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SUPERIOR COURT
SPOKANE COUNTY, WA

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

TOSCO REFINING CORPORATION,
and PHILLIPS PETROLEUM
COMPANY,

Defendants.

NO. 00207012-2

CLEANUP ACTION PLAN
CONSENT DECREE

NORTH
MARKET
STREET
SITE, PLPs
SPOKANE

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CLEANUP ACTION PLAN
CONSENT DECREE

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and the Phillips Petroleum Company & Tosco Refining Company (Defendants) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendants to undertake the following remedial action(s):

- (1) Installation of an air sparging system to treat contaminated groundwater.
- (2) Installation of a bioventing system to bioremediate soil vapor.
- (3) Excavation and thermal treatment of contaminated soil.
- (4) Implement institutional controls plan for the Site.

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

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

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

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

1 E. 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 an admission of any facts;
3 provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any
4 proceeding to enforce this Decree.

5 F. The Court is fully advised of the reasons for entry of this Decree, and good
6 cause having been shown:

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS 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 RCW
12 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
13 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious
14 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be
15 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 which is the subject of this Decree.

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

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

24 F. The Defendants have agreed to undertake the actions specified in this Decree
25 and consents to the entry of this Decree under the MTCA.

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site, referred to as the North Market Street Site, is located in portions of Sections 15, 16, 21, 22, 27 and 28, Township 26 North, Range 43 East, Willamette Meridian (WM) in Spokane County. The Site is more particularly described in Exhibit A to this Decree which is a detailed site diagram.

B. Parties: Refers to the Washington State Department of Ecology and to the Defendants.

C. Defendants: Refers to Phillips Petroleum Company and Tosco Refining Company

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

V. STATEMENT OF FACTS

1 1. The North Market Street site, hereinafter known as the Facility, as defined in
2 RCW 70.105D.020(4), is located in portions of Sections 15, 16, 21, 22, 27 and 28, Township
3 26 North, Range 43 East, Willamette Meridian (WM) in Spokane County, approximately one
4 mile north of the City of Spokane corporate limits.
5

6 2. Tosco Refining Company (Tosco) currently owns property and operates a fuel
7 terminal within the Facility. Chevron PipeLine Company (Chevron) currently owns property
8 within the Facility. Phillips Petroleum Company (Phillips) previously owned property and
9 operated a petroleum refinery within the Facility. Exhibit 1 presents current land ownership at
10 the Site.

11 3. Portions of the facility have been used in the past, or are currently being used, as
12 an oil refinery, petroleum pipeline terminus, and petroleum products storage and distribution
13 center.

14 4. Historic refinery operations resulted in discharges of petroleum and other
15 refinery-related wastes and waste waters which were released to the environment through a series
16 of ponds and ditches, once located immediately west to northwest of the current Tosco Spokane
17 Fuel Terminal RCW 70.105D.020(20).

18 5. Operations at the fuel terminal now owned by Tosco have resulted in the spill or
19 release of petroleum substances to the environment. Release of an estimated 709 barrels of jet
20 fuel from overfilling of Tank No. 158 occurred in October 1979. An estimated forty thousand
21 (40,000) gallons of gasoline were spilled in April 1989, from Tank No. T302. Two hundred
22 barrels of transmix were reported spilled in December 1990.

23 6. Data from studies directed by Ecology and the U. S. Environmental Protection
24 Agency (EPA), and follow up ground-water sampling and site study by Ecology have confirmed
25 that "releases" of "hazardous substances", as defined in RCW 70.105D.020(20) and (7)

1 respectively, to soil and ground water have occurred on the facility. Historic aerial photographs
2 also show evidence of releases. These data and studies are found in the following references:

3 Ecology and Environment, Inc., 1989, Technical Assistance Team Site
4 Assessment, Final Report for: Tosco Corporation Spokane Terminal, Spokane,
5 Washington.

6 Golder Associates, 1985, Phase I Remedial Investigation of the North Market
7 Street Site Volumes I, II, and III.

8 Data Compilation Report for the North Market Street Site Phases I, II, and III
9 Remedial Investigations - 1988.

10 U. S. Environmental Protection Agency, 1990, Aerial Photographic Analysis of
11 Tosco, Incorporated, Spokane, Washington, Prepared by: Environmental Systems
12 Laboratory, TS-PIC-90752.

