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WHATCOM COUNTY
WASHINGTON

BY _____

STATE OF WASHINGTON
WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

INTALCO ALUMINUM CORP.,

Defendant.

NO. 07-2-00181-2

ORDER ENTERING CONSENT
DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Declaration of Paul Skyllingstad, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 2nd day of February, 2007.

STEVEN J. MURA

JUDGE STEVEN J. MURA
Whatcom County Superior Court

ORDER ENTERING CONSENT
DECREE

1 Presented by:

2 ROBERT M. McKENNA
3 Attorney General

4 JS/
5 JAMES A. HARMONY, WSBA #32236
6 Assistant Attorney General
7 Attorneys for Plaintiffs
8 State of Washington, Department of Ecology
9 (360) 586-2667

10 SUMMIT LAW GROUP PLLC

11 JS/
12 RALPH H. PALUMBO, WSBA #4751
13 Attorney for Intalco Aluminum Corp
14 (206) 676-7000

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ORDER ENTERING CONSENT
DECREE

Intalco Landfills

SIC# N35C3

SITE# 13998393

Proj-Coord. Paul Skillingstad

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WHATCOM COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

INTALCO ALUMINUM CORP.
4050 Mountain View Road
Ferndale, WA 98248

Defendant.

NO.

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 Intalco Aluminum Corporation (Intalco or Defendant) 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 to undertake the following remedial action(s):

(1) Excavate the two historic landfills known as Beach I and Beach II and place the excavated material in either the Intalco Double- Lined Solid Waste Landfill or Intalco Triple-Lined Dangerous Waste Landfill. Grade and re-vegetate the remaining Beach I and Beach II slopes.

(2) Stabilize the Closed Construction Debris Landfill with the placement of a retaining structure, grading, and the installation of a closure cap over the landfill.

(3) Once the Double-Lined Solid Waste Landfill is filled to capacity, close the unit following the Solid Waste Permit closure plan.

1 (4) Once the Triple-Lined Dangerous Waste Landfill is filled to capacity, close the
2 unit following the closure plan found in the Part B Permit Application.

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

5 B. The Complaint in this action is being filed simultaneously with this Decree. An
6 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
7 However, the Parties wish to resolve the issues raised by Ecology's Complaint by entering into
8 this Consent Decree. The Parties agree that settlement of these matters without litigation is
9 reasonable and in the public interest, and that entry of this Decree is the most appropriate
10 means of resolving these matters.

11 C. In signing this Decree, the Parties agree to its entry and agree to be bound by its
12 terms.

13 D. By entering into this Decree, the Parties do not intend to discharge non-settling
14 Parties from any liability they may have with respect to matters alleged in the Complaint. The
15 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
16 sums expended under this Decree.

17 E. This Decree shall not be construed as proof of liability or responsibility for any
18 releases of hazardous substances or cost for remedial action nor an admission of any facts;
19 provided, however, that the Defendant shall not challenge the authority of the Attorney
20 General and Ecology to enforce this Decree.

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

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

24 **II. JURISDICTION**

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

1 B. Authority is conferred upon the Washington State Attorney General by RCW
2 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
3 notice and any required hearing, Ecology finds the proposed settlement would lead to a more
4 expeditious clean up of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
5 settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

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

8 D. Ecology has given notice to Defendant of Ecology's determination that
9 Defendant is a potentially liable person for the Site, as required by RCW 70.105D.020(16) and
10 WAC 173-340-500.

11 E. Ecology has determined that the actions to be taken pursuant to this Decree are
12 necessary to protect public health and the environment.

13 F. This Decree has been subject to public notice, public hearing and thirty (30) day
14 comment period.

15 G. Ecology finds that this Decree will lead to a more expeditious clean up of
16 hazardous substances at the Site in compliance with the cleanup standards established under
17 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

18 H. Defendant has agreed to undertake the actions specified in this Decree and
19 consents to the entry of this Decree under MTCA.

