

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

STATE OF WASHINGTON, DEPARTMENT  
OF ECOLOGY,

Plaintiff,

v.

THE CITY OF SEATTLE and PUGET  
SOUND ENERGY,

Defendant.

NO. \_\_\_\_\_

**CONSENT DECREE**

Table of Contents

- I. INTRODUCTION
- II. JURISDICTION
- III. PARTIES BOUND
- IV. DEFINITIONS
- V. STATEMENT OF FACTS
- VI. WORK TO BE PERFORMED
- VII. DESIGNATED PROJECT COORDINATORS
- VIII. PERFORMANCE
- IX. ACCESS
- X. SAMPLING, DATA REPORTING, AND AVAILABILITY
- XI. PROGRESS REPORTS
- XII. RETENTION OF RECORDS
- XIII. TRANSFER OF INTEREST IN PROPERTY
- XIV. RESOLUTION OF DISPUTES
- XV. AMENDMENT OF CONSENT DECREE
- XVI. EXTENSION OF SCHEDULE
- XVII. ENDANGERMENT
- XVIII. INDEMNIFICATION
- XIX. COMPLIANCE WITH APPLICABLE LAWS

- 1 XX. REMEDIAL AND INVESTIGATIVE COSTS
- 2 XXI. IMPLEMENTATION OF REMEDIAL ACTION
- 3 XXII. FIVE YEAR REVIEW
- 4 XXIII. PUBLIC PARTICIPATION
- 5 XXIV. DURATION OF DECREE
- 6 XXV. CLAIMS AGAINST THE STATE
- 7 XXVI. LAND USE RESTRICTIONS
- 8 XXVII. COVENANT NOT TO SUE
- 9 XXVIII. CONTRIBUTION PROTECTION
- 10 XXIX. EFFECTIVE DATE
- 11 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

- 12
  - 13
  - 14
  - 15
  - 16
  - 17
  - 18
  - 19
  - 20
  - 21
  - 22
  - 23
  - 24
  - 25
  - 26
- Exhibit A Site Diagram
  - Exhibit B Cleanup Action Plan
  - Exhibit C Scope of Work and Schedule
  - Exhibit D Public Participation Plan
  - Exhibit E Restrictive Covenant

1 I. INTRODUCTION

2 A. Gas Works Park and certain adjacent property in Seattle, Washington  
3 (hereinafter referred to as "the Site" and depicted on Exhibit A attached hereto) is the former  
4 location of a coal and oil gasification plant that operated from 1906 to 1956. The City of  
5 Seattle (herein "the City") purchased the Gas Works Park property from the Washington  
6 Natural Gas Company (now Puget Sound Energy) in 1962 and developed it into a park, which  
7 opened in 1976. Studies conducted at the Site in the late 1970s and 1980s indicated the  
8 presence of soil and groundwater contamination from the former gas plant operation. The  
9 Washington State Department of Ecology (herein "Ecology"), through execution of an Agreed  
10 Order dated August 1, 1997, required the City and PSE to complete both a Focused  
11 Feasibility Study (herein "FFS") of cleanup alternatives and a Cleanup Action Plan (herein  
12 "CAP") (both attached hereto and incorporated herein as Exhibit B) describing the  
13 recommended cleanup alternatives. Ecology, the City and PSE are collectively referred to  
14 herein as "the Parties."

15 B. In entering into this Consent Decree (herein "Decree"), the mutual objective of  
16 Ecology, the City, and PSE (collectively the City and PSE are referred to herein as  
17 Defendants) is to provide for remedial action at a facility where there has been a release or  
18 threatened release of hazardous substances. This Decree requires the Defendants to  
19 undertake the following remedial actions:

20 (1) Design, install and operate an *in-situ* groundwater air sparging and soil  
21 vapor extraction system in the benzene source area to remediate contaminated soil,  
22 and groundwater as described in the CAP, attached and incorporated herein as  
23 Exhibit B);

24 (2) Design and install a protective vegetated soil cover over unpaved open  
25 areas in the north-central and southeastern portions of the Park (as described in the  
26 CAP;

1           (3)    Perform compliance monitoring to determine the effectiveness of remedial  
2 actions. This includes the monitoring of natural attenuation processes in the western  
3 portion of the Park;

4           (4)    Implement the institutional controls and site use restrictions specified in  
5 the CAP;

6           (5)    Continue the removal of any upwelling tar sources as they are  
7 discovered;

8           (6)    Continue free product recovery within the proposed benzene treatment  
9 zone;

10          (7)    Implement the institutional controls described in the Final Cleanup Action  
11 Plan (Exhibit B).