13 Washington State Department of Ecology, 1990, October 1990 ground water
14 sample results data report.

15 -----, 1990, Environmental Report Tracking System, Spill Report - Tosco
16 Refining Company, E. 3225 Lincoln Road, Spokane, Washington.

17 7. The EPA proposed the facility for inclusion on the National Priority List (NPL)
18 on June 24, 1988 (53 FR 23978). The facility was named to the NPL on August 30, 1990 (55
19 FR 35502).

20 8. The facility overlies the Hillyard Trough portion of the Spokane Valley-
21 Rathdrum Prairie Aquifer, designated by the EPA in 1978 as a sole source aquifer.
22 Groundwater in the vicinity of the facility is used for residential, commercial, industrial, and
23 irrigation purposes.

24 9. On February 25, 1991, Ecology issued proposed findings of potentially liable
25 person (PLP) status to Tosco, Chevron, Phillips, and Burlington Northern as owner and/or
operator of the Facility under RCW 70.105D 040.

On May 15, 1991, Ecology issued final determinations of PLP status to Tosco,
Chevron, Phillips, and Burlington Northern as an owner and/or operator of the facility.

1 11. Ecology issued Agreed Orders to the potentially liable persons (PLPs) to perform
2 Phase I of the remedial investigation and feasibility study (RI/FS) at the facility. The following
3 four PLPs signed Agreed Orders to perform the Phase I work at the facility:

4 Burlington Northern Railroad Company (BN) - Agreed Order
5 No. DE 92TC-E101

6 Chevron Corporation (Chevron) - Agreed Order No. DE 92TC-E102

7 Phillips Petroleum Co. (Phillips) - Agreed Order
8 No. DE 92TC-E103

9 Tosco Refining Co. (Tosco) - Agreed Order No. DE 92TC-E104

10 Collectively these four PLPs, hereafter referred to as the "North Market Street Group",
11 formed a work group and designated a project coordinator to implement the Phase I RI/FS Scope
12 of Work (SOW) defined in Section IV. - Work to be Performed of the 1992 Agreed Order.

13 12. In October 1994, Tosco, Chevron, and Phillips signed an Amendment to the
14 Agreed Order. The Amendment to the Order provided for performance of a Phase II Remedial
15 Investigation and Feasibility Study.

16 13. Burlington Northern Railroad Company (BN) submitted a Work Plan to Ecology
17 in October 1994 to conduct soil remediation at the BN property south of Lincoln Road. A De
18 Minimis Consent Decree settlement was signed between Ecology and BN in February 1995.
19 This settlement removed BN from the North Market Street Group.

20 14. In June 1996, the North Market Street Group submitted the Phase II Remedial
21 Investigation report. The report was finalized after a 30-day comment period.

22 15. The North Market Street Group completed a Feasibility Study for the Site in June
23 1998. After a 30-day comment period, the Feasibility Study was finalized.

24 16. Ecology issued an Enforcement Order to the North Market Street Group in June
25 1998. The Enforcement Order was for the completion of an additional Scope of Work at the Site.
The Scope of Work included the completion and sampling of four soil borings to the smear zone,

1 monthly water levels, and quarterly groundwater and soil gas monitoring. The smear zone
2 samples were sent for treatability testing to assess the biodegradability of the contamination.

3 17. In 1999, a Supplemental Groundwater and Soil Vapor Quality Monitoring
4 Report was prepared for Phillips Petroleum Company and was submitted to Ecology. The
5 report detailed the data collected since the issuance of the 1998 Enforcement Order.

6 18. Ecology finalized the cleanup action plan (CAP) in December 1999. In the CAP
7 Ecology selected the cleanup remedial actions to be implemented at the Site. The actions include
8 installation of an air sparging system to treat contaminated groundwater, installation of a
9 bioventing system to remediate soil vapor, and excavation and thermal treatment of contaminated
10 soil.

11 19. Quarterly groundwater and soil gas monitoring have been conducted since the
12 issuance of the Enforcement Order in 1998 to present.

13 20. Based on the documented facts, Ecology has determined that the hazardous
14 substances released on the Site require remedial action.