20 III. PARTIES BOUND

21 This Decree shall apply to and be binding upon the Parties to this Decree, their
22 successors and assigns. The undersigned representative of each party hereby certifies that he
23 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
24 comply with the Decree. Defendant agrees to undertake the actions required by the terms and
25 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
26

1 responsibility under this Decree. Defendant shall ensure that the work undertaken by its
2 agents, contractors, and subcontractors complies with this Decree.

3 IV. DEFINITIONS

4 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200
5 apply to the terms in this Decree.

6 A. Site: The Site, referred to as the Intalco Landfills include the Beach I Landfill,
7 Beach II Landfill, Closed Construction Debris Landfill, Solid Waste Double-Lined Landfill,
8 and Dangerous Waste Triple-Lined Landfill and any contiguous contaminated areas that are
9 found around each of the five landfills. The five landfills are generally located within the
10 larger Intalco facility at 4050 Mountain View Road, Ferndale, WA 98248. The Site is more
11 particularly described in Exhibit A to this Decree, which includes a detailed site diagram
12 showing the footprint of each landfill. Ecology has determined that the Site constitutes a
13 Facility under RCW 70.105D.020(4).

14 B. Parties: Refers to the Washington State Department of Ecology and Intalco
15 Aluminum Corporation ("Intalco").

16 C. Defendant: Refers to Intalco Aluminum Corporation.

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

20 V. STATEMENT OF FACTS

21 Ecology makes the following findings of fact without any express or implied
22 admissions by Defendant.

23 1. Intalco is a primary aluminum smelting facility that processes refined alumina
24 (aluminum oxide) into aluminum metal by electrolytic reduction. With the exception of an
25 eleven-month temporary curtailment in 2001, the facility has been in continuous operation
26

1 since 1966. On or about July 31, 1998, Alcoa Inc. ("Alcoa") acquired a controlling interest in
2 Intalco in conjunction with Alcoa's acquisition of Intalco's majority owner, Alumax, Inc.

3 2. From 1966 to 1973, Intalco generated and disposed of industrial solid waste in a
4 historic solid waste landfill located due west of the main plant site along a bluff overlooking
5 the Strait of Georgia (hereinafter, the "Closed Construction Debris Landfill").

6 3. From 1966 to 1976, Intalco generated and disposed of industrial solid waste in a
7 historic solid waste landfill located northwest of the main plant site along a bluff overlooking
8 the Strait of Georgia (hereinafter, the "Beach I Landfill").

9 4. From 1971 to 1976, Intalco generated and disposed of industrial solid waste in a
10 historic solid waste landfill located southwest of the main plant site along a bluff overlooking
11 the Strait of Georgia (hereinafter, the "Beach II Landfill"). Together the Closed Construction
12 Debris Landfill, Beach I, and Beach II Landfills shall be known herein as "historic landfills."

13 5. During May, August, and December 2000, Intalco investigated the Beach I and
14 II Landfills and the Closed Construction Debris Landfill to determine the nature and volume of
15 waste materials in the landfills, the volume and characteristics of materials that have sloughed
16 to the bottom of the landfills, and the flow levels and water quality of observed surface water
17 run-off/seepage. The results of those investigations were presented in two field investigation
18 reports (MFG, 2000b and MFG, 2001a).

19 6. Additional field investigations were conducted in September and October 2001,
20 May 2002, and April 2004 to evaluate geotechnical conditions, further characterize the nature
21 and extent of constituents in wastes, and to characterize underlying soils and groundwater. The
22 results of those investigations were presented in two reports (MFG, 2001b and Anchor, 2004).

23 7. Contamination consists of the following soil and water contaminants at the three
24 historic landfills. At the Beach I and Beach II Landfills, soil contamination consists of
25 cyanide, fluoride, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons
26 (PAHs). The waste was tested using fish bioassay and was determined to be non-hazardous.

1 At Beach I, surface water seep contamination consists of total cyanide, amenable cyanide;
2 fluoride, and total PCBs, while at Beach II fluoride and amenable cyanide are contaminants of
3 concern in surface water. The Closed Construction Debris Landfill soil contaminants are total
4 cyanide, fluoride, total PCBs, and total PAHs. Fluoride is the only contaminant of concern
5 found in surface water at the Closed Construction Debris Landfill.