12          Ecology has determined that these actions are necessary to protect public health and  
13 the environment.

14          C.    The Complaint in this action is being filed simultaneously with this Decree. An  
15 answer has not been filed, and there has not been a trial on any issue of fact or law in this  
16 case. However, the parties wish to resolve the issues raised by Ecology's complaint by  
17 entering into a settlement pursuant to RCW 70.105D.040(4). In addition, the parties agree  
18 that settlement of these matters without litigation is reasonable and in the public interest and  
19 that entry of this Decree is the most appropriate means of resolving these matters.

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

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

1 F. This Decree shall not be construed as proof of liability or responsibility for any  
2 releases of hazardous substances or cost for remedial action nor as an admission of any  
3 facts; provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in  
4 any proceeding to enforce this Decree.

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

8 II. JURISDICTION

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

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

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

18 D. Ecology has given notice to the Defendants, as set forth in  
19 RCW 70.105D.020(15), of Ecology's determination that the Defendants are potentially liable  
20 persons for the Site and that there has been a release or threatened release of hazardous  
21 substances at the Site.

22 E. The actions to be taken pursuant to this Decree are necessary to protect public  
23 health, welfare, and the environment, and will lead to a more expeditious cleanup of  
24 hazardous substances in accordance with RCW 70.105D.040(4)(a).

1 F. The Defendants have agreed to undertake the actions specified in this Decree to  
2 resolve their liability to the State of Washington and consent to the entry of this Decree under  
3 the MTCA.

### 4 III. PARTIES BOUND

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

### 15 IV. DEFINITIONS

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

18 A. Site: The Site commonly referred to as Gas Works Park, is located at 2000  
19 N. Northlake Way in Seattle, Washington. The Site is more particularly described in Exhibit A  
20 to this Decree which is a detailed site diagram.

21 B. Parties: Refers to Ecology, the City and PSE.

22 C. Defendants: Refers collectively to the City and PSE.

23 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
24 exhibits to the Decree are entered into pursuant to RCW 70.105D.040(4). All exhibits are  
25 integral and enforceable parts of this Consent Decree. The terms "Consent Decree" or  
26 "Decree" shall include all Exhibits to the Consent Decree.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

V. STATEMENT OF FACTS

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

1. The City is the current owner of the Site, located at 2000 N. Northlake Way, Seattle, Washington.

2. PSE or its predecessors were a former owner and operator of a facility that was located at the Site.

3. The Site is the location of a former manufactured gas plant (herein "MGP") facility.

4. Operation of this MGP facility for 50 years (1906-1956) and subsequent park construction left soil underlying the Site contaminated with a number of hazardous materials, including polynuclear aromatic hydrocarbons (herein "PAHs"), and volatile organic compounds (herein "VOCs").

5. The release of hazardous substances to soil has contaminated the shallow ground water beneath the Site with dense non-aqueous phase liquids (herein "DNAPL"), PAHs and VOCs.

6. The concentrations of hazardous substances in soil and ground water at the Site exceed the  $1 \times 10^{-6}$  risk-based cleanup levels for human-health and the environment, as promulgated under Chapter 173-340 WAC.

VI. 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.

1. The Defendants shall perform the remedial actions specified in detail in the Scope of Work and Schedule (Exhibit C) and the Cleanup Action Plan (Exhibit B). These

1 exhibits are incorporated herein by reference and are an integral and enforceable part of this  
2 Decree. A summary of the work program to be performed is as follows:

3 • A new vegetated soil cover will be placed over unpaved  
4 open areas in the north-central and southeastern portions of the  
5 Site and institutional controls will be set into place by the City to  
6 protect its integrity. The soil cover will serve as a protective barrier  
7 between park users and chemicals of concern.

8 • The groundwater at the southeast part of the Site is  
9 contaminated with oil, benzene, and other organics. The remedial  
10 action will consist of a system of air sparging and soil vapor  
11 extraction. This action will allow contaminant concentrations in  
12 groundwater to meet surface water criteria at discharge points into  
13 Lake Union within 27 years. Institutional controls will be set in  
14 place by the City to prevent any use of groundwater at the Site  
15 other than for remediation.

16 • The groundwater at the western portion of the Site is  
17 contaminated with PAHs. The FFS concluded that natural  
18 attenuation is reducing the concentrations of these chemicals to  
19 surface water cleanup criteria prior to their discharge into Lake  
20 Union. The City and PSE will be required to demonstrate that  
21 attenuation of dissolved PAHs is occurring at the western portion of  
22 the Site at a rate sufficient to meet surface water criteria within a  
23 reasonable restoration time frame. The effectiveness of  
24 attenuation as a remedial action will be evaluated during the first  
25 Periodic Review. Should attenuation not be progressing as  
26 anticipated, other more active remedial actions may be required.

• Due to concerns expressed during the public comment  
period, limited monitoring of MW-19 and MW-17 for chemicals of  
concern will be required.

• In 1997, the City and PSE characterized known and  
suspected tar seeps at the Park and conducted an interim action  
which removed and destroyed by thermal desorption as much of  
this material as practicable. The following year, additional tar  
surfaced from the general area of the previous excavations and  
was removed and treated. The City and PSE will continue to  
remove and treat any residual tar, that might seep from these and  
other areas.