15 VI. WORK TO BE PERFORMED

16 Based on the foregoing Facts and Determinations, it is hereby ordered that the North
17 Market Street Group take the following remedial actions and that these actions be conducted in
18 accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

19 1. The Defendants shall continue to conduct quarterly groundwater monitoring
20 well and soil vapor probe sampling at the North Market Street Site

21 2. Monitoring wells shall be installed upgradient and downgradient of the
22 proposed air sparging line. The air sparging system will be installed between monitoring wells
23 NM-18 and NM-22. The monitoring wells shall be sampled prior to start up of the air sparging
24 system and during system operation to assess system performance. A Scope of Work is
25 attached as Appendix C. The monitoring well and air sparging system installation schedule is

1 shown as Table 1 in Appendix C. The schedule presents the effective dates for completion of
2 each task as well as the number of calendar days following completion of each task for the
3 required deliverables.

4 3. As with the air sparging system, the bioventing system will require additional
5 monitoring points to assess system operation and performance. Soil gas samples will be
6 collected prior to and during operation. The sampling will be performed in accordance with
7 the schedule outlined in Appendix C.

8 4. Approximately 67,000 cubic yards of soil are slated for removal. Of which,
9 53,000 cubic yards will require treatment. The majority of soil will be removed from the
10 portion of the Site referred to as Area 1.

11 5. Progress reports shall be completed by the Project Coordinator according to the
12 schedule outlined in the schedule presented in Table 1.

13 6. In accordance with WAC 173-340-840(5), ground water sampling data shall be
14 submitted in an electronic format acceptable to Ecology's Project Coordinator.

15 **VII. DESIGNATED PROJECT COORDINATORS**

16 The project coordinator for Ecology is:

17 William J. Fees, P.E.
18 Department of Ecology
19 Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205-1295

20 The project coordinators for the Defendants are:

21 Cindy L. Smith
22 Senior Hydrogeologist
23 Phillips Petroleum Company
13 C4 Phillips Building
Bartlesville, OK 74004

Lawrence B. Silva
Environmental Manager
Tosco Refining Company
P O. Box 2628
Santa Fe Springs, CA 90670

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. The Ecology project coordinator will be Ecology's designated representative at the

1 Site. To the maximum extent possible, communications between Ecology and the Defendants
2 and all documents, including reports, approvals, and other correspondence concerning the
3 activities performed pursuant to the terms and conditions of this Decree, shall be directed
4 through the project coordinators. The project coordinators may designate, in writing, working
5 level staff contacts for all or portions of the implementation of the remedial work required by
6 this Decree. The project coordinators may agree to minor modifications to the work to be
7 performed without formal amendments to this Decree. Minor modifications will be
8 documented in writing by Ecology.

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

11 **VIII. PERFORMANCE**

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

19 **IX. ACCESS**

20 Ecology or any Ecology authorized representatives shall have the authority to enter and
21 freely move about all property at the Site at all reasonable times for the purposes of, inter alia:
22 inspecting records, operation logs, and contracts related to the work being performed pursuant
23 to this Decree; reviewing Defendants progress in carrying out the terms of this Decree;
24 conducting such tests or collecting such samples as Ecology may deem necessary; using a
25 camera, sound recording, or other documentary type equipment to record work done pursuant

1 to this Decree; and verifying the data submitted to Ecology by the Defendants. All parties with
2 access to the Site pursuant to this paragraph shall comply with the Ecology-approved health
3 and safety plans.

4 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

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

9 In accordance with WAC 173-340-840(5), sampling data shall be submitted to Ecology
10 in accordance with Section XI of this Decree.

11 If requested by Ecology, the Defendants shall allow split or duplicate samples to be
12 taken by Ecology and/or its authorized representatives of any samples collected by Defendant
13 pursuant to the implementation of this Decree. The Defendants shall notify Ecology seven (7)
14 days in advance of any sample collection or work activity at the Site. Ecology shall, upon
15 request, allow split or duplicate samples to be taken by Defendants or its authorized
16 representatives of any samples collected by Ecology pursuant to the implementation of this
17 Decree provided it does not interfere with the Department's sampling. Without limitation on
18 Ecology's rights under Section IX, Ecology shall provide seven (7) days notice to the
19 Defendants prior to any sample collection activity, except in an Endangerment situation as
20 described in Section XVII herein.

