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STATE OF WASHINGTON
SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

AMERICAN DISTRIBUTING
COMPANY; and EXXONMOBIL OIL
CORPORATION,

Defendants.

NO. 24 2 01561 31

CONSENT DECREE

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Ex parte

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1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), and American Distributing Company (American Distributing), and ExxonMobil Oil
4 Corporation (ExxonMobil) (Defendants) under this Decree is to provide for remedial action at a
5 facility where there has been a release or threatened release of hazardous substances. This Decree
6 requires Defendants to perform the remedial actions at the ExxonMobil ADC Site in Everett,
7 Washington (Site) in accordance with the Cleanup Action Plan (CAP) attached as Exhibit B to
8 this Decree.

9 2. Ecology has determined that these actions are necessary to protect human health
10 and the environment.

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

16 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
17 terms.

18 5. By entering into this Decree, the Parties do not intend to discharge non-settling
19 parties from any liability they may have with respect to matters alleged in the Complaint. The
20 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
21 sums expended under this Decree.

22 6. This Decree shall not be construed as proof of liability or responsibility for any
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;
24 provided, however, that Defendants shall not challenge the authority of the Attorney General
25 and Ecology to enforce this Decree.

1 **III. PARTIES BOUND**

2 1. This Decree shall apply to and be binding upon the Parties to this Decree, their
3 successors and assigns. The undersigned representative of each party hereby certifies that they
4 are fully authorized to enter into this Decree and to execute and legally bind such party to comply
5 with this Decree. Defendants agree to undertake all actions required by the terms and conditions
6 of this Decree. No change in ownership or corporate status shall alter Defendant's responsibility
7 under this Decree. Defendants shall provide a copy of this Decree to all agents, contractors, and
8 subcontractors retained to perform work required by this Decree, and shall ensure that all work
9 undertaken by such agents, contractors, and subcontractors complies with this Decree.

10 **IV. DEFINITIONS**

11 1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and
12 WAC 173-340 shall control the meanings of the terms in this Decree.

13 A. Site: The Site is referred to as the ExxonMobil ADC Site, Cleanup Site
14 ID: 5182. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined
15 by where a hazardous substance, other than a consumer product in consumer use, has
16 been deposited, stored, disposed of, or placed, or otherwise come to be located.

17 B. Consent Decree or Decree: Refers to this Consent Decree and each of the
18 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
19 Decree.

20 C. Defendants: Refers to the American Distributing Company and the
21 ExxonMobil Oil Corporation.

22 D. Parties: Refers to the State of Washington, Department of Ecology and
23 Defendants.

24 **V. FINDINGS OF FACT**

25 1. Ecology makes the following findings of fact without any express or implied
26 admissions of such facts by Defendants.

1 A. Based upon factors currently known to Ecology, the Site is generally
2 located at 2717 and 2731 Federal Avenue, Everett, (longitude 122.21668; latitude
3 47.98167), as shown in the Site Location Diagram (Exhibit A). The Site is situated less
4 than ¼ mile to the east of Port Gardner. The Site includes the ExxonMobil/American
5 Distributing properties, former Everett Avenue property (owned by the Port of Everett),
6 City of Everett Federal Avenue and Terminal Avenue rights-of-way, BNSF Railway Co.
7 parcel, and Port of Everett properties to the west. The Terminal Avenue overpass,
8 constructed in 2003, is located within the eastern portion of the Site. The location of the
9 MTCA Site, as well as the parcels contained within the Site is depicted in Exhibit A,
10 Figure 2.

11 B. The Miller Trust currently owns lots 1 through 9 and part of lot 10 of
12 Block 619, Plat of Everett, Division C, Everett, Washington. American Distributing
13 formerly operated on this property. ExxonMobil currently owns or formerly operated lots
14 11 through 14 and part of lot 10 of Block 619, Plat of Everett, Division C, Everett,
15 Washington.

16 C. Between approximately 1922 and 1990, the Site was used by American
17 Distributing, ExxonMobil, and other entities for operating a bulk petroleum storage,
18 transfer, and distribution facilities. Contamination at the Site is related to petroleum
19 releases from the bulk petroleum operations.

