

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ART BRASS PLATING, INC., a
Washington corporation; BLASER DIE
CASTING CO., a Washington
corporation; BURLINGTON
ENVIRONMENTAL, LLC, a
Washington limited liability company;
CAPITAL INDUSTRIES, INC., a
Washington corporation,

Defendants.

NO. _____

CONSENT DECREE

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I. INTRODUCTION

1. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Art Brass Plating, Inc., a Washington corporation; Blaser Die Casting Corporation, a Washington corporation; Burlington Environmental, LLC, a Washington limited liability company; and Capital Industries, Inc., a Washington corporation, (collectively, Defendants) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendant(s) to perform the remedial actions at the West of 4th Site (Site) in Seattle, Washington, as depicted and described in Exhibits A and B, in accordance with the Cleanup Action Plan, attached as Exhibit C to this Decree.

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

3. The Complaint in this action will be 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 (as defined herein) 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.

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

5. By entering into this Decree, the Parties do not intend to discharge non-settling 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.

6. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts;

provided, however, that Defendants shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

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

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.

2. Authority is conferred upon the Washington State Attorney General by RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required public meeting, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

4. Ecology has given notice to Defendants of Ecology's determination that Defendants are PLPs for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

5. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

6. This Decree has been subject to public notice and comment.

7. Ecology finds that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70A.305.030(2)(e) and WAC 173-340.

8. Defendants have agreed to undertake the actions specified in this Decree and consent to the entry of this Decree under MTCA.

III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that they are fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendants agree to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter Defendants' responsibility under this Decree. 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 agents, contractors, and subcontractors complies with this Decree.

IV. DEFINITIONS

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

A. Site: The Site is referred to as West of 4th, Facility Site ID 47779679, Cleanup Site ID 12260. The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Location Diagram (Exhibit A) and the CAP (Exhibit C). The Site constitutes a "Facility" under RCW 70A.305.020(8).

B. Site Unit: The Site consists of multiple administrative sub-divisions of the Site to facilitate implementation of the remedial activities to be performed under the CAP, and to afford a more effective means for targeting remedial actions associated with specific contaminants, specific contaminated media, or specific areas of contamination. The Site Units are Site Unit 1 (SU1) and Site Unit 2 (SU2). A third area of targeted action is an area referred to as the SU Boundary Area. The Site Units and the SU Boundary Area are more fully described in the CAP (Exhibit B). Actions at individual Site Units and SU Boundary Area will contribute

1 to the overall cleanup of the entire Site and will not interfere with or foreclose remedial actions
2 at other Site Units or any other portion of the Site.

3 C. Consent Decree or Decree: Refers to this Consent Decree and each of the
4 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.

5 D. Defendants: Refers to Art Brass Plating, Inc., a Washington corporation;
6 Blaser Die Casting Corporation, a Washington corporation; Burlington Environmental, LLC, a
7 Washington limited liability company; and Capital Industries, Inc., a Washington corporation.

8 E. Parties: Refers to the State of Washington, Department of Ecology and the
9 Defendants.

10 V. FINDINGS OF FACT

11 Ecology makes the following findings of fact without any express or implied admissions
12 of such facts by Defendants.

13 A. Based upon factors currently known to Ecology, the Site is generally located in
14 Seattle's Georgetown Neighborhood, bounded by Fourth Ave. S. to the east; the Duwamish
15 Waterway to the west; S. Lucile St. to the north; and Slip 2 of the Duwamish Waterway to the
16 south as shown in the Site Location Diagram (Exhibit A).

17 B. Contaminated groundwater is present west of 4th Ave. S. Hazardous substances
18 continue to migrate in the groundwater in the direction of regional groundwater flow, which is
19 generally westerly to southwesterly. Contamination at the Site has been attributed to the
20 following sources:*

21 (1) The Art Brass Plating (ABP) property is located at 5516 3rd Avenue South,
22 Seattle, Washington.

23 (a) Since 1983, ABP has conducted industrial operations on the ABP
24 property exclusively for metal plating and related work (e.g., metal polishing and powder
25 coating). Metal plating has included nickel, chrome, brass (an alloy of copper and zinc), copper,
26

1 and gold. The chlorinated solvent trichloroethene (TCE) was used at the ABP property for vapor
2 degreasing from approximately 1983 to February 2004.

3 (b) Hazardous substances exceeding MTCA cleanup levels were
4 detected in soil and groundwater on the ABP property. ABP performed interim remedial actions,
5 including groundwater air-sparging, soil vapor extraction, and vapor intrusion mitigation.

6 (2) The Blaser Die Casting (BDC) property is located at 5700 Third Avenue
7 South, Seattle, Washington.

