

DEC 20 2024

WHATCOM COUNTY CLERK

03-2-02164-1  
AMDC 16  
Amended Decree  
18012387



STATE OF WASHINGTON  
WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington  
municipal corporation; NORTHWEST  
RECYCLING, P. HARRINGTON, LLC,  
PARBERRY'S INC., CAPRON LLC, OLD  
TOWN VILLAGE LLC, PARBERRY  
FAMILY LIMITED PARTNERSHIP I  
AGREEMENT, L.L.L.P., JOHN SANDS,  
and PARBERRY IRON & METAL CO.,  
LLC,

Defendants.

NO. 03-2-02164-1

FIRST AMENDMENT TO CONSENT  
DECREE  
Holly Street Landfill Site

Pursuant to Section XVII of the Consent Decree entered by this Court on September 25, 2003, Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, City of Bellingham; Northwest Recycling; P. Harrington, LLC; Parberry's Inc.; Capron LLC; Old Town Village LLC; Parberry Family Limited Partnership I Agreement, L.L.L.P.; John Sands; and Parberry Iron & Metal Co., LLC, hereby stipulate or were provided the opportunity to object to a first amendment of the Consent. This Amendment does not attempt to recite all of the provisions of the 2014 Consent Decree. Provisions of the 2003 Consent decree not specifically changed in this Amendment remain in full force and effect.

1 **I. INTRODUCTION**

2 A. In entering into this Consent Decree ("Decree"), the mutual objective of the  
3 Plaintiff and Defendants is to provide for remedial action at a facility where there has been a  
4 release or threatened release of hazardous substances. This Decree requires the Defendants to  
5 undertake remedial action as described in the Cleanup Action Plan ("CAP") attached as Exhibit  
6 A to the 2003 Decree and to record covenants restricting the future uses of their property to uses  
7 consistent with this Decree and the CAP. All references in this Decree to Ch. 70.105D RCW  
8 shall be replaced with the recodified Ch. 70A.305 RCW.

9 **IV. DEFINITIONS**

10 Unless otherwise specified herein, all definitions in RCW 70A.305.020, WAC 173-204,  
11 and WAC 173-340 shall control the meanings of the terms in this Decree. Paragraphs B and D  
12 in Section IV of the Consent Decree are replaced in their entirety by the following:

13 B. Parties: Refers to Plaintiff, State of Washington, Department of Ecology  
14 ("Ecology"), and Defendants, the City of Bellingham; Northwest Recycling; P. Harrington,  
15 LLC; Parberry's Inc.; Capron LLC; Old Town Village LLC; Parberry Family Limited  
16 Partnership I Agreement, L.L.L.P.; John Sands; and Parberry Iron & Metal Co., LLC.

17 D. Defendants: Refers to the City of Bellingham; Northwest Recycling; P.  
18 Harrington, LLC; Parberry's Inc.; Capron LLC; Old Town Village LLC; Parberry Family  
19 Limited Partnership I Agreement, L.L.L.P.; John Sands; and Parberry Iron & Metal Co., LLC.

20 **V. STATEMENT OF FACTS**

21 Ecology makes the following findings of fact without any express or implied admissions  
22 of such facts by Defendants. Paragraph C in Section V of the Consent Decree is replaced in its  
23 entirety by the following:

24 C. The City of Bellingham; P. Harrington, LLC; Capron LLC; Old Town Village  
25 LLC; Parberry Family Limited Partnership I Agreement, L.L.L.P. (as successor to Parberry  
26 Family L.P.); and Parberry Iron & Metal Co., LLC are current owners of property within the Site

1 and are “owners” as defined by RCW 70A.305.020(22). Northwest Recycling; Parberry’s Inc.;  
2 and John Sands were owners of property within the Site at the time of entry of the original  
3 Consent Decree and have not expressed a desire to be removed as Defendants from the Consent  
4 Decree.

## 5 **VII. DESIGNATED PROJECT COORDINATORS**

6 The Project Coordinator for Ecology is:

7 Cliff Nale  
8 PO Box 330316  
9 Shoreline WA 98133-9716  
425-725-0438  
[Cliff.nale@ecy.wa.gov](mailto:Cliff.nale@ecy.wa.gov)

10 The Project Coordinator for Defendants is:

11 Craig Mueller  
12 City of Bellingham  
13 104 W. Magnolia Street, Suite 109  
Bellingham, WA 98225  
360-778-7922  
[camueller@cob.org](mailto:camueller@cob.org)

14 Each project coordinator shall be responsible for overseeing the implementation of  
15 this Decree. Ecology’s project coordinator will be Ecology’s designated representative for  
16 MU-1 and MU-2. To the maximum extent possible, communications between Ecology  
17 and Defendants and all documents, including reports, approvals, and other  
18 correspondence concerning the activities performed pursuant to the terms and conditions of  
19 this Decree shall be directed through the project coordinators. It is the responsibility of  
20 the City’s project coordinator to distribute materials to DNR and the Port. The project  
21 coordinators may designate, in writing, working level staff contacts for all or portions of  
22 the implementation of the work to be performed required by this Decree.