6 8. Groundwater within the vicinity of the historic landfills was determined to be
7 non-potable. The groundwater does not serve as a current source of drinking water. The
8 groundwater is not a potential future source of drinking water because: 1) the groundwater is
9 located beneath steep slopes making groundwater recovery technically impossible, and 2) the
10 groundwater yield at the site is on the order of 0.1 gallons per minute and is insufficient to
11 sustain a normal domestic water well.

12 VI. WORK TO BE PERFORMED

13 This Decree contains a program designed to protect human health and the environment
14 from the known release, or threatened release, of hazardous substances or contaminants at, on,
15 or from the Site.

16 A. **Cleanup Action Plan.** The Cleanup Action Plan (or "CAP") governs the
17 cleanup action mandated by this Decree. The CAP is attached to this Decree as Exhibit B.
18 The CAP incorporates by reference the engineering report entitled Technical Specifications,
19 Final Design Submittal, Intalco Landfill Closure Program, Revision 3, April 2006, and related
20 construction drawings (attached to this Decree as Exhibit C), the Double-Lined Solid Waste
21 Closure Plan (attached to this Decree as Exhibit D) and the Triple-Lined Dangerous Waste
22 Landfill Closure Plan (attached to this Decree as Exhibit D). To comply with this Decree, the
23 Defendant must comply with the terms of the CAP (Exhibit B), the Technical Specifications,
24 Final Design Submittal, Intalco Landfill Closure Program, Revision 3, April 2006 (Exhibit C),
25 the Double-Lined Solid Waste Landfill Closure Plan (Exhibit D), and the Triple-Lined
26 Dangerous Waste Landfill Closure Plan (Exhibit D). Exhibit "D" contains the Solid Waste

1 Landfill Closure Plan which governs the closure of the Solid Waste Double- Lined Landfill.
2 Exhibit "D" also contains the Dangerous Waste Closure Plan which governs the closure of the
3 Triple-Lined Dangerous Waste Landfill.

4 **B. Restoration Timeframe.** The cleanup action at the Historic Beach I, Beach II
5 and Closed Construction Debris Landfills calls for the removal of historic waste at Beach I and
6 Beach II Landfills and the covering of waste at the Closed Construction Debris Landfill with a
7 low-permeability cap. Soils at the Beach I and Beach II Landfills are contaminated with
8 PAHs, PCBs, and fluoride. The cleanup action will remove contaminated soil and debris at the
9 Beach I and Beach II Landfills resulting in a soil restoration timeframe at project completion
10 (estimated to be December 2007).

11 At the Beach I Landfill and Closed Construction Debris Landfill, the ground water/
12 surface water interface are seeps in the exposed bluff soils adjacent to the Strait of Georgia.
13 Surface water seeps at Beach I and Beach II are contaminated with PCBs, cyanide, and
14 fluoride. A stream at the Closed Construction Debris Landfill is contaminated with fluoride.
15 Groundwater flows to the west beneath each landfill into the seeps. The surface water seeps
16 flow intermittently from the Site. After remediation of the beach landfills in 2005, surface
17 water seeps ceased to flow at Beach II Landfill.

18 Flows range from zero to 2.5 gallons/ minute at Beach I. Estimated surface water flows
19 at Beach II were less than one gallon per minute prior to remediation. At Beach II, no water
20 was noted in the subsurface in the Esperance Sand and along the Esperance Sand and Cherry
21 Point Formation boundary. No surface water flow estimates have been made for the Closed
22 Construction Debris Landfill. The surface water flows past the Closed Construction Debris
23 Landfill in a small intermittent stream from an area upgradient of the landfill. Surface water
24 enters the Strait of Georgia as subsurface flow.

25 As set forth more fully in the CAP (Exhibit B), the restoration time frame for surface
26 water has been calculated using flow data from the Beach I Landfill and flow estimates for the

1 Closed Construction Debris Landfill and the Beach II Landfill. It is estimated that the surface
2 water seeps exiting the Beach I Landfill will reach the Surface Water Remediation Level in
3 this Decree in less than five years assuming a conservative linear rate of decrease in the
4 dissolved contaminants. It is estimated that the ground water at the Beach I and Beach II
5 Landfills and the Closed Construction Debris Landfill will reach the Cleanup Standards in this
6 Decree in five years assuming a linear rate of decrease in the dissolved contaminants. It is
7 estimated that the surface water flow exiting the Closed Construction Debris Landfill into the
8 intermittent stream in the ravine adjacent to the landfill will reach the Surface Water
9 Remediation Level in this Decree in six years assuming a linear rate of decrease in the
10 dissolved contaminants.