8 (a) BDC has occupied the BDC property in its present location since
9 1962. BDC performed die casting until 2010 when the building was converted to a storage and
10 distribution facility. BDC's processes did not change substantively from 1962 until 2010. A
11 release of TCE occurred sometime before 1996 when a building addition was constructed at the
12 BDC property. The building addition is currently used as warehouse and temporary storage
13 space.

14 (b) BDC performed soil, soil gas, indoor air, and groundwater
15 sampling on and under its property and in the vicinity of its property and detected TCE and vinyl
16 chloride (VC) exceeding MTCA cleanup levels. BDC performed interim remedial actions at the
17 BDC property, including excavating and removing contaminated soils and vapor intrusion
18 mitigation.

19 (c) Contaminated groundwater is present west of 4th Ave. S. TCE and
20 VC continue to migrate in the groundwater from the BDC property in the direction of regional
21 groundwater flow, which is generally westerly to southwesterly.

22 (3) The Capital Industries (CI) property located at 5801 Third Avenue South,
23 Seattle, Washington.

24 (a) The CI Property consists of multiple buildings (referred to as
25 Plants 1 through 5 typically) located at 5801 3rd Avenue South. Former CI operations that may
26 have resulted in releases of TCE and/or tetrachloroethene (PCE) to soil and groundwater from

1 the CI property include use of a vapor degreaser formerly located in CI Plant 4, and use of a
2 solvent-based parts cleaner formerly located in CI Plant 2. Concentrations of PCE and/or TCE
3 have been confirmed in soil, groundwater, and soil gas at the CI Property. PCE was detected in
4 soil and groundwater at CI Plant 4.

5 (b) CI performed soil, soil gas, and groundwater sampling on and in
6 the vicinity of the CI property and detected hazardous substances exceeding MTCA cleanup
7 levels.

8 (c) CI performed interim remedial actions at the CI property,
9 including soil excavation at CI Plant 2, an in-situ chemical oxidation pilot test at CI Plant 4, and
10 vapor intrusion mitigation.

11 (d) Contaminated groundwater is present west of 4th Ave. S. At SU2,
12 plumes of TCE-contaminated groundwater extend from the BDC Property and the CI Property
13 flowing generally to the southwest in the direction of regional groundwater but do not reach the
14 Lower Duwamish Waterway. Plume boundaries in SU1 and SU2 are defined for TCE. The PCE
15 and TCE plume associated with CI Plant 4 is a separate plume with a more limited downgradient
16 extent than the plume from CI Plant 2.

17 (4) Burlington Environmental, LLC (BE) is and has been the owner and
18 operator of the dangerous waste management facility located at 734 South Lucile Street, Seattle,
19 Washington. The BE facility ceased operations and is subject to a separate CAP (dated May
20 2010) under Agreed Order DE 7347 with Ecology.¹

21 (a) Chemical Processors, Inc. or "Chempro" was incorporated in
22 August 1970 and began solvent distillation and recycling operations on its property initially on
23 behalf of the Preservative Paint Company. In December 1986, the Sabey Corporation purchased
24

25 ¹ The BE facility is defined as "the dangerous waste/hazardous waste management facility owned and
26 operated by PSC located at 734 South Lucile Street, Seattle, Washington, and all contiguous land, and structures,
other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing,
treating or disposing of dangerous waste or dangerous waste constituents also controlled by PSC. "

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1 a 100% interest in Chempro and became the sole owner. In March 1988, Burlington Northern
2 Inc. ("BNI"), through its subsidiary Glacier Park Company ("GPC"), acquired a majority interest
3 in Chempro from the Sabey Corporation. Subsequent to the corporate spin-off of the BNI
4 resources companies into a separate company, Burlington Resources Inc. ("BR") became the
5 majority owner of Chempro.

6 (b) Under BR's ownership, Chempro filed its Part B permit
7 application, and in 1988 negotiated a Section 3008(h) Agreed Order with the United States
8 Environmental Protection Agency ("EPA") to perform a Resource Conservation and Recovery
9 Act (RCRA) facility investigation and corrective measures study at the Georgetown Facility. In
10 August 1991, EPA and Ecology jointly issued Permit No. WAD 000812909 to Chempro to treat
11 and store hazardous and dangerous wastes.

12 (c) In January 1992, Chempro formally changed its corporate name
13 to "Burlington Environmental Inc." In March 2003, following several corporate mergers and
14 acquisitions at the parent company level, Burlington Environmental Inc. became a wholly owned
15 subsidiary of PSC Environmental Services, Inc. In April 2008, Burlington Environmental
16 merged with Burlington-PSC, LLC to form a new entity called "Burlington Environmental,
17 LLC" (BE).