2. The schedule in the Scope of Work sets out timelines for:

- a. Submission of draft and final Engineering Design Reports;
- b. Remedial Action Construction/Implementation; and



1 c. Operation, maintenance, monitoring and reporting on the remedial  
2 actions.

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

7 VII. DESIGNATED PROJECT COORDINATORS

8 The project coordinator for Ecology is:

9 Name: Craig Thompson  
10 Address: DEPARTMENT OF ECOLOGY  
11 P.O. Box 47600  
Olympia, WA 98054-7600  
(360) 407-7234

12 The project coordinator for PSE is:

13 Name: Steve Secrist  
14 Address: PUGET SOUND ENERGY  
815 Mercer Street  
15 M/S MER-04S  
Seattle, WA 98109

16 The project coordinator for the City is:

17 Name: Robin V. Kordik  
18 Address: SEATTLE PARKS AND RECREATION DEPARTMENT  
2911 Second Avenue, 4th Floor  
19 Seattle; WA 98121-1079  
(206) 233-7938

20 Each project coordinator shall be responsible for overseeing the implementation of this  
21 Decree. The Ecology project coordinator will be Ecology's designated representative at the  
22 Site. To the maximum extent possible, communications between Ecology and the Defendants  
23 and all documents, including reports, approvals, and other correspondence concerning the  
24 activities performed pursuant to the terms and conditions of this Decree, shall be directed  
25 through the project coordinators. The project coordinators may designate, in writing, working  
26 level staff contacts for all or portions of the implementation of the remedial work required by

1 this Decree. The project coordinators may agree to minor modifications to the work to be  
2 performed without formal amendments to this Decree. Minor modifications will be documented  
3 in writing by Ecology.

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

#### 6 VIII. PERFORMANCE

7 All work performed pursuant to this Decree shall be under the direction and  
8 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with  
9 experience and expertise in hazardous waste site investigation and cleanup. Any  
10 construction work must be under the supervision of a professional engineer. Defendants shall  
11 notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others  
12 and of any contractors and subcontractors to be used in carrying out the terms of this Decree,  
13 in advance of their involvement at the Site.

#### 14 IX. ACCESS

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

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

25 With respect to the implementation of this Decree, the Defendants shall make the  
26 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf

1 available to Ecology and shall submit these results in accordance with Section XI of this  
2 Decree.

3 In accordance with WAC 173-340-840(5), ground water sampling data shall be  
4 submitted according to Appendix E: GROUND WATER SAMPLING DATA SUBMITTAL  
5 REQUIREMENTS. These submittals shall be provided to Ecology in accordance with  
6 Section XI of this Decree.

7 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken  
8 by Ecology and/or its authorized representatives of any samples collected by Defendants  
9 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days  
10 in advance of any sample collection or work activity (except routine maintenance and  
11 oversight) at the Site. Ecology shall, upon request by one or both of the Defendants, allow  
12 split or duplicate samples to be taken by Defendants or their authorized representatives of any  
13 samples collected by Ecology pursuant to the implementation of this Decree provided it does  
14 not interfere with the Department's sampling. Without limitation on Ecology's rights under  
15 Section IX, Ecology shall notify Defendants seven (7) days prior to any sample collection  
16 activity.

#### 17 XI. PROGRESS REPORTS

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

- 21 A. A list of on-site activities that have taken place during the month;
- 22 B. Detailed description of any deviations from required tasks not otherwise  
23 documented in project plans or amendment requests;
- 24 C. Description of all deviations from the schedule contained in Exhibit C during the  
25 current month and any planned deviations in the upcoming month;

1 D. For any deviations from the schedule, a plan for recovering lost time and  
2 maintaining compliance with the schedule;

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

5 F. A list of deliverables for the upcoming month if different from the schedule; and  
6 All progress reports shall be submitted by the tenth day of the month in which they are  
7 due after the effective date of this Decree. Unless otherwise specified, progress reports and  
8 any other documents submitted pursuant to this Decree shall be sent by certified mail, return  
9 receipt requested, to Ecology's project coordinator.

## 10 XII. RETENTION OF RECORDS

11 Defendants shall preserve, during the pendency of this Decree and for ten (10) years  
12 from the date this Decree is no longer in effect as provided in Section XXIV, all records,  
13 reports, documents, and underlying data in their possession relevant to the implementation of  
14 this Decree and shall insert in contracts with project contractors and subcontractors a similar  
15 record retention requirement. Upon request by Ecology, Defendants shall make all non-  
16 archived records that are not legally privileged available to Ecology and allow Ecology access  
17 for review. All such archived records shall be made available to Ecology within a reasonable  
18 period of time.