21 **XI. PROGRESS REPORTS**

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

- 25 A A list of on-site activities that have taken place during the month;

1 B. Detailed description of any deviations from required tasks not otherwise
2 documented in project plans or amendment requests;

3 C. Description of all deviations from the schedule (Exhibit C) during the current
4 month and any planned deviations in the upcoming month;

5 D. For any deviations in schedule, a plan for recovering lost time and maintaining
6 compliance with the schedule;

7 E. All raw data (including laboratory analysis) received by the Defendant during
8 the past month and an identification of the source of the sample;

9 F. A list of deliverables for the upcoming month if different from the schedule;
10 and

11 All progress reports shall be submitted by the tenth day of the month in which they are
12 due after the effective date of this Decree. Unless otherwise specified, progress reports and
13 any other documents submitted pursuant to this Decree shall be sent to Ecology's project
14 coordinator with appropriate proof of mailing.

15 XII. RETENTION OF RECORDS

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

23 XIII. TRANSFER OF INTEREST IN PROPERTY

24 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
25 or other interest in any portion of the Site shall be consummated without provision for

1 continued operation and maintenance of any containment system, treatment system, and
2 monitoring system installed or implemented pursuant to this Decree.

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

8 **XIV. RESOLUTION OF DISPUTES**

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

12 (1) Upon receipt of the Ecology project coordinator's decision, the Defendant has
13 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the
14 decision.

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

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

21 (4) Ecology's Program Manager shall conduct a review of the dispute and shall
22 issue a written decision regarding the dispute within thirty (30) days of the Defendant's request
23 for review. The Program Manager's decision shall be Ecology's final decision on the disputed
24 matter.
25

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

8 C. The parties agree to only utilize the dispute resolution process in good faith and
9 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
10 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
11 the other party may seek sanctions.

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

15 **XV. AMENDMENT OF CONSENT DECREE**

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

20 Defendants shall submit any request for an amendment to Ecology for approval.
21 Ecology shall indicate its approval or disapproval in a timely manner after the request for
22 amendment is received. If the amendment to the Decree is substantial, Ecology will provide
23 public notice and opportunity for comment. Reasons for the disapproval shall be stated in
24 writing. If Ecology does not agree to any proposed amendment, the disagreement may be
25 addressed through the dispute resolution procedures described in Section XIV of this Decree.

XVI. EXTENSION OF SCHEDULE

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

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

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

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

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

(3) Endangerment as described in Section XVII.

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

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

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

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

6 (3) Endangerment as described in Section XVI.

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

9 XVII. ENDANGERMENT

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

21 In the event the Defendants determine that activities undertaken in furtherance of this
22 Decree or any other circumstances or activities are creating an endangerment to the people on
23 the Site or in the surrounding area or to the environment, Defendants may stop implementation
24 of this Decree for such period of time necessary for Ecology to evaluate the situation and
25 determine whether Defendants should proceed with implementation of the Decree or whether

1 the work stoppage should be continued until the danger is abated. The Defendants shall notify
2 Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after
3 such stoppage of work, and thereafter provide Ecology with documentation of the basis for the
4 work stoppage. If Ecology disagrees with the Defendants' determination, it may order
5 Defendant to resume implementation of this Decree. If Ecology concurs with the work
6 stoppage, the Defendants' obligations shall be suspended and the time period for performance
7 of that work, as well as the time period for any other work dependent upon the work which was
8 stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as
9 Ecology determines is reasonable under the circumstances. Any disagreements pursuant to the
10 clause shall be resolved through the dispute resolution procedures in Section XIV.

11 **XVIII. OTHER ACTIONS**

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

16 (1) Where Defendants fail, after notice, to comply with any requirement of this
17 Decree;

18 (2) In the event or upon the discovery of a release or threatened release not
19 addressed by this Decree;

20 (3) Upon Ecology's determination that action beyond the terms of this Decree is
21 necessary to abate an emergency situation which threatens public health or welfare or the
22 environment; or

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

1 geographic Site described in Exhibit A and to those contaminants which Ecology knows to be
2 at the Site when this Decree is entered.

3 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
4 resources resulting from the release or threatened release of hazardous substances from the
5 Site.