20 D. Multiple environmental investigations and remedial actions have been
21 conducted at the Site beginning in 1985. Investigation results have found the following
22 contaminants above MTCA cleanup levels in both soil and groundwater at the Site: total
23 petroleum hydrocarbons-gasoline range (TPH-Gx), total petroleum hydrocarbons-diesel
24 range (TPH-Dx), total petroleum hydrocarbons-heavy oil range (TPH-HO), benzene,
25 total-xylenes, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), lead, and 1-
26

1 methylnaphthalene in both soil and groundwater, as well as ethyl-benzene in soil. In
2 addition, light non-aqueous phase liquid (LNAPL) was encountered at the Site.

3 E. Release(s) and/or potential release(s) of hazardous substances occurred at
4 the Site. The following hazardous substances at the Site have been detected at
5 concentrations above MTCA cleanup levels in both soil and groundwater: TPH-Gx, -Dx,
6 -HO, benzene, total-Xylenes, cPAHs, 1-methylnaphthalene, and lead. In addition, ethyl-
7 benzene was detected in soil above the respective cleanup level. These hazardous
8 substances have been, and may continue to be, released at the Site into the environment
9 including soil, groundwater, and potentially soil vapor.

10 F. Ecology has assigned the Site an overall priority ranking of two pursuant
11 to MTCA.

12 G. In April 1996, Ecology entered into Agreed Order No. DE 95TC-N402
13 (the 1996 Order) with Mobil Oil Corporation, a predecessor to ExxonMobil, American
14 Distributing, and Mr. A.P Miller (Miller), which required the cleanup and elimination
15 and/or containment of petroleum releases at and near the City of Everett's combined sewer
16 overflow (CSO) discharge line into Port Gardner Bay. The 1996 Order also required pilot
17 testing of LPH recovery technologies and characterization of the areal and vertical
18 distribution and concentration of the free-phase waste petroleum liquid and groundwater
19 contamination. Between June 1996 and January 1997, approximately 23,000 gallons of
20 LPH were recovered.

21 H. In October 1998, Ecology, Mobil Oil Corporation, American Distributing,
22 and Miller entered into Agreed Order No. DE 98TCP-N223 (the 1998 Order) which
23 required the preparation of a Remedial Investigation/Focused Feasibility Study Report
24 (RI/FFS), an Interim Action Work Plan (IAWP), and the subsequent implementation and
25 performance of the work described in the IAWP. Based on the results of the RI/FFS, the
26

1 Mobil Oil Corporation, American Distributing, and Miller prepared and implemented the
2 IAWP. The following interim remedial actions were performed:

- 3 (1) **Demolition of site structures.** Structures that were demolished on the Site
4 included buildings, piping, loading racks, the firewall and the northeast corner
5 of the firewall's foundation, and the above ground storage tank pad.
6
7 (2) **Monitoring well abandonment.** A total of 22 groundwater monitoring wells
8 were abandoned in 1998. In addition, three wells were abandoned and then
9 reinstalled in 1999.
10
11 (3) **Construction of interceptor trench.** An interceptor trench was constructed
12 along the western and northern Site boundaries.
13
14 (4) **Construction of site cover.** The site cover was designed to minimize the
15 potential for infiltration of surface water into subsurface soil. In addition to
16 an asphalt cap, a storm water collection system was included in the design for
17 the cover.
18
19 (5) **Water management.** The water management and treatment system was
20 constructed in December 1998. Between December 1998 and September
21 1999, the system treated approximately 2.5 million gallons of water from the
22 Site.

23 The above remediation activities commenced in November 1998 and ended in January
24 2000. After the RI/FFS and subsequent interim remedial actions were conducted at the
25 Site, the ExxonMobil and Miller properties were converted into a parking lot for
26 neighboring businesses.

I. On March 16, 2010, the Parties entered into Agreed Order No. DE 6184
(the 2010 Agreed Order), which required Defendants to conduct a supplemental
Remedial Investigation and Focused Feasibility Study (RI/FFS) and develop a draft
Cleanup Action Plan (DCAP) to address upland (soil and groundwater) contamination
for the Site.