18 (d) BE owned and operated the BE property as a dangerous waste
19 management facility on or after November 19, 1980, the date that subjected facilities to RCRA
20 permitting requirements, including interim status requirements pursuant to Section 3005 of
21 RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized
22 state dangerous waste regulations promulgated in Chapter 173-303 WAC.

23 (e) BE's Georgetown dangerous waste facility Permit expired in
24 August 2001. In February 2001, BE submitted a dangerous waste permit renewal application to
25 Ecology to continue operations until closure and the completion of corrective action.
26

1 (f) The BE dangerous waste facility consists of two adjacent and
2 contiguous parcels of property - the original permitted parcel consisting of approximately two
3 (2) acres located at 734 Lucile Street, Seattle, Washington, and an unpermitted parcel of
4 approximately four (4) acres (the former Amalgamated Sugar Company or "TASCO" property)
5 located at 5400 Denver Avenue, Seattle, Washington. BE purchased the Amalgamated Sugar
6 parcel on December 2, 2002.

7 (g) On December 1, 2002, BE notified Ecology of its intent to close
8 all permitted dangerous waste operations at its Georgetown facility. In August 2003, Ecology
9 conditionally accepted certification for final clean closure of permitted dangerous waste
10 management units at the facility after reviewing the certification report and supporting
11 documentation in the "Facility Clean Closure Certification" submitted by BE in July 2003. BE
12 closed the operating portion of the facility effective December 2003.

13 (h) BE has performed an RI under permit WAD 00081 2909. The RI
14 Report, as amended, was approved by Ecology in December 2004. During the RI, BE performed
15 soil, soil gas, and groundwater sampling on and in the vicinity of the BE property and detected
16 concentrations of hazardous substances in soils and groundwater, including TCE, exceeding
17 MTCA clean up levels. The hazardous substances have been detected on and to the north and
18 east of the BE property. Hazardous substances due to releases of hazardous substances from the
19 BE property have contaminated groundwater east and west of 4th Ave S., and migrate in the
20 direction of regional groundwater flow, which is generally westerly-to-southwesterly. This has
21 resulted in contaminated groundwater located both east and west of 4th Ave. S.

22 (i) The western area of the BE plume(s) is within the Site. In 2005,
23 Ecology divided the BE property into two areas for purposes of administering cleanup,
24 designated as the "East of 4th Avenue South Area" and the "West of 4th Avenue South Area," as
25 shown on Exhibit A. The eastern area of the BE facility, located to the east of 4th Ave. S., is
26 being addressed under a May 2010 Cleanup Action Plan and Agreed Order DE #7347.

1 (j) Agreed Order DE #7347 requires remediation of 1,4-dioxane in
2 groundwater, which appears to be due to migration of groundwater from the E4 Site. ~~The~~
3 ~~presence of 1,4 dioxane in Site groundwater appears to be due to migration of groundwater~~
4 ~~originating from the E4 Site and is being addressed by Clean Earth/BE under Agreed Order DE~~
5 ~~#7347.~~

6 (k) BE's corrective action obligations with respect to its dangerous
7 waste facility are enforceable conditions of its June 2010 dangerous waste permit, WAD 00081
8 2909, under the authority of Chapter 70A.305 RCW, and its implementing regulations, Chapter
9 173-303 WAC.

10 (l) BE has performed interim remedial actions on the BE property,
11 including implementation of an Inhalation Pathway Interim Measure Program and a vapor
12 intrusion program that included performing reconnaissance borings, collecting indoor air,
13 ambient air, and subslab soil gas samples at multiple building locations, and installing subslab
14 and/or submembrane depressurization systems.

15 C. Remedial Investigation (RI) reports were completed to characterize W4 Site
16 conditions and collect the information needed to prepare the Feasibility Study (FS), as
17 documented in the Remedial Investigation Report, Art Brass Plating (ABP RI Report; Aspect,
18 2012), Revised Draft Remedial Investigation Report, Capital Industries (CI RI Report; Farallon,
19 2012), Revised Remedial Investigation, Blaser Die Casting (BDC RI Report; PGG, 2012), and
20 Final Comprehensive Remedial Investigation Report for Philip Services Corporation's
21 Georgetown Facility, Philip Services Corporation (BE RI; PSC, 2003).

22 D. RI activities were completed in 2012. Ecology initiated negotiations with ABP,
23 CI, BDC, and BE for an Agreed Order to complete an FS and prepare a draft CAP (dCAP) for
24 the Site. AO No. DE10402, which required the Defendants to conduct an FS and submit a dCAP
25 was signed by the Parties on April 23, 2014.
26

1 E. Between 2014 and 2016, the Defendants submitted numerous technical
2 memorandums to Ecology as required by the AO. The “Site Conceptual Model Technical
3 Memo” (SCM; Aspect, 2014) identifies the sources of constituents of concern (COCs), nature
4 and extent of contamination, and known and potential exposure pathways and receptors.