## 19 XIII. TRANSFER OF INTEREST IN PROPERTY

20 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,  
21 or other interest in any portion of the Site shall be consummated without provision for  
22 continued operation and maintenance of any containment system, treatment system, and  
23 monitoring system installed or implemented pursuant to this Decree.

24 Prior to transfer of any legal or equitable interest in all or any portion of the property,  
25 and during the effective period of this Decree, Defendants shall serve a copy of this Decree  
26 upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest

1 of the property; and, at least thirty (30) days prior to any transfer, Defendants shall notify  
2 Ecology of said contemplated transfer.

3 XIV. RESOLUTION OF DISPUTES

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

7 (1) Upon receipt of the Ecology project coordinator's decision, the Defendants have  
8 fourteen (14) days within which to notify Ecology's project coordinator of their objection to the  
9 decision.

10 (2) The Parties' project coordinators shall then confer in an effort to resolve the  
11 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
12 Ecology's project coordinator shall issue a written decision.

13 (3) Defendants may then request Ecology management review of the decision. This  
14 request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7)  
15 days of receipt of Ecology's project coordinator's decision.

16 (4) Ecology's Program Manager shall conduct a review of the dispute and shall  
17 issue a written decision regarding the dispute within thirty (30) days of the Defendants'  
18 request for review. The Program Manager's decision shall be Ecology's final decision on the  
19 disputed matter.

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

1 C. The Parties agree to only utilize the dispute resolution process in good faith and  
2 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

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

#### 6 XV. AMENDMENT OF CONSENT DECREE

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

11 Defendants shall submit any request for an amendment to this Decree to Ecology for  
12 approval. Ecology shall indicate its approval or disapproval in a timely manner but not more  
13 than thirty (30) days after the request for amendment is received. If the amendment to the  
14 Decree is substantial, Ecology will provide public notice and opportunity for comment.  
15 Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any  
16 proposed amendment, the disagreement may be addressed through the dispute resolution  
17 procedures described in Section XIV of this Decree.

#### 18 XVI. EXTENSION OF SCHEDULE

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

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

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

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

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

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

14 (3) Endangerment as described in Section XVII.

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

18 C. Ecology may extend the schedule for a period not to exceed ninety (90) days;  
19 provided, however, that it may extend the schedule for a longer period where an extension is  
20 needed as a result of:

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

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

24 (3) Endangerment as described in Section XVII.

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

1 XVII. ENDANGERMENT

2 In the event Ecology determines that activities implementing or in noncompliance with  
3 this Decree, or any other circumstances or activities, are creating or have the potential to  
4 create a danger to the health or welfare of the people on the Site or in the surrounding area or  
5 to the environment, Ecology may order Defendants to stop further implementation of this  
6 Decree for such period of time as needed to abate the danger or may petition the Court for an  
7 order as appropriate. During any stoppage of work under this section, the obligations of  
8 Defendants with respect to the work under this Decree which is ordered to be stopped shall be  
9 suspended and the time periods for performance of that work, as well as the time period for  
10 any other work dependent upon the work which is stopped, shall be extended, pursuant to  
11 Section XVI of this Decree, for such period of time as Ecology determines is reasonable under  
12 the circumstances. In the event Defendants determine that activities undertaken in  
13 furtherance of this Decree or any other circumstances or activities are creating an  
14 endangerment to the people on the Site or in the surrounding area or to the environment,  
15 Defendants may stop implementation of this Decree for such period of time necessary for  
16 Ecology to evaluate the situation and determine whether Defendants should proceed with  
17 implementation of the Decree or whether the work stoppage should be continued until the  
18 danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible,  
19 but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide  
20 Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the  
21 Defendants' determination, it may order Defendants to resume implementation of this Decree.  
22 If Ecology concurs with the work stoppage, the Defendants' obligations shall be suspended  
23 and the time period for performance of that work, as well as the time period for any other work  
24 dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of  
25 this Decree, for such period of time as Ecology determines is reasonable under the  
26



1 circumstances. Any disagreements pursuant to the clause shall be resolved through the  
2 dispute resolution procedures in Section XIV.

3 XVIII. INDEMNIFICATION

4 Each Defendant agrees to severally indemnify and save and hold the State of  
5 Washington, its employees, and agents harmless from any and all claims or causes of action  
6 for death or injuries to persons or for loss or damage to property arising from or on account of  
7 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into  
8 and implementing this Decree. However, the Defendants shall not indemnify the State of  
9 Washington nor save nor hold its employees and agents harmless from any claims or causes  
10 of action arising out of the negligent acts or omissions of the State of Washington, or the  
11 employees or agents of the State, including in implementing the activities pursuant to this  
12 Decree.

13 XIX. COMPLIANCE WITH APPLICABLE LAWS

14 A. All actions carried out by Defendants pursuant to this Decree shall be done in  
15 accordance with all applicable federal, state, and local requirements, including requirements  
16 to obtain necessary permits, except as provided in paragraph B. of this section.

