
18 of the Kenmore Industrial Park Site, or within ten (10) years of the date of entry of
19 this Amendment, whichever occurs earlier. For the purposes of this condition,
20 "redevelopment" shall mean the completion of Phase 1, Step 1 (Development Permits
21 Received for Phase 1) as outlined in Attachment A (Timeline) to Exhibit B to this
22 Decree.

23 2. In the interim until Condition 1 above is satisfied, Pioneer Towing
24 shall make payment on the \$68,739.00 amount at the rate of \$200.00 per month with
25 no interest, with the first payment due on the fifteenth (15th) day of the first full
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calendar month following entry of this Amendment. All such \$200.00 payments shall reduce the principal amount due under Condition 1 above.

3. In the event Pioneer Towing is more than ninety (90) days past due on a monthly payment to be made pursuant to Condition 2 above, interest shall accrue on the principal amount remaining due at a 12 percent (12%) annual rate, compounded quarterly, per WAC 173-340-550(4).

4. Pioneer Towing's obligation to pay the above debt will be secured by a statutory lien per MTCA, RCW 70.105D.055(2)(a).

Pioneer Towing shall satisfy Ecology's invoices for the period from January 1, 2009, to June 30, 2010, and claimed by Ecology to be owed under this Section XXII, through the payment of \$13,807.00, subject to the following conditions:

1. Pioneer Towing shall make payment on the \$13,807.00 amount at the rate of \$500.00 per month with no interest until the amount is paid in full. All such \$500.00 payments shall reduce the principal amount due under this Condition 1.

2. In the event Pioneer Towing is more than ninety (90) days past due on a monthly payment to be made pursuant to Condition 1 above, interest shall accrue on the principal amount remaining due at a 12 percent (12%) annual rate, compounded quarterly, per WAC 173-340-550(4).

By agreeing to this Amendment, Pioneer Towing does not admit for purposes of future billings that all the Ecology costs being reimbursed pursuant to this Amendment are within the scope of costs appropriately charged under this Section XXII, nor should this


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1 Amendment be construed against Pioneer Towing as proof of such liability. Pioneer Towing
 2 does, however, agree it will not challenge its obligation to pay the costs described in this
 3 Amendment in any proceeding to enforce the terms of this Amendment.

4 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

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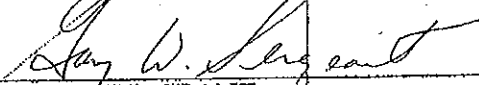
7 ROBERT W. WARREN
Section Manager, NWRO
Toxics Cleanup Program

ANDREW A. FITZ, WSBA #22169
Senior Counsel
Attorneys for Plaintiff

8 Date: OCTOBER 1, 2010

Date: 10/06/10

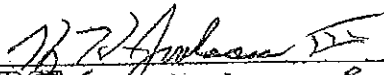
10 PIONEER TOWING COMPANY, INC.

11 

12 GARY W. SERGEANT
President

13 Date: 9/24/10

15 DATED this 12th day of October 2010.

17 
18 JUDGE Conroy
King County Superior Court

20 PARTIAL LAKE POINT AMENDMENT 1 TO CD