5 F. FS reports for the Site (Aspect, 2016 and PGG, 2016) were approved by Ecology
6 in a letter dated October 25, 2016 (Ecology, 2016). The FS Addendum reports for the Site
7 (Aspect, 2023 and Farallon, 2023) were approved by Ecology in a letter dated September 7, 2023
8 (Ecology, 2023).

9 G. Releases of hazardous substances have occurred at the Site. The following
10 hazardous substances at the Site have been detected at concentrations above MTCA cleanup
11 levels: Chlorinated Solvents (PCE, TCE, cis-1,2-dichloroethene, trans-1,2-dichloroethene, 1,1-
12 dichloroethene, vinyl chloride (VC)) and Metals (cadmium, copper, nickel, zinc, arsenic, and
13 manganese) in soil and/or groundwater. These hazardous substances have been released at the
14 Site into the environment including soil and groundwater.

15 H. The constituents of concern (COCs) for the Site are TCE, VC, and select plating
16 metals (nickel, copper, and zinc), and are summarized as follows:

17 a. Soil

18 i. TCE concentrations exceeding MTCA Method B direct contact
19 cleanup levels were last detected as of sampling performed in _____. No TCE concentrations have
20 been detected in soil above the direct contact cleanup level since implementation of interim
21 actions by ABP. However, a historical exceedance of TCE is located under the ABP property
22 that is inaccessible, so potential exceedances remain in this area as of 2024. The location is
23 beneath the building where drilling would penetrate a secondary containment floor coating in an
24 active plating area.

25 b. Groundwater

1 i. Chlorinated solvent releases from the properties owned and
2 operated by the Defendants are present in groundwater, which migrates laterally to the west
3 and/or southwest. In SU1, the chlorinated solvent plume migrates upward west of 1st Avenue
4 South to the southwest and extends to the Lower Duwamish Waterway. At SU2, the existing site
5 characterization data indicates that the chlorinated solvent plume migrates to the west and/or
6 southwest and does not reach Slip 2 of the Lower Duwamish Waterway. TCE does not extend
7 vertically below 40 feet in depth. Chlorinated solvent plume boundaries in SU1 and SU2 are
8 defined for TCE, as shown on Figure 2-4. Chlorinated solvent degradation products (including
9 Dichloroethene and Vinyl Chloride) are present in groundwater pursuant to a similar flow path.

10 ii. Vinyl Chloride (VC) is present in groundwater at the W4 Site in
11 the shallow and intermediate groundwater intervals, as illustrated in Figure 2-5. Concentrations
12 of VC that are migrating from the BE property within the E4 Site into the W4 Site have become
13 commingled with VC associated with releases that occurred at the ABP, CI, and BDC properties.
14 Near the center of the W4 Site, an area of elevated VC concentrations in the shallow and
15 intermediate groundwater intervals downgradient of 1st Avenue South is referred to as the Site
16 Unit Boundary Area.

17 iii. A PCE plume has been identified in groundwater at the CI Plant 4
18 property. The PCE plume is limited in extent and present only in the water table and shallow
19 groundwater intervals.

20 iv. Plating metals are present in groundwater and are only identified
21 as a COC in SU-1. In SU-1, plating metals copper, nickel, and zinc in groundwater exceed
22 cleanup levels for protection of surface water. The horizontal extent of impacts from plating
23 metals extends to a distance of approximately 400 feet downgradient from the ABP Property.
24 Copper and zinc are limited to the water table groundwater interval, and nickel extends to the
25 shallow groundwater interval. Nickel has the greatest area and magnitude of impact. The
26

1 maximum extent of plating metals in groundwater is represented as the extent of nickel in
2 groundwater, as shown in the CAP.

3 I. Several interim actions have been completed or are underway at the Site. These
4 interim actions have been both independent remedial actions or formal remedial actions as
5 outlined in more detail in the CAP, and consist of:

6 a. Treatment via in situ chemical oxidation (ISCO) at CI Plant 4 to reduce
7 chlorinated solvent concentrations in groundwater;

8 b. Treatment via an air sparging/soil vapor extraction (AS/SVE) system at
9 the ABP property to reduce chlorinated solvent concentrations in soil and groundwater;

10 c. A Metals Immobilization Pilot Study evaluated in situ treatment methods
11 at the ABP property for immobilizing metals in groundwater (primarily nickel);

12 d. An enhanced bioremediation pilot study evaluated in situ treatment
13 options downgradient of the ABP property at South Fidalgo Street (Fidalgo Street) near the
14 Lower Duwamish Waterway to reduce chlorinated solvent concentrations in groundwater;

15 e. Permanent soil removal via excavation in the BDC property (Pacific
16 Groundwater Group 2008) and at the CI property (Farallon 2012); and

17 f. Assessment and implementing vapor intrusion mitigation measures at
18 multiple structures throughout the Site.