17 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
18 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
19 local government permits or approvals for the remedial action under this Decree that are  
20 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the  
21 Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

22 Defendants have a continuing obligation to determine whether additional permits or  
23 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
24 action under this Decree. In the event either Defendants or Ecology determines that  
25 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be  
26 required for the remedial action under this Decree, it shall promptly notify the other party of

1 this determination. Ecology shall determine whether Ecology or Defendants shall be  
2 responsible to contact the appropriate state and/or local agencies. If Ecology so requires,  
3 Defendants shall promptly consult with the appropriate state and/or local agencies and  
4 provide Ecology with written documentation from those agencies of the substantive  
5 requirements those agencies believe are applicable to the remedial action. Ecology shall  
6 make the final determination on the additional substantive requirements that must be met by  
7 Defendants and on how Defendants must meet those requirements. Ecology shall inform  
8 Defendants in writing of these requirements. Once established by Ecology, the additional  
9 requirements shall be enforceable requirements of this Decree. Defendants shall not begin or  
10 continue the remedial action potentially subject to the additional requirements until Ecology  
11 makes its final determination; provided, however, that Ecology shall grant an extension of  
12 schedule to accommodate both the additional requirements and the time required by Ecology  
13 to make its determination.

14 Ecology shall ensure that notice and opportunity for comment is provided to the public  
15 and appropriate agencies prior to establishing the substantive requirements under this  
16 section.

17 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
18 exemption from complying with the procedural requirements of the laws referenced in  
19 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is  
20 necessary for the State to administer any federal law, the exemption shall not apply and the  
21 Defendants shall comply with both the procedural and substantive requirements of the laws  
22 referenced in RCW 70.105D.090(1), including any requirements to obtain permits provided,  
23 however, that Ecology shall grant an extension of schedule to accommodate both the  
24 additional requirements and the time required by Ecology to make its determination..



1 Site and the need, if any, of further remedial action at the Site. Ecology reserves the right to  
2 require further remedial action at the Site under appropriate circumstances. This provision  
3 shall remain in effect for the duration of the Decree.

4 XXIII. PUBLIC PARTICIPATION

5 Ecology shall maintain the responsibility for public participation at the Site. However,  
6 Defendants shall cooperate with Ecology and, if agreed to by Ecology, shall:

7 A. Prepare drafts of public notices and fact sheets at important stages of the  
8 remedial action, such as the submission of work plans and engineering design reports.

9 Ecology will finalize (including editing if necessary) and distribute such fact sheets and  
10 prepare and distribute public notices of Ecology's presentations and meetings;

11 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
12 and fact sheets, and before major meetings with the interested public and local governments.  
13 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact  
14 sheets, and before major meetings with the interested public and local governments;

15 C. Participate in public presentations on the progress of the remedial action at the  
16 Site. Participation may be through attendance at public meetings to assist in answering  
17 questions, or as a presenter; and

18 D. In cooperation with Ecology, arrange and/or continue information repositories to  
19 be located at The Wallingford Wilmot Library, 4423 Densmore Ave. N, Seattle, WA and  
20 Ecology's Headquarters at 300 Desmond Drive SE, Lacey, WA. At a minimum, copies of all  
21 public notices, fact sheets, and press releases; all quality assured ground water, surface  
22 water, soil sediment, and air monitoring data; remedial action plans, supplemental remedial  
23 planning documents, and all other similar documents relating to performance of the remedial  
24 action required by this Decree shall be promptly placed in these repositories.

1 XXIV. DURATION OF DECREE

2 This Decree shall remain in effect and the remedial program described in the Decree  
3 shall be maintained and continued until the Defendants have received written notification from  
4 Ecology that the requirements of this Decree have been satisfactorily completed, and  
5 thereupon, Ecology shall dismiss the Complaint.

6 XXV. CLAIMS AGAINST THE STATE

7 The Defendants hereby agree that, except for any agency of the State of Washington  
8 that is a potentially liable person, they will not seek to recover any costs accrued in  
9 implementing the remedial action required by this Decree from the State of Washington or any  
10 of its agencies; and further, that the Defendants will make no claim against the State Toxics  
11 Control Account or any Local Toxics Control Account for any costs incurred in implementing  
12 this Decree. Except as provided above, however, Defendants expressly reserve their right to  
13 seek to recover any costs incurred in implementing this Decree from any other potentially  
14 liable person.

15 XXVI. LAND USE RESTRICTIONS

16 Defendants agree that the restrictive covenant, Exhibit E, shall be recorded with the  
17 office of the King County Auditor within 10 days of the entry of this Decree and shall restrict  
18 future uses of the Site. Defendants will provide a copy of the recorded, restrictive covenant  
19 within thirty (30) days of the recording date.