23 Any party may change its respective project coordinator. Written notification shall  
24 be given to the other party at least ten (10) calendar days prior to the change.  
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This Covenant Not to Sue shall have no applicability whatsoever to:

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

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

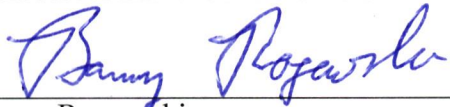
- A. Upon Defendant's failure to meet the requirements of this Decree.
- B. Failure of the remedial action to meet the cleanup standards identified in the CAP (Exhibit B to the 2003 Consent Decree).
- C. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment.

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

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


9 4. Except in the case of an emergency, prior to instituting legal or administrative  
10 action against Defendant(s) pursuant to this section, Ecology shall provide Defendant(s) with  
11 fifteen (15) calendar days' notice of such action.  
12

13  
14 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15   
16 Barry Rogowski  
17 Program Manager  
18 Toxics Cleanup Program  
360-407-3738

19 Date: Dec. 12, 2024

ROBERT W. FERGUSON  
Attorney General

  
20 John A. Level, WSBA #20439  
21 Assistant Attorney General  
360-586-6753

22 Date: Dec 6, 2024

23 CITY OF BELLINGHAM  
24

25 \_\_\_\_\_  
26 Kim Lund  
Mayor, City of Bellingham  
360-778-8100

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

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14 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

15  
16 \_\_\_\_\_  
Barry Rogowski  
17 Program Manager  
Toxics Cleanup Program  
360-407-3738

16 \_\_\_\_\_  
John A. Level, WSBA #20439  
17 Assistant Attorney General  
360-586-6753

18  
19 Date: \_\_\_\_\_

Date: \_\_\_\_\_

20 CITY OF BELLINGHAM

21 

22 ~~Kim Lund~~ Edwin H. Williams III  
23 Mayor, City of Bellingham Mayor Pro Tempore  
360-778-8100

24  
25 Dated: 12/19/2024  
26

1 APPROVED AS TO FORM:


2   
3 Office of the City Attorney  
4

5 ATTEST:

6   
7 Finance Director  
8

9 Dated: 12/19/24

10 DEPARTMENTAL APPROVAL:

11   
12 Alan Marriner  
13 City Attorney  
14

15 NORTHWEST RECYCLING

16 \_\_\_\_\_  
17 By:  
18 Its:  
19 Date:

20 P. HARRINGTON, LLC

21 \_\_\_\_\_  
22 By:  
23 Its:  
24 Date:

25 //

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1 APPROVED AS TO FORM:

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3 \_\_\_\_\_  
4 Office of the City Attorney

5 ATTEST:

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7 \_\_\_\_\_  
8 Finance Director

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

10 DEPARTMENTAL APPROVAL:

11  
12 \_\_\_\_\_  
13 Alan Marriner  
14 City Attorney

15 NORTHWEST RECYCLING

16   
17 By: Brad L. Parberry  
18 Its: President

19 Date: December 18, 2024

20 P. HARRINGTON, LLC

21   
22 By: Brad L. Parberry  
23 Its: owner

24 Date: December 18, 2024


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PARBERRY'S INC.

  
By: Brad L. Parberry  
Its: President  
Date: December 18, 2024

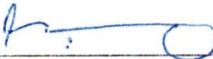
CAPRON LLC

By:  
Its:  
Date:

OLD TOWN VILLAGE LLC

By:  
Its:  
Date:

PARBERRY FAMILY LIMITED PARTNERSHIP I AGREEMENT, L.L.L.P.

  
By: Brad L. Parberry  
Its: MANAGER  
Date: December 18, 2024

JOHN SANDS

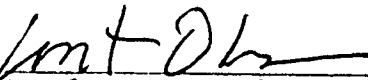
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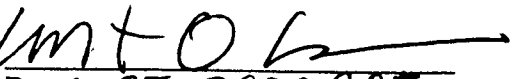
1 PARBERRY'S INC.

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4 By:  
5 Its:  
6 Date:

7 CAPRON I.L.C

8   
9 By: CURT O'CONNOR  
10 Its: member  
11 Date: 12/18/24

12 OLD TOWN VILLAGE LLC

13   
14 By: CURT O'CONNOR  
15 Its: member  
16 Date: 12/18/24

17 PARBERRY FAMILY LIMITED PARTNERSHIP I AGREEMENT, L.L.L.P.

18  
19 By:  
20 Its:  
21 Date:

22 JOHN SANDS

23  
24 By:  
25 Its:  
26 Date:

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1 PARBERRY IRON & METAL CO., LLC

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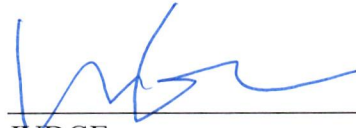
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By: Brad L. Parberry  
Its: Owner  
Date: December 18, 2024

1 ENTERED this 20<sup>th</sup> day of December 2024.

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4 JUDGE  
5 Whatcom County Superior Court  
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