19 J. Ecology has assigned the Site an overall priority ranking of 4 pursuant to MTCA.

20 K. As documented in the CAP (Exhibit B), Ecology has chosen a final cleanup
21 action to be implemented at the Site.

22 L. [Etc.]

23 VI. WORK TO BE PERFORMED

24 1. This Decree contains a program designed to protect human health and the
25 environment from the known release, or threatened release, of hazardous substances at, on, or
26

1 from the Site. All remedial action(s) conducted by Defendants at the Site shall be done in
2 accordance with WAC 173-340.2.

3 2. The Defendants shall implement the CAP (Exhibit C) in accordance with the
4 Schedule attached to this Decree (Exhibit D). Among other remedial actions, the CAP requires
5 Defendants to conduct pH neutralization for immobilization of metals in groundwater in the
6 vicinity of the ABP Property; perform enhanced bioremediation treatment injections for
7 groundwater at Fidalgo Street; install and operate a soil vapor extraction (SVE) system at CI
8 Plant 4 to address chlorinated solvents in soil; implement institutional and engineering controls
9 as appropriate throughout the Site to mitigate direct contact with affected soil and groundwater;
10 evaluate ongoing natural attenuation of chlorinated solvents in groundwater throughout the Site;
11 conduct compliance groundwater monitoring to demonstrate to monitor natural attenuation of
12 chlorinated solvents; and evaluate and implement contingency actions where necessary to meet
13 the cleanup action objectives cited in the CAP for the Site.

14 3. To effectuate the work to be performed under this Decree in the most efficient
15 manner, certain Defendants have elected to take the lead in performing various aspects of the
16 work required under this Decree. Language in this Decree, and the exhibits attached hereto, may
17 reflect this agreement among the Defendants. However, the Defendants remain strictly, jointly,
18 and severally liable for the performance of any and all obligations under this Decree. In the event
19 the party identified as a lead should fail to timely and properly complete performance of all or
20 any portion of its work, all Defendants must perform that remaining work, if any.

21 4. All plans or other deliverables submitted by Defendants for Ecology's review and
22 approval under the CAP (Exhibit C) or Schedule (Exhibit D) shall, upon Ecology's approval,
23 become integral and enforceable parts of this Decree.

24 5. If Defendants learn of a significant change in conditions at the Site, including a
25 statistically significant increasing trend in CVOC concentrations that is sustained in groundwater
26 and air at the shoreline and where the CVOC concentrations at the shoreline pose a risk to the

1 ~~Lower Duwamish Waterway, then Defendants,~~ within seven (7) days of learning of the change
2 in condition, shall notify Ecology in writing of said change and provide Ecology with any reports
3 or records (including laboratory analyses, sampling results) relating to the change in conditions.

4 6. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and
5 adequate financial assurance mechanisms based on net present value with an agreed discount
6 rate to cover all costs associated with the operation and maintenance of the remedial action at
7 the Site, including institutional controls, compliance monitoring, and corrective measures.

8 A. Within sixty (60) days of the effective date of this Decree, Defendants
9 shall submit to Ecology for review and approval an estimate of the costs associated with the
10 operation and maintenance of the remedial action at the Site that it will incur in carrying out the
11 terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost
12 estimate, Defendants shall provide proof of financial assurances sufficient to cover those costs
13 in a form acceptable to Ecology.

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

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

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

1 C. The Financial Assurance Officer for Ecology shall work with the project
2 coordinators to review and approve financial assurance coverage pursuant to this Decree and
3 make determinations on any adjustments necessary based on the annual reporting. As of the
4 execution date of this Decree, Ecology's Financial Assurance Officer is Joanna Seymour, 360-
5 485-5992 or Joanna.Seymour@ecy.wa.gov.

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

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

12 B. After approval by Ecology, Defendants shall record the Environmental
13 (Restrictive) Covenants for affected properties it owns with the office of the King County
14 Auditor as detailed in the Schedule (Exhibit D). Defendants shall provide Ecology with the
15 original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording
16 date.

17 C. As detailed in the CAP, as part of the remedial action for the Site,
18 institutional controls are required on properties not owned by Defendant(s). Defendant(s) will
19 ensure that the owner of each affected property records an Ecology-approved Environmental
20 (Restrictive) Covenant as detailed in the Schedule (Exhibit D). Upon a showing that
21 Defendant(s) has made a good faith effort to secure an Environmental (Restrictive) Covenant for
22 an affected property and failed to do so, Ecology may provide assistance to Defendant(s). Unless
23 Ecology determines otherwise, affected properties include [addresses or parcel numbers].
24 Defendant(s) shall provide Ecology with the original recorded Environmental (Restrictive)
25 Covenant within thirty (30) days of the recording date.
26

Commented [KL1]: This information will be incorporated before final execution of the Consent Decree.