20 XXVII. COVENANT NOT TO SUE

21 In consideration of Defendants' compliance with the terms and conditions of this  
22 Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all  
23 administrative, legal, and equitable remedies and enforcement actions ("Actions") available to  
24 the State against Defendants, for releases or threatened releases of hazardous substances at  
25 the Site, provided that such Actions pertain to the type, nature, extent and location of  
26 contamination which Ecology knows to be located at the Site as of the date of this Decree,

1 and provided that confirmational monitoring indicates that additional remedial actions are not  
2 necessary at the Site to attain the MTCA cleanup standards identified in the Cleanup Action  
3 Plan. This covenant is strictly limited to the Site as defined in Exhibit A. Until cleanup  
4 standards identified in the Cleanup Action Plan are met at the Site, compliance with this  
5 Decree shall satisfy Defendants' cleanup obligations for the release or threatened release of  
6 hazardous substances covered by the terms of this Decree.

7 The terms and application of this Covenant Not to Sue are strictly limited to the type,  
8 nature, extent and location of contamination identified in the FFS and CAP and only to the  
9 identified contamination located within the Site. This Covenant Not To Sue does not apply to  
10 any contamination of sediments in Lake Union.

11 A. Reopeners: Ecology specifically reserves the right to institute legal or  
12 administrative action against Defendants seeking to require them to perform additional  
13 response actions at the Site, and to pursue appropriate cost recovery in accordance with  
14 provisions set out in RCW 70.105D.050, under the following circumstances:

15 (1) Upon Defendants' failure to meet the requirements of this Decree,  
16 including, but not limited to, failure of the remedial action to meet the cleanup  
17 standards identified in the Cleanup Action Plan;

18 (2) Upon Ecology's determination that confirmation monitoring indicates that  
19 additional remedial actions are necessary to meet the cleanup standards identified in  
20 the CAP;

21 (3) Upon Ecology's determination that action beyond the terms of this Decree  
22 is necessary to abate an imminent and substantial endangerment to public health or  
23 welfare or the environment;

24 (4) In the event new information becomes available regarding factors  
25 previously unknown to Ecology, including the nature or quantity of hazardous  
26 substances at the Site, and Ecology determines, in light of this information, that further

1 remedial action is necessary at the Site to protect human health or the environment,  
2 and Defendants after notice, fail to take the necessary action within a reasonable time.

3 B. Applicability: Any Covenant Not To Sue concerning work performed under this  
4 Consent Decree shall have no applicability whatsoever to:

- 5 (1) Criminal liability;
- 6 (2) Liability for damages to natural resources;
- 7 (3) Any Ecology action against potentially liable persons not a party to this  
8 Decree, including cost recovery.

9 XXVIII. CONTRIBUTION PROTECTION

10 By signing this Decree, the parties intend that Defendants will obtain the protection  
11 against claims for contribution for matters addressed in this Decree, as is provided by MTCA,  
12 RCW 70.105D.040(d)(4).

13 XXIX. EFFECTIVE DATE

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

15 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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

23 STATE OF WASHINGTON  
24 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
ATTORNEY GENERAL

25  
26 JAMES J. PENDOWSKI

Tom Morrill, WSBA # \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Program Manager  
Toxics Cleanup Program

Assistant Attorney General  
Attorney for Plaintiff  
State of Washington  
Department of Ecology

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

PUGET SOUND ENERGY

GRAHAM & JAMES LLP/RIDDELL WILLIAMS  
PS

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
HARRY E. GRANT, WSBA #13494  
Attorneys for Puget Sound Energy  
Dated: \_\_\_\_\_

CITY OF SEATTLE

SEATTLE CITY ATTORNEY

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
PETER E. HAPKE, WSBA #23159  
Assistant City Attorney  
Dated: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
JUDGE  
King County Superior Court



1 **EXHIBIT C**

2 **SCOPE OF WORK AND SCHEDULE**

3  
4 This Scope of Work, which is an enforceable part of the Consent Decree (Decree) contains a  
5 program designed to protect public health, welfare, and the environment from the known  
6 release, or threatened release, of hazardous substances or contaminants at, on, or from Gas  
7 Works Park and certain adjacent property (Site). Based on the facts and determinations  
8 found in the Decree, it is hereby Ordered that the City of Seattle and Puget Sound Energy  
9 (PSE) (collectively, Defendants) take the following remedial actions:

- 10 1. The City and PSE shall carry out the provisions of the Workplan in a manner  
11 and time frame as described herein. The term "Workplan" is defined to consist  
12 of this Exhibit (Scope of Work and Schedule).
- 13 2. The City and PSE shall implement the tasks detailed in the Workplan in  
14 accordance therewith and within the due dates specified, including, but not  
15 limited to, the following deliverables:

16  
17 **WORKPLAN DELIVERABLES:**

18  
19 **Task I Draft Engineering Design Report**

20 **Due Date: Three Months from Effective Date of Decree**

21  
22 The engineering design report shall be prepared by or under the direct supervision of a  
23 registered professional engineer and shall be submitted in accordance with WAC 173340-400  
24 (a) through (c) with a preliminary compliance monitoring plan in accordance with WAC 173-  
25 340-410. The report shall include the following:

- 1 a. Goals of the cleanup action, including specific cleanup or performance  
2 requirements.
- 3 b. General information on the Site, including a summary of information in the  
4 remedial investigation/feasibility study updated as necessary to reflect the  
5 current conditions;
- 6 c. Identification of who will own, operate, and maintain the Site and the cleanup  
7 action during the following construction;
- 8 d. Facility maps, of minimum dimension two feet square, showing existing Site  
9 conditions and proposed location of the cleanup action/components, including  
10 surface water drainage features and storm water conveyances;
- 11 e. Location of materials, if any, to be treated or otherwise managed;
- 12 f. A schedule for construction of the remedial action and monitoring systems,  
13 including a critical timing chart for accomplishment of major milestones.
- 14 g. A description and conceptual plan of the remaining final cleanup action per the  
15 Cleanup Action Plan (Exhibit B). The Conceptual Design shall document:
- 16 g-1 Installation of an *in-situ* air sparging and soil vapor extraction treatment  
17 system in the benzene source area (as described in the Final Cleanup Action  
18 Plan (Exhibit B).
- 19 g-2 Installation of performance monitoring wells as needed to monitor the  
20 effectiveness of treatment.
- 21 g-3 Installation of a protective vegetated soil cover over unpaved open areas  
22 in the north-central and southeastern portions of the Site (as described in the  
23 Final Cleanup Action Plan (Exhibit B)).
- 24 h. Engineering justification for design parameters, including design criteria,  
25 assumptions, and calculations for all components of the cleanup action, and  
26

1 demonstration that the cleanup action will achieve compliance with cleanup  
2 requirements;

3 i. Design features for control of hazardous materials spills and accidental  
4 discharge (for example, containment structures, leak detection devices, run-on  
5 and run-off controls);

6 j. Design features to assure long-term safety of workers and local residences as  
7 applicable (for example, hazardous substances monitoring devices, wind  
8 speed/direction monitors);

9 k. A discussion of methods for management or disposal of any treatment residual  
10 and other waste materials containing hazardous substances generated as a  
11 result of the cleanup action;

12 l. Facility specific characteristics which may affect design, construction, or  
13 operation of the selected cleanup action, including: Relationship of the  
14 proposed cleanup action to existing area and facility operations, probability of  
15 flooding, temperature extremes, planned post-remedial site uses/activities, local  
16 planning and development issues;

17 m. Any information not provided in the remedial investigation/focused feasibility  
18 study needed to fulfill all applicable requirements of the State Environmental  
19 Policy Act (Chapter 43.21C RCW), and any additional information needed to  
20 address the applicable state, federal, and local requirements;

21 n. Detailed final as-built drawings and operation and maintenance manual for  
22 operation of the cleanup systems prepared in conformance with currently  
23 accepted engineering practices and techniques. This shall include mapping of  
24 all new and existing Site wells, remedial action piping and treatment system  
25 components, design details of monitoring wells and product recovery wells;  
26

- 1 o. Describe methodology and results of quality control (QC) tests performed as  
2 applicable, including specification for the testing or reference to specific testing  
3 methods, frequency of testing, acceptable results, and other documentation  
4 methods;
- 5 p. A **Compliance Monitoring Plan** prepared under WAC 173-340-410 describing  
6 monitoring performed during construction and operation, as applicable, and a  
7 sampling and analysis plan meeting the requirements of WAC 173-340-820.
- 8 p-1. This section shall include a **Protection Monitoring Plan**, per WAC 173-  
9 340-410(1) (a), to confirm that human health and the environment are protected  
10 during cleanup action construction, including monitoring and plans to minimize  
11 waste inhalation, skin contact, mud and dust generation, surface water run-off,  
12 and waste spillage during construction;
- 13 p-2. This section shall also include a **Confirmation Monitoring Plan**, per  
14 WAC 173-340-410(1) (c). This plan will be designed to confirm the long-term  
15 effectiveness of the cleanup action. This plan will also include a groundwater  
16 monitoring schedule pursuant to the final cleanup action plan (Exhibit B) for the  
17 Site designed to ensure that compliance with Site surface water cleanup  
18 standards are maintained outside of the Site points of compliance, and to track  
19 groundwater flow, free product distribution, contaminant concentrations, and  
20 natural attenuation within the Site. Groundwater monitoring and reporting will  
21 occur quarterly for three years following substantial completion of construction.  
22 Semi-annual monitoring and reporting will be required in years four and five.  
23 Annual monitoring and reporting will be required in years 5 through 10.  
24 Monitoring may be terminated only after Ecology affirms in writing that all  
25 groundwater and surface water cleanup levels have been attained. The plan  
26 shall include proposed well locations and depths, construction, sampling and

1 analysis methodology and plan per WAC 173-340-820, and sampling frequency.  
2 The Compliance Monitoring Plan will also include a methodology to be used to  
3 determine whether an exceedance of surface water standards has occurred  
4 based upon extrapolation from sampling points located upland of the shoreline.  
5 The methodology will also identify when or whether a contingency groundwater  
6 cleanup action is needed.