J. On June 21, 2022, the Parties amended Agreed Order No. DE 6184. The
amendment required Defendants to conduct an interim action that involved excavation
of accessible soil on the Port of Everett's property at the Site containing Light Non-
Aqueous Phase Liquid (LNAPL) or residual LNAPL saturation. From July 2022 to

1 February 2023, Defendants excavated and transported approximately 7,500 cubic yards
2 of contaminated soil off-site. Clean soil was used to backfill the excavation area and an
3 asphalt cap was be placed on top of the backfilled soil. In addition, a permanent
4 subsurface barrier was installed along Federal Avenue to limit LNAPL migration
5 following the remedial excavation on the Port's property.

6 K. In May 2023, Defendants submitted a Site Characterization/Focused
7 Feasibility Study (SC/FFS) Report as well as a SC/FFS Addendum (Addendum), and
8 DCAP for the Site. The SC/FFS and SC/FFS Addendum demonstrate that petroleum
9 related contaminants of concern exceed MTCA cleanup levels in soil and groundwater
10 at the Site.

11 L. As documented in the Cleanup Action Plan (CAP) (Exhibit B), Ecology
12 has chosen a final cleanup action to be implemented at the Site.

13 VI. WORK TO BE PERFORMED

14 1. This Decree contains a program designed to protect human health and the
15 environment from the known release, or threatened release, of hazardous substances at, on, or
16 from the Site. All remedial action(s) conducted by Defendants at the Site shall be done in
17 accordance with WAC 173-340.

18 2. Defendants shall implement the CAP (Exhibit B) in accordance with the Scope
19 of Work and Schedule attached to this Decree (Exhibit C). Among other remedial actions, the
20 CAP requires Defendants to:

21 A. Excavate accessible soils from the ExxonMobil and American
22 Distributing properties and adjacent City of Everett right-of-way to established pre-
23 determined extents in order to remove LNAPL and soil exceeding the Site-specific
24 residual saturation remediation levels to the maximum extent practicable.

25 B. Implement institutional controls to address residual contamination in
26 inaccessible areas (e.g., beneath the Terminal Avenue overpass and other areas at the Site

1 where contamination remains above cleanup levels) to prevent future exposure or
2 exasperation of residual contamination, such as limiting future use of the Site to
3 commercial or industrial uses, maintain existing asphalt cap, prohibit groundwater use,
4 and to require any future structures constructed in the Site source areas to assess and
5 mitigate any potential soil vapor migration into these structures.

6 C. Develop and implement a post-excavation performance monitoring plan
7 for both soil and groundwater and a confirmational monitoring plan for groundwater.

8 3. All plans or other deliverables submitted by Defendants for Ecology's review and
9 approval under the CAP (Exhibit B) or Scope of Work and Schedule (Exhibit C) shall, upon
10 Ecology's approval, become integral and enforceable parts of this Decree.

11 4. If Defendants learn of a significant change in conditions at the Site, including but
12 not limited to a statistically significant increase in contaminant and/or chemical concentrations
13 in soil or groundwater, Defendants, within seven (7) days of learning of the change in condition,
14 shall notify Ecology in writing of said change and provide Ecology with any reports or records
15 (including laboratory analyses, sampling results) relating to the change in conditions.

16 5. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and
17 adequate financial assurance mechanisms to cover all costs associated with the operation and
18 maintenance of the remedial action at the Site, including institutional controls, compliance
19 monitoring, and corrective measures.

20 A. Within sixty (60) days of the completion of soil solidification at and
21 disposal of excavated soils from the Site, Defendants shall submit to Ecology for review
22 and approval an estimate of the costs associated with the operation and maintenance of
23 the remedial action at the Site that Defendants will incur in carrying out the terms of this
24 Decree. Within sixty (60) days after Ecology approves the aforementioned cost estimate,
25 Defendants shall provide proof of financial assurances sufficient to cover those costs in
26 a form acceptable to Ecology.

1 B. Defendants shall adjust the financial assurance coverage and provide
2 Ecology's project coordinator with documentation of the updated financial assurance for:

3 i. Inflation, annually, within thirty (30) days of the anniversary date
4 of the entry of this Decree; or if applicable, the modified anniversary date
5 established in accordance with this section, or if applicable, ninety (90) days after
6 the close of Defendant's fiscal year if the financial test or corporate guarantee is
7 used.