1 8. Unless otherwise directed by Ecology, Defendants shall submit written quarterly
2 Progress Reports [to Ecology](#) that describe the actions taken during the previous [quarter](#) to
3 implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth
4 (10th) day of the month in which they are due after the effective date of this Decree. Unless
5 otherwise specified in writing by Ecology, Progress Reports and any other documents submitted
6 pursuant to this Decree shall be sent by electronic mail to Ecology's project coordinator. The
7 Progress Reports shall include the following:

8 A. A list of on-site activities that have taken place during the prior reporting
9 period.

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

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

13 D. Description of all deviations from the Schedule (Exhibit D) during the
14 prior [three \(3\)](#) month reporting period and any planned deviations in the upcoming [three \(3\)](#)
15 month reporting period.

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

18 F. All raw data (including laboratory analyses) received during the previous
19 [three \(3\)](#) month reporting period (if not previously submitted to Ecology), together with a
20 detailed description of the underlying samples collected.

21 G. A list of planned activities for the upcoming [three \(3\)](#) month reporting
22 period.

23 9. Except in the case of an emergency, Defendants agree not to perform any
24 remedial actions at the Site outside the scope of this Decree without prior written approval of
25 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial
26

1 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
2 emergency.

3 VII. DESIGNATED PROJECT COORDINATORS

- 4 1. The project coordinator for Ecology is:

5 [Name]
6 [Address]
7 [Telephone]
8 [Email]

- 9 2. The project coordinators for Defendants are:

10 [Name]
11 [Address]
12 [Telephone]
13 [Email]

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

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

24 VIII. PERFORMANCE

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

Commented [KL2]: This information will be provided prior to execution of the Consent Decree.

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

4 3. Except as otherwise provided for by RCW 18.43.130, all construction work
5 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
6 registered by the State of Washington or a qualified technician under the direct supervision of a
7 professional engineer registered by the State of Washington.

8 4. As required by RCW 18.43 and 18.220, any documents submitted containing
9 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
10 professional.

11 5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
12 geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying
13 out the terms of this Decree, in advance of their involvement at the Site.

14 IX. ACCESS

15 1. Ecology or any Ecology-authorized representative shall have access to enter and
16 freely move about all property at the Site that Defendants either owns, controls, or has access
17 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,
18 and contracts related to the work being performed pursuant to this Decree; reviewing
19 Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting
20 such samples as Ecology may deem necessary; using a camera, sound recording, or other
21 documentary type equipment to record work done pursuant to this Decree; and verifying the data
22 submitted to Ecology by Defendants.

23 2. Nothing in this Decree is intended by the Defendants to waive any right it may
24 have under applicable law to limit disclosure of documents protected by the attorney work-
25 product privilege and/or the attorney-client privilege. If Defendants withhold any requested
26 records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying

1 the records withheld and the applicable privilege. No Site-related data collected pursuant to this
2 Decree shall be considered privileged.

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

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

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

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

19 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
20 representative to take split or duplicate samples of any samples collected by Defendants pursuant
21 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance
22 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
23 Defendants and/or its authorized representative to take split or duplicate samples of any samples
24 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does
25 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
26

(Access), Ecology shall notify Defendants prior to any sample collection activity unless an emergency prevents such notice.

3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

XI. ACCESS TO INFORMATION

1. Defendants shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Defendants' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. Defendants shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

2. Nothing in this Decree is intended to waive any rights Defendants may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If Defendants withhold any requested Records based on an assertion of privilege, Defendants shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Defendants are required to create or generate pursuant to this Order.

1 3. Notwithstanding any provision of this Order, Ecology retains all of its
2 information gathering and inspection authorities and rights, including enforcement actions
3 related thereto, under any other applicable statutes or regulations.

4 XII. RETENTION OF RECORDS

5 During the pendency of this Decree, and for ten (10) years from the date this Decree is
6 no longer in effect as provided in Section XXVI (Duration of Decree), Defendants shall preserve
7 all records, reports, documents, and underlying data in its possession relevant to the
8 implementation of this Decree and shall insert a similar record retention requirement into all
9 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall
10 make all records available to Ecology and allow access for review within a reasonable time.

11 XIII. TRANSFER OF INTEREST IN PROPERTY

12 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
13 interest in any portion of the Site shall be consummated by Defendants without provision for
14 continued operation and maintenance of any containment system, treatment system, and/or
15 monitoring system installed or implemented pursuant to this Decree.