7 q. **Safety and Health Plan** per WAC 173-340-810.

8 r. **Operation and Maintenance Plan.** A plan for operation and maintenance of the  
9 final remedial actions systems shall include operating instructions, control  
10 parameters, safety limits, etc. for the groundwater/product extraction and  
11 treatment systems as well as a listing of regular maintenance items and  
12 inspection and maintenance procedures and frequencies. The plan shall  
13 present technical guidance and regulatory requirements to assure effective  
14 operations under both normal and emergency conditions. The operation and  
15 maintenance plan shall include the following elements, as appropriate:

- 16 (i) Name and phone number of the responsible individuals;
- 17 (ii) Process description and operating principles;
- 18 (iii) Design criteria and operating parameters and limits;
- 19 (iv) General operating procedures, including startup, normal operations,  
20 operation at less than design loading, shutdown, and emergency or  
21 contingency procedures;
- 22 (v) A discussion of the detailed operation of individual treatment units,  
23 including a description of various controls, recommended operating  
24 parameters, safety features, and any other relevant information;
- 25 (vi) Procedures and sample forms for collection and management of operating  
26 and maintenance records;

- (vii) Spare part inventory, addresses of suppliers of spare parts, equipment warranties, and appropriate equipment catalogues;
- (viii) Equipment maintenance schedules incorporating manufacturers recommendations;
- (ix) Contingency procedures for spills, releases, and personnel accidents;
- (x) Description of procedures which assure that the safety and health requirements of WAC 173-340-810 are met, including specification of contaminant action levels and contingency plans, as appropriate;
- (xi) An inspection schedule for maintenance of the physical measures to be used as institutional controls as described in the Final Cleanup Action Plan (Exhibit B).
- (xii) A schedule for periodic inspection of the site for upwelling tar sources.
- (xiii) Other information as required by the Department of Ecology.

**Task 2 Final Engineering Design Report**

**Date Due: One month after issuance of Ecology's comments on the draft report.**

The City and PSE shall submit a final Engineering Design Report that amends the draft Engineering Design Report to satisfy all written comments submitted by Ecology regarding the draft report.

**Task 3 Construction, Operation and Maintenance of Final Cleanup Action**

**Due Date: Substantial completion of construction by fourteen months from Ecology's approval of the Final Engineering Design Report.**

1 Construction of the final cleanup actions shall be performed in accordance with, and shall  
2 execute the requirements of the Ecology-approved Engineering Design Report.

3  
4 All aspects of construction shall be performed under the supervision of a professional  
5 engineer registered in the State of Washington or a qualified technician, under the direct  
6 supervision of a professional engineer registered in the State of Washington. During  
7 construction, detailed records shall be kept of all aspects of the work performed, including  
8 construction techniques and materials used, items installed, and tests and measurements  
9 performed.

10  
11 Operation and maintenance of all remedial action systems shall be in conformance with, and  
12 shall execute the applicable requirements of, the following Ecology-approved Workplan  
13 Deliverables: Engineering Design Report, Operation and Maintenance Plan, and Compliance  
14 Monitoring Plan. Startup, operation and maintenance of the final remedial action system shall  
15 begin upon completion of system construction and shall follow the Operation and Maintenance  
16 Plan as approved by Ecology. The remedial systems shall thenceforth be run continuously  
17 with minimum down time, until Ecology approves each remedial system shut down in writing.

18  
19 **Task 4 Compliance Monitoring and Reporting**

20  
21 **Due Date: Reports are due one month after each calendar quarter for the first 3 years,**  
22 **then one month after each January-June and July-December periods.**

23  
24 Compliance monitoring shall be performed in accordance with the Ecology approved  
25 Compliance Monitoring Plan. Reports shall be due quarterly for the first 3 years of system  
26

1 operations and semi-annually thereafter, until Ecology affirms in writing that Site groundwater  
2 and surface water maintain compliance with Site Cleanup levels per the CAP.

3  
4 **Task 5 Project Record Drawings**

5  
6 **Date Due: Two months after completion of cleanup action construction.**

7  
8 At the completion of construction, the engineer responsible for the supervision of construction  
9 shall prepare Project Record Drawings and a report documenting all aspects of Site  
10 construction work, including those portions of the final remedial systems which had been  
11 constructed prior to the issuance of this decree.

12  
13 The report shall also contain an opinion from the project manager and the engineer, based on  
14 the testing results and inspections, as to whether the remedial systems have been completed  
15 in substantial compliance with the plans and specifications and related documents.