8 ii. Changes in cost estimates, within thirty (30) days of issuance of
9 Ecology's approval of a modification or revision to the CAP that result in
10 increases to the cost or expected duration of remedial actions. Any adjustments
11 for inflation since the most recent preceding anniversary date shall be made
12 concurrent with adjustments for changes in cost estimates. The issuance of
13 Ecology's approval of a revised or modified CAP will revise the anniversary date
14 established under this section to become the date of issuance of such revised or
15 modified CAP.

16 C. The Financial Assurance Officer for Ecology shall work with the project
17 coordinators to review and approve financial assurance coverage pursuant to this Decree
18 and make determinations on any adjustments necessary based on the annual reporting.
19 As of the execution date of this Decree, Ecology's Financial Assurance Officer is Joanna
20 Richards, (360) 485-5992 or Joanna.richards@ecy.wa.gov.

21 6. As detailed in the CAP, institutional controls are required at the Site.
22 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

23 A. In consultation with Defendants, Ecology will prepare the Environmental
24 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any
25 policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants
26 shall restrict future activities and uses of the Site as agreed to by Ecology and Defendants.

1 B. After approval by Ecology, Defendants shall record the Environmental
2 (Restrictive) Covenant for affected properties it owns with the office of the Snohomish
3 County Auditor as detailed in the Schedule (Exhibit C). Defendants shall provide
4 Ecology with the original recorded Environmental (Restrictive) Covenants within thirty
5 (30) days of the recording date.

6 C. As detailed in the CAP, as part of the remedial action for the Site,
7 institutional controls are required on properties not owned by Defendants. Defendants
8 will ensure that the owner of each affected property records an Ecology-approved
9 Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a
10 showing that Defendant(s) has made a good faith effort to secure an Environmental
11 (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide
12 assistance to Defendant(s). Unless Ecology determines otherwise, affected properties are
13 the following Snohomish County Assessor Office parcel numbers: 00437161900101,
14 00437161900100, 00437161901000, 00597761803901, 00437161901702,
15 00437161901801, 00437161901400, 29051900301600, 29051900302500,
16 29051900302700, 29051900302800, and 29051900302900. Defendant(s) shall provide
17 Ecology with the original recorded Environmental (Restrictive) Covenant within thirty
18 (30) days of the recording date.

19 7. Unless otherwise directed by Ecology, until completion of soil excavation and
20 disposal, Defendants shall submit to Ecology written monthly Progress Reports that describe the
21 actions taken during the previous month to implement the requirements of this Decree. Once soil
22 excavation and disposal is completed, the frequency of Progress Reports to Ecology will be
23 documented in the Post Excavation Performance Monitoring plan. All Progress Reports shall
24 be submitted by the tenth (10th) day of the month in which they are due after the effective date
25 of this Decree. Unless otherwise specified in writing by Ecology, Progress Reports and any other
26

1 documents submitted pursuant to this Decree shall be sent by electronic mail to Ecology's project
2 coordinator. The Progress Reports shall include the following:

3 A. A list of on-site activities that have taken place during the month or other
4 designated period.

5 B. Description of any sample results which deviate from the norm.

6 C. Detailed description of any deviations from required tasks not otherwise
7 documented in project plans or amendment requests.

8 D. Description of all deviations from the Scope of Work and Schedule
9 (Exhibit C) during the current month or other designated period and any planned
10 deviations in the upcoming month or designated period.

11 E. For any deviations in schedule, a plan for recovering lost time and
12 maintaining compliance with the schedule.

13 F. All raw data (including laboratory analyses) received during the previous
14 quarter (if not previously submitted to Ecology), together with a detailed description of
15 the underlying samples collected.

16 G. A list of planned activities for the upcoming month or other designated
17 period.

18 8. Except in the case of an emergency, Defendants agree not to perform any
19 remedial actions at the Site outside the scope of this Decree without prior written approval of
20 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial
21 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
22 emergency.