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

8 **XIX. INDEMNIFICATION**

9 The Defendants agree to indemnify and save and hold the State of Washington, its
10 employees, and agents harmless from any and all claims or causes of action for death or
11 injuries to persons or for loss or damage to property arising from or on account of acts or
12 omissions of Defendant, its officers, employees, agents, or contractors in entering into and
13 implementing this Decree. However, the Defendants shall not indemnify the State of
14 Washington nor save nor hold its employees and agents harmless from any claims or causes of
15 action arising out of the negligent acts or omissions of the State of Washington, or the
16 employees or agents of the State, in implementing the activities pursuant to this Decree.

17 **XX. LAND USE RESTRICTIONS**

18 For those parcels within the Site owned by Defendants where residual concentrations of
19 hazardous substances for which cleanup levels have been established in the CAP will exceed
20 residential cleanup levels following completion of the cleanup action, Defendants agree that
21 the Restrictive Covenant (Exhibit E) shall be recorded with the office of the Spokane County
22 Auditor within (12) months of the entry of this Decree and shall restrict future users of those
23 parcels. Defendants will provide Ecology with a copy of the recorded Restrictive Covenant
24 within thirty (30) days of the recording date.
25

XXI. COMPLIANCE WITH APPLICABLE LAWS

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

B. Pursuant to RCW 70.105D.090(l), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Decree that are known to be applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action Plan, and are binding and enforceable requirements of the Decree. Defendants have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(l) would otherwise be required for the remedial action under this Decree. In the event either the Defendants or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(l) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or Defendants shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Defendants and on how Defendants must meet those requirements. Ecology shall inform Defendants in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendants shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination. Ecology shall ensure that

1 notice and opportunity for comment is provided to the public and appropriate agencies prior to
2 establishing the substantive requirements under this section.

3 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
4 exemption from complying with the procedural requirements of the laws referenced in RCW
5 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
6 for the State to administer any federal law, the exemption shall not apply and the Defendants
7 shall comply with both the procedural and substantive requirements of the laws referenced in
8 RCW 70.105D.090(1), including any requirements to obtain permits.

9 **XXII. REMEDIAL AND INVESTIGATIVE COSTS**

10 The Defendants agree to pay costs incurred by Ecology pursuant to this Decree. These
11 costs shall include work performed by Ecology or its contractors for, or on, the Site under Ch.
12 70.105D RCW both prior to and subsequent to the issuance of this Decree for investigations,
13 remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology
14 costs shall include costs of direct activities and support costs of direct activities as defined in
15 WAC 173-340-550(2). The Defendants agree to pay the required amount within ninety (90)
16 days of receiving from Ecology an itemized statement of costs that includes a summary of
17 costs incurred, an identification of involved staff, and the amount of time spent by involved
18 staff members on the project. A general statement of work performed will be provided upon
19 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within
20 ninety (90) days of receipt of the itemized statement will result in interest charges.

21 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

22 If Ecology determines that the Defendants have failed without good cause to implement
23 the remedial action, Ecology may, after notice to Defendants, perform any or all portions of the
24 remedial action that remain incomplete. If Ecology performs all or portions of the remedial
25 action because of the Defendant's failure to comply with its obligations under this Decree, the

1 Defendants shall reimburse Ecology for the costs of doing such work in accordance with
2 Section XXI, provided that the Defendants is not obligated under this section to reimburse
3 Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

4 **XXIV. CONTRIBUTION PROTECTION**

5 With regard to claims for contribution against the Defendants, the parties intend that the
6 Defendants will obtain protection against claims for contribution for matters addressed in this
7 Decree pursuant to RCW 70.105D.040(4)(d).

8 **XXV. COVENANT NOT TO SUE / REOPENERS**

9 A In consideration of the Defendants' compliance with the terms and conditions of
10 this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all
11 administrative, legal, and equitable remedies and enforcement actions available to the State
12 against the Defendants regarding all matters within the scope of this Decree.

13 B Reopeners: In the following circumstances, Ecology may exercise its full
14 legal authority to address releases of hazardous substances at the Site, notwithstanding the
15 Covenant Not To Sue set forth above:

16 (1) In the event Defendants fail to comply with the terms and conditions of this
17 Decree, including all Exhibits, and after written notice of non-compliance, such failure is not
18 cured by Defendants within thirty (30) days of receipt of notice of non-compliance.