11 C. **Cleanup Standards.** The contaminants of concern, Cleanup Standards and
12 Surface Water Remediation Levels for those contaminants at the Intalco Historic Beach I,
13 Beach II, and Closed Construction Debris Landfills are set forth in the tables below for each
14 landfill unit.

15 **Beach I and Beach II Landfills**
16 **Soil Cleanup Standards**

17 Parameter	Cleanup Standard	Protection Basis
18 PAHs	2.0 mg/Kg	MTCA A Industrial WAC 173-340-745
20 PCBs	10.0 mg/Kg	MTCA A Industrial WAC 173-340-745
22 Fluoride	5,950.0 mg/kg	MTCA B WAC 173-340-747 (Using 100 mg/L F, Kd 26.5, dilution 2.23) Protection of non-potable groundwater and surface water

**Beach I and Beach II Landfills
Marine Surface Water Cleanup Standards**

Parameter	Cleanup Standard	Protection Basis
PCBs	10 ug/L	WAC 173-201A Marine
Metal cyanide complex	9.1 ug/L	WAC 173-201A Marine
Fluoride	1.5 mg/L	Ministry of Environment British Columbia, Canada Recommended Marine Criteria

Note: The point of compliance where the Marine Surface Water Cleanup Standards are attained is the Strait of Georgia below the mean lower, low water (MLLW) datum adjacent to each individual historic landfill.

**Closed Construction Debris Landfill
Marine Surface Water Cleanup Standard**

Parameter	Cleanup Standard	Protection Basis
Fluoride	1.5 mg/L	Ministry of Environment British Columbia, Canada Recommended Marine Criteria

Note: The point of compliance where the Marine Surface Water Cleanup Standard is attained is the Strait of Georgia below the MLLW datum adjacent to each individual historic landfill.

**Beach I, Beach II, and Closed Construction Debris Landfills
Surface Water Remediation Levels**

Parameter	Remediation Level	Protection Basis
Fluoride	100.0 mg/L	WAC 173-340-730(3)(c)(v) WAC 173-340-747

Notes: The point of measurement to achieve compliance with the Surface Water Remediation Level is the seep at the Beach I Landfill and the intermittent stream at the Closed Construction Debris Landfill. The data from the Beach I Landfill will be used to demonstrate compliance with the Surface Water Remediation Level for the Beach II Landfill.

**Beach I, Beach II, and Closed Construction Debris Landfills
Groundwater Standard**

Parameter	Cleanup Standard	Protection Basis
Fluoride	100.0 mg/L	MTCA 173-340-720(6) Non-potable Groundwater

1 The point of compliance for soils at the Beach I and Beach II Landfills is the native
2 soil/waste boundary. The point of compliance for marine surface water at the Beach I, Beach
3 II, and Closed Construction Debris Landfills is the Strait of Georgia below the MLLW datum
4 adjacent to each individual historic landfill. The point of compliance for groundwater at the
5 Beach I and Beach II Landfills is the seep at the Beach I Landfill. The point of compliance for
6 groundwater at the Closed Construction Debris Landfill is the intermittent stream at the base of
7 the landfill.

8 The point of measurement to achieve compliance with the Surface Water Remediation
9 Level at the Beach I and II Landfills is the confluence of the intermittent surface seeps in the
10 exposed banks directly below the Beach I Landfill. There is no surface water flow at the
11 Beach II Landfill. Therefore, the data from the Beach I Landfill will be used to demonstrate
12 compliance with the Surface Water Remediation Level for the Beach II Landfill. The point of
13 measurement to achieve compliance with the Surface Water Remediation Level at the Closed
14 Construction Debris Landfill is the intermittent stream at the base of the landfill.

15 The Marine Surface