16 2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and
17 during the effective period of this Decree, Defendants shall provide a copy of this Decree to any
18 prospective purchaser, lessee, transferee, assignee, or other successor in said interest. At least
19 thirty (30) days prior to any transfer, Defendant(s) shall notify Ecology of said transfer. Upon its
20 transfer of any interest, Defendants shall notify all transferees of the restrictions on the activities
21 and uses of the property under this Decree and incorporate any such use restrictions into the
22 transfer documents.

23 XIV. RESOLUTION OF DISPUTES

24 1. In the event that Defendants elect to invoke dispute resolution, Defendants must
25 utilize the procedure set forth below.

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

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

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

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

21 E. If Defendants find Ecology's Regional Section Manager's decision of the
22 disputed matter unacceptable, Defendants may then request final management review of that
23 decision. Defendants must submit this request (Final Review Request) in writing to the Toxics
24 Cleanup Program Manager within seven (7) calendar days of Defendant's receipt of the Decision
25 on Dispute. The Final Review Request shall include a written statement of dispute setting forth:
26

1 the nature of the dispute; the disputing Defendant's position with respect to the dispute; and the
2 information relied upon to support its position.

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

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

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

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

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

23 **XV. AMENDMENT OF DECREE**

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

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

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

14 **XVI. EXTENSION OF SCHEDULE**

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

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

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

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

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

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

9 D. Endangerment as described in Section XVII (Endangerment).

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

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

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

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

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

25 C. Endangerment as described in Section XVII (Endangerment).

XVII. ENDANGERMENT

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

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

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

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

XVIII. COVENANT NOT TO SUE

1. Covenant Not to Sue: In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendants regarding the release or threatened release of hazardous substances at the

1 Site. This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology
2 retains all of its authority relative to any hazardous substance(s) or area not covered by this
3 Decree.

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

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

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

12 3. 4. Reopeners: Ecology specifically reserves the right to institute legal or
13 administrative action against Defendants to require it to perform additional remedial actions at
14 the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of
15 the following circumstances:

- 16 A. Upon Defendants' failure to meet the requirements of this Decree.
- 17 B. Failure of the remedial action to meet the cleanup standards identified in
18 the CAP (Exhibit B).
- 19 C. Upon Ecology's determination that remedial action beyond the terms of
20 this Decree is necessary to abate an imminent and substantial endangerment to human health or
21 the environment.
- 22 D. Upon the availability of information previously unknown to Ecology
23 regarding Site factors including the nature, quantity, migration, pathway, or mobility of
24 hazardous substances, and Ecology's determination, in light of this information, that further
25 remedial action is necessary at the Site to protect human health or the environment.
26

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

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

7 XIX. CONTRIBUTION PROTECTION

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

11 XX. INDEMNIFICATION

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

20 XXI. COMPLIANCE WITH APPLICABLE LAWS

21 1. *Applicable Law.* All actions carried out by Defendants pursuant to this Decree
22 shall be done in accordance with all applicable federal, state, and local requirements, including
23 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. At this time,
24 no federal, state, or local requirements have been identified as being applicable to the actions
25 required by this Decree. Defendants have a continuing obligation to identify additional
26 applicable federal, state, and local requirements which apply to actions carried out pursuant to

1 this Decree, and to comply with those requirements. As additional federal, state, and local
2 requirements are identified by Ecology or the Defendants, Ecology will document in writing if
3 they are applicable to actions carried out pursuant to this Decree, and the Defendants must
4 implement those requirements.

5 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendants
6 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
7 identified by Ecology. At this time, no relevant and appropriate requirements have been
8 identified as being applicable to the actions required by this Decree.. If additional relevant and
9 appropriate requirements are identified by Ecology or the Defendants, Ecology will document
10 in writing if they are applicable to actions carried out pursuant to this Decree and the Defendants
11 must implement those requirements.

12 3. Pursuant to RCW 70A.305.090(1), Defendants may be exempt from the
13 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of
14 any laws requiring or authorizing local government permits or approvals. However, Defendants
15 shall comply with the substantive requirements of such permits or approvals. For permits and
16 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the
17 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
18 government permits and/or approvals. At this time, no state or local permits or approvals have
19 been identified as being applicable but procedurally exempt under this section.

20 4. Defendants have a continuing obligation to determine whether additional permits
21 or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
22 action under this Decree. In the event either Ecology or Defendants determine that additional
23 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
24 remedial action under this Decree, it shall promptly notify the other party of its determination.
25 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
26 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult

1 with the appropriate state and/or local agencies and provide Ecology with written documentation
2 from those agencies of the substantive requirements those agencies believe are applicable to the
3 remedial action. Ecology shall make the final determination on the additional substantive
4 requirements that must be met by Defendants and on how Defendants must meet those
5 requirements. Ecology shall inform Defendants in writing of these requirements. Once
6 established by Ecology, the additional requirements shall be enforceable requirements of this
7 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
8 additional requirements until Ecology makes its final determination.