19 (2) In the event factors not known at the time of entry of this Decree and not
20 disclosed to Ecology are discovered and such factors present a previously unknown threat to
21 human health or the environment and are not addressed by the Cleanup Action Plan, attached
22 hereto as Exhibit _____. If such factors are discovered, Ecology shall provide written notice to
23 the Defendants.

1 (3) Upon Ecology's determination that actions beyond the terms of this Decree are
2 necessary to abate an emergency situation which threatens public health, welfare, or the
3 environment.

4 C. Applicability: The Covenant Not To Sue set forth above shall have no
5 applicability whatsoever to:

- 6 (1) Criminal Liability;
7 (2) Actions against PLP's who are not parties to this Decree;
8 (3) Liability for damages for injury to, destruction of, or loss of natural resources;
9 (4) Determinations pursuant to groundwater monitoring that show that cleanup
10 levels are being exceeded.

11 D. Ecology retains all of its legal and equitable rights against all persons except as
12 otherwise provided in this Decree.

13 XXVI. FIVE YEAR REVIEW

14 As remedial action, including ground water monitoring, continues at the Site, the
15 parties agree to review the progress of remedial action at the Site, and to review the data
16 accumulated as a result of site monitoring as often as is necessary and appropriate under the
17 circumstances. At least every five years the parties shall meet to discuss the status of the Site
18 and the need, if any, of further remedial action at the Site Ecology reserves the right to require
19 further remedial action at the Site under appropriate circumstances. This provision shall
20 remain in effect for the duration of the Decree

21 XXVII. PUBLIC PARTICIPATION

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

24 A. Prepare drafts of public notices and fact sheets at important stages of the
25 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility

1 Study reports and engineering design reports. Ecology will finalize (including editing if
2 necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's
3 presentations and meetings;

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

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

11 D. In cooperation with Ecology, arrange and/or continue information repositories
12 to be located at Spokane Public Library – Hillyard Branch at 4005 North Cook Street in
13 Spokane, Washington, and Ecology's Eastern Regional Office at 4601 North Monroe Street,
14 Suite 202 in Spokane, Washington. At a minimum, copies of all public notices, fact sheets,
15 and press releases; all quality assured ground water, surface water, soil sediment, and air
16 monitoring data; remedial actions plans, supplemental remedial planning documents, and all
17 other similar documents relating to performance of the remedial action required by this Decree
18 shall be promptly placed in these repositories.

19 **XXVIII. DURATION OF DECREE**

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

23 **XXIX. CLAIMS AGAINST THE STATE**

24 The Defendants hereby agree that it will not seek to recover any costs accrued in
25 implementing the remedial action required by this Decree from the State of Washington or any

1 of its agencies; and further, that the Defendant will make no claim against the State Toxics
2 Control Account or any Local Toxics Control Account for any costs incurred in implementing
3 this Decree. Except as provided above, however, the Defendants expressly reserve its right to
4 seek to recover any costs incurred in implementing this Decree from any other potentially
5 liable person.

6 **XXX. EFFECTIVE DATE**

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


8 **XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**


9 This Decree has been the subject of public notice and comment under RCW
10 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to
11 a more expeditious cleanup of hazardous substances at the Site.

12 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
13 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.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CHRISTINE O GREGOIRE
Attorney General


JIM PENDOWSKI
Program Manager
Toxics Cleanup Program

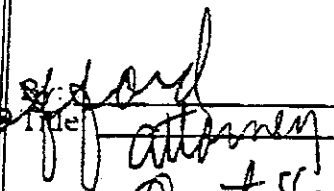

KEN LEDERMAN, WSBA #26515
Assistant Attorney General


Date: 11/2/00

Date: 12/5/00

PHILLIPS PETROLEUM COMPANY

TOSCO REFINING CORPORATION

mclw

By: Steven N. Grovda
Title: Attorney

By: 
Title: SV VP SUE

Date: Oct 4, 2000

Date: Sept. 27, 2000

DATED this 11 day of December, 2000.

STEVEN N. GROVDAHL
COURT COMMISSIONER
JUDGE
Spokane County Superior Court

F LEDERMAN NORTH MARKET ST CONSENT DECREE #4 9-25-00

CLEANUP ACTION PLAN
CONSENT DECREE