23 **VII. DESIGNATED PROJECT COORDINATORS**

24 1. The project coordinator for Ecology is:

25 Jason Cook
26 Toxics Cleanup Program
 PO Box 47600

1 Olympia, WA 98504
2 360-407-6834
3 asco461@ECY.WA.GOV

4 2. The project coordinator for Defendants is:

5 Robert Thompson
6 Stantec
7 720 Third Avenue, Suite 1500
8 Seattle, WA 98104-1878
9 206-510-5855
10 robert.thompson@stantec.com

11 3. Each project coordinator shall be responsible for overseeing the implementation
12 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
13 Site. To the maximum extent possible, communications between Ecology and Defendants and
14 all documents, including reports, approvals, and other correspondence concerning the activities
15 performed pursuant to the terms and conditions of this Decree shall be directed through the
16 project coordinators. The project coordinators may designate, in writing, working level staff
17 contacts for all or portions of the implementation of the work to be performed required by this
18 Decree.

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

21 VIII. PERFORMANCE

22 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
23 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
24 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
25 supervision of an engineer registered by the State of Washington.

26 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
performed pursuant to this Decree shall be under the direct supervision of a professional engineer
registered by the State of Washington.

1 3. Defendants shall make all reasonable efforts to secure access rights for those
2 properties within the Site not owned or controlled by Defendants where remedial activities or
3 investigations will be performed pursuant to this Decree.

4 4. Ecology or any Ecology authorized representative shall give reasonable notice
5 before entering any Site property owned or controlled by Defendants unless an emergency
6 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
7 any applicable health and safety plan(s). Ecology employees and their representatives shall not
8 be required to sign any liability release or waiver as a condition of Site property access.

9 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

10 1. With respect to the implementation of this Decree, Defendants shall make the
11 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
12 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
13 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
14 accordance with paragraph 8 of Section VI (Work to be Performed), Ecology's Toxics Cleanup
15 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified
16 by Ecology for data submittal.

17 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
18 representative to take split or duplicate samples of any samples collected by Defendants pursuant
19 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance
20 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
21 Defendants and/or its authorized representative to take split or duplicate samples of any samples
22 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does
23 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
24 (Access), Ecology shall notify Defendants prior to any sample collection activity unless an
25 emergency prevents such notice.

1 A. Upon the triggering event (receipt of Ecology's project coordinator's
2 written decision or an itemized billing statement), Defendant has fourteen (14) calendar
3 days within which to notify Ecology's project coordinator in writing of its dispute
4 (Informal Dispute Notice).

5 B. The Parties' project coordinators shall then confer in an effort to resolve
6 the dispute informally. The parties shall informally confer for up to fourteen (14)
7 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
8 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar
9 days Ecology's project coordinator shall issue a written decision (Informal Dispute
10 Decision) stating: the nature of the dispute; the Defendant's position with regards to the
11 dispute; Ecology's position with regards to the dispute; and the extent of resolution
12 reached by informal discussion.

13 C. Defendant may then request regional management review of the dispute.
14 Defendant must submit this request (Formal Dispute Notice) in writing to the Section
15 Manager of Ecology's Toxics Cleanup Program's Headquarter Section within seven (7)
16 calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute
17 Notice shall include a written statement of dispute setting forth: the nature of the dispute;
18 the disputing Party's position with respect to the dispute; and the information relied upon
19 to support its position.

20 D. The Section Manager shall conduct a review of the dispute and shall issue
21 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
22 days of receipt of the Formal Dispute Notice.

23 E. If Defendant finds Ecology's Headquarters Section Manager's decision
24 of the disputed matter unacceptable, Defendant may then request final management
25 review of that decision. Defendant must submit this request (Final Review Request) in
26 writing to the Toxics Cleanup Program Manager within seven (7) calendar days of

1 Defendant's receipt of the Decision on Dispute. The Final Review Request shall include
2 a written statement of dispute setting forth: the nature of the dispute; the disputing
3 Defendant's position with respect to the dispute; and the information relied upon to
4 support its position.

5 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
6 the dispute and shall issue a written decision regarding the dispute (Final Decision on
7 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
8 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
9 disputed matter.

10 2. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant
11 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
12 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
13 this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial decisions shall be
14 upheld unless they are arbitrary and capricious.

15 3. The Parties agree to only utilize the dispute resolution process in good faith and
16 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
17 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
18 the other party may seek sanctions.