9 5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the
10 exemption from complying with the procedural requirements of the laws referenced in
11 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary
12 for the state to administer any federal law, the exemption shall not apply and Defendants shall
13 comply with both the procedural and substantive requirements of the laws referenced in
14 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

15 **XXII. REMEDIAL ACTION COSTS**

16 1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this
17 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by
18 Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions
19 and Decree preparation, negotiation, oversight, and administration. These costs shall include
20 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
21 include costs of direct activities and support costs of direct activities as defined in
22 WAC 173-340-550(2). For all costs incurred, Defendants shall pay the required amount within
23 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
24 summary of costs incurred, an identification of involved staff, and the amount of time spent by
25 involved staff members on the project. A general statement of work performed will be provided
26 upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-

1 550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement
2 of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
3 monthly.

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

7 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

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

14 2. Except where necessary to abate an emergency or where required by law, the
15 Defendants shall not perform any remedial actions at the Site outside those remedial actions
16 required by this Decree to address the contamination that is the subject of this Decree, unless
17 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
18 (Amendment of Decree). In the event of an emergency, or where actions are taken as required
19 by law, Defendants must notify Ecology in writing of the event and remedial action(s) planned
20 or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of
21 the event.

22 **XXIV. PERIODIC REVIEW**

23 So long as remedial action continues at the Site, the Parties agree to review the progress
24 of remedial action at the Site, and to review the data accumulated as a result of monitoring the
25 Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed
26 to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the

1 Parties shall confer regarding the status of the Site and the need, if any, for further remedial
2 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall submit
3 a report to Ecology that documents whether human health and the environment are being
4 protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
5 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
6 under appropriate circumstances. This provision shall remain in effect for the duration of this
7 Decree.

8 **XXV. PUBLIC PARTICIPATION**

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

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

16 B. Notify Ecology's project coordinator prior to the preparation of all press
17 releases and fact sheets, and before meetings related to remedial action work to be performed at
18 the Site with the interested public and/or local governments. Likewise, Ecology shall notify
19 Defendants prior to the issuance of all press releases and fact sheets related to remedial action
20 work to be performed at the Site, and before meetings related to remedial action work to be
21 performed at the Site with the interested public and/or local governments. For all press releases,
22 fact sheets, meetings, and other outreach efforts by Defendants that do not receive prior Ecology
23 approval, Defendants shall clearly indicate to its audience that the press release, fact sheet,
24 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4 E. When requested by Ecology, arrange and/or continue information
5 repositories at the following locations:

- 6 i. [Location]
7 [Address of location]

8 At a minimum, copies of all public notices, fact sheets, and documents relating to public
9 comment periods shall be promptly placed in this repository. A copy of all documents related to
10 this Site shall be maintained at Ecology's Northwest Regional Office in Shoreline, Washington.

11 **XXVI. DURATION OF DECREE**

12 The remedial program required pursuant to this Decree shall be maintained and continued
13 until Defendants have received written notification from Ecology that the requirements of this
14 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by
15 the Court. When dismissed, Section XII (Retention of Records), Section XVIII (Covenant Not
16 to Sue), Section XIX (Contribution Protection), Section XX (Indemnification), and Section
17 XXVII (Claims Against the State) shall survive.

18 **XXVII. CLAIMS AGAINST THE STATE**

19 Defendants hereby agree that it will not seek to recover any costs accrued in
20 implementing the remedial action required by this Decree from the State of Washington or any
21 of its agencies; and further, that Defendants will make no claim against the State Toxics Control
22 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
23 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
24 Except as provided above, however, Defendants expressly reserve their right to seek to recover
25 any costs incurred in implementing this Decree from any other PLP. This section does not limit
26 or address funding that may be provided under WAC 173-322A.

XXVIII. EFFECTIVE DATE

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

XXIX. WITHDRAWAL OF CONSENT

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

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

NICHOLAS W. BROWN
Attorney General

Nhi Irwin
Program Manager
Toxics Cleanup Program
[Telephone]

Victoria Banks, WSBA # _____
Assistant Attorney General
[Telephone]

Date: _____

Date: _____

[DEFENDANT]

[NAME OF SIGNATORY]
[Title of signatory]
[Telephone]

Date: _____

ENTERED this ____ day of _____ 20____.

JUDGE
King County Superior Court

Commented [KL3]: Signature blocks for all parties will be provided prior to execution of the Consent Decree.