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

22 5. In case of a dispute, failure to either proceed with the work required by this
23 Decree or timely invoke dispute resolution may result in Ecology's determination that
24 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
25 undertaking the work under Section XXII (Implementation of Remedial Action).

1 **XV. AMENDMENT OF DECREE**

2 1. The Parties may agree to minor changes to the work to be performed without
3 formally amending this Decree. Minor changes will be documented in writing by Ecology.

4 2. Substantial changes to the work to be performed shall require formal amendment
5 of this Decree. This Decree may only be formally amended by a written stipulation among the
6 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written
7 consent to a formal amendment only after public notice and opportunity to comment on the
8 formal amendment. Such amendment shall become effective upon entry by the Court.
9 Agreement to amend the Decree shall not be unreasonably withheld by any party.

10 3. When requesting a change to the Decree, Defendant shall submit a written request
11 to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a
12 timely manner after the written request is received. If Ecology determines that the change is
13 substantial, then the Decree must be formally amended. Reasons for the disapproval of a
14 proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
15 requested change, the disagreement may be addressed through the dispute resolution procedures
16 described in Section XIII (Resolution of Disputes).

17 **XVI. EXTENSION OF SCHEDULE**

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

- 22 A. The deadline that is sought to be extended.
- 23 B. The length of the extension sought.
- 24 C. The reason(s) for the extension.
- 25 D. Any related deadline or schedule that would be affected if the extension
26 were granted.

1 2. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology
2 that the request for such extension has been submitted in a timely fashion and that good cause
3 exists for granting the extension. Good cause may include, but may not be limited to:

4 A. Circumstances beyond the reasonable control and despite the due
5 diligence of Defendants including delays caused by unrelated third parties or Ecology,
6 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
7 documents submitted by Defendants.

8 B. A shelter in place or work stoppage mandated by state or local
9 government order due to public health and safety emergencies.

10 C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
11 or other unavoidable casualty.

12 D. Endangerment as described in Section XVI (Endangerment).

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

16 4. Ecology shall act upon any Defendant's written request for extension in a timely
17 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant
18 to this Decree. A requested extension shall not be effective until approved by Ecology or, if
19 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
20 amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension
21 is granted.

22 5. At Defendant's request an extension shall only be granted for such period of time
23 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
24 extensions exceeding ninety (90) days only as a result of one of the following:

25 A. Delays in the issuance of a necessary permit which was applied for in a
26 timely manner.

1 B. Other circumstances deemed exceptional or extraordinary by Ecology.

2 C. Endangerment as described in Section XVI (Endangerment).

3 **XVII. ENDANGERMENT**

4 1. In the event Ecology determines that any activity being performed at the Site
5 under this Decree is creating or has the potential to create a danger to human health or the
6 environment, Ecology may direct Defendants to cease such activities for such period of time as
7 it deems necessary to abate the danger. Defendants shall immediately comply with such
8 direction.

9 2. In the event Defendants determine that any activity being performed at the Site
10 under this Decree is creating or has the potential to create a danger to human health or the
11 environment, Defendants may cease such activities. Defendants shall notify Ecology's project
12 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
13 determination or ceasing such activities. Upon Ecology's direction, Defendants shall provide
14 Ecology with documentation of the basis for the determination or cessation of such activities. If
15 Ecology disagrees with Defendant's cessation of activities, it may direct Defendants to resume
16 such activities.

17 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
18 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology
19 determines the danger is abated, and the time for performance of such activities, as well as the
20 time for any other work dependent upon such activities, shall be extended, in accordance with
21 Section XV (Extension of Schedule), for such period of time as Ecology determines is reasonable
22 under the circumstances.

23 4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,
24 or contractors to take or require appropriate action in the event of an emergency.

1 **XVIII. COVENANT NOT TO SUE**

2 1. Covenant Not to Sue: In consideration of Defendant’s compliance with the terms
3 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
4 against Defendants regarding the release or threatened release of hazardous substances at the
5 Site, as described in Section V.1.A. (Findings of Fact). This Covenant Not to Sue does not cover
6 any other hazardous substance(s) or area. Ecology retains all of its authority relative to any
7 hazardous substance(s) or area not covered by this Decree.

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

- 9 A. Criminal liability.
- 10 B. Liability for damages to natural resources.
- 11 C. Any Ecology action, including cost recovery, against PLPs not a party to
12 this Decree.

13 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not
14 to Sue if factors not known at the time of entry of this Decree are discovered and present a
15 previously unknown threat to human health or the environment.

16 3. Reopeners: Ecology specifically reserves the right to institute legal or
17 administrative action against Defendants to require it to perform additional remedial actions at
18 the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of
19 the following circumstances:

- 20 A. Upon Defendants’ failure to meet the requirements of this Decree.
 - 21 B. Failure of the remedial action to meet the cleanup standards identified in
22 the CAP (Exhibit B).
 - 23 C. Upon Ecology’s determination that remedial action beyond the terms of
24 this Decree is necessary to abate an imminent and substantial endangerment to human
25 health or the environment.
- 26

1 D. Upon the availability of information previously unknown to Ecology
2 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
3 hazardous substances, and Ecology's determination, in light of this information, that
4 further remedial action is necessary at the Site to protect human health or the
5 environment.

6 E. Upon Ecology's determination that additional remedial actions are
7 necessary to achieve cleanup standards within the reasonable restoration time frame set
8 forth in the CAP.

9 4. Except in the case of an emergency, prior to instituting legal or administrative
10 action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen
11 (15) calendar days' notice of such action.

12 **XIX. CONTRIBUTION PROTECTION**

13 1. With regard to claims for contribution against Defendants, the Parties agree that
14 Defendants are entitled to protection against claims for contribution for matters addressed in this
15 Decree as provided by RCW 70A.305.040(4)(d).

16 **XX. INDEMNIFICATION**

17 1. Defendants agree to indemnify and save and hold the State of Washington, its
18 employees, and agents harmless from any and all claims or causes of action (1) for death or
19 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
20 of acts or omissions of Defendants, its officers, employees, agents, or contractors in entering into
21 and implementing this Decree. However, Defendants shall not indemnify the State of
22 Washington nor save nor hold its employees and agents harmless from any claims or causes of
23 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
24 the employees or agents of the State, in entering into or implementing this Decree.

1 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
2 include costs of direct activities and support costs of direct activities as defined in
3 WAC 173-340-550(2). For all costs incurred, Defendants shall pay the required amount within
4 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
5 summary of costs incurred, an identification of involved staff, and the amount of time spent by
6 involved staff members on the project. A general statement of work performed will be provided
7 upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-
8 550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement
9 of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
10 monthly.

11 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
12 utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property
13 subject to the remedial actions to recover unreimbursed remedial action costs.

14 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

15 1. If Ecology determines that the Defendants have failed to make sufficient progress
16 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
17 Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow
18 Defendants opportunity to correct. In an emergency, Ecology is not required to provide notice
19 to Defendants, or an opportunity for dispute resolution. Defendants shall reimburse Ecology for
20 the costs of doing such work in accordance with Section XXI (Remedial Action Costs).

21 2. Except where necessary to abate an emergency or where required by law, the
22 Defendants shall not perform any remedial actions at the Site outside those remedial actions
23 required by this Decree to address the contamination that is the subject of this Decree, unless
24 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XIV
25 (Amendment of Decree). In the event of an emergency, or where actions are taken as required
26 by law, Defendants must notify Ecology in writing of the event and remedial action(s) planned

1 or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of
2 the event.

3 **XXIV. PERIODIC REVIEW**

4 1. So long as remedial action continues at the Site, the Parties agree to review the
5 progress of remedial action at the Site, and to review the data accumulated as a result of
6 monitoring the Site as often as is necessary and appropriate under the circumstances. Unless
7 otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action
8 at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further
9 remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendants
10 shall submit a report to Ecology that documents whether human health and the environment are
11 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVII
12 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
13 under appropriate circumstances. This provision shall remain in effect for the duration of this
14 Decree.

15 **XXV. PUBLIC PARTICIPATION**

16 1. Ecology shall maintain the responsibility for public participation at the Site.
17 However, Defendants shall cooperate with Ecology, and shall:

18 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
19 of public notices and fact sheets at important stages of the remedial action, such as the
20 submission of work plans, remedial investigation/feasibility study reports, cleanup action
21 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
22 distribute such fact sheets and prepare and distribute public notices of Ecology's
23 presentations and meetings.

24 B. Notify Ecology's project coordinator prior to the preparation of all press
25 releases and fact sheets, and before meetings related to remedial action work to be
26 performed at the Site with the interested public and/or local governments. Likewise,

1 Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets
2 related to remedial action work to be performed at the Site, and before meetings related
3 to remedial action work to be performed at the Site with the interested public and/or local
4 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
5 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate
6 to its audience that the press release, fact sheet, meeting, or other outreach effort was not
7 sponsored or endorsed by Ecology.

8 C. When requested by Ecology, participate in public presentations on the
9 progress of the remedial action at the Site. Participation may be through attendance at
10 public meetings to assist in answering questions, or as a presenter.

11 D. When requested by Ecology, arrange and/or continue information
12 repositories at the following locations:

- 13 i. Everett Public Library
14 2702 Hoyt Avenue
15 Everett, WA 98501

16 At a minimum, copies of all public notices, fact sheets, and documents relating to public
17 comment periods shall be promptly placed in this repository. A copy of all documents
18 related to this Site shall be maintained at Ecology's Toxics Cleanup Program's
19 Headquarter Cleanup Section in Lacey, Washington.

20 **XXVI. DURATION OF DECREE**

21 1. The remedial program required pursuant to this Decree shall be maintained and
22 continued until Defendants have received written notification from Ecology that the
23 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
24 effect until dismissed by the Court. When dismissed, Section XI (Retention of Records),
25 Section XVII (Covenant Not to Sue), Section XVIII (Contribution Protection), Section XIX
26 (Indemnification), and Section XXVI (Claims Against the State) shall survive.

1 **XXVII. CLAIMS AGAINST THE STATE**

2 1. Defendants hereby agree that they will not seek to recover any costs accrued in
3 implementing the remedial action required by this Decree from the State of Washington or any
4 of its agencies; and further, that Defendants will make no claim against any Ecology Model
5 Toxics Control Account for any costs incurred in implementing this Decree. Except as provided
6 above, however, Defendants expressly reserves its right to seek to recover any costs incurred in
7 implementing this Decree from any other PLP. This section does not limit or address funding
8 that may be provided under WAC 173-322A.

9 **XXVIII. EFFECTIVE DATE**


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


11 **XXIX. WITHDRAWAL OF CONSENT**

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

16 STATE OF WASHINGTON
17 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

18 
19 _____
BARRY ROGOWSKI
Program Manager
20 Toxics Cleanup Program
360-485-3738


21 _____
JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
360-586-6753

22 Date: 2/8/24

Date: 2/8/24

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AMERICAN DISTRIBUTING COMPANY

EXXONMOBIL OIL CORPORATION

Steve Miller

STEVE MILLER
American Distributing Company Owner
360-658-3751

MARIA QUEZADA
U.S. West-Americas Americas South Business
Manager
832-624-2948

Date: 10-24-2023

Date: _____

ENTERED this 26th day of March 2023.

[Signature]

JUDGE
Snohomish County Superior Court

[Signature]

1 AMERICAN DISTRIBUTING COMPANY

EXXONMOBIL OIL CORPORATION

DocuSigned by:

Maria M. Quezada

2
3 STEVE MILLER

MARIA M. QUEZADA

4 American Distributing Company Owner
5 360-658-3751

ITS: Agent and Attorney-in-Fact

6 Date: _____

Date: November 20, 2023

7
8 ENTERED this _____ day of _____ 2023.

9
10
11 JUDGE
12 Snohomish County Superior Court

1 AMERICAN DISTRIBUTING COMPANY EXXONMOBIL OIL CORPORATION

2
3 STEVE MILLER
American Distributing Company Owner
4 360-658-3751

MARIA QUEZADA
U.S. West-Americas Americas South Business
Manager
832-624-2948

5
6 Date: _____

Date: _____

7
8 ENTERED this ____ day of _____ 2023.

9
10 _____
11 JUDGE
Snohomish County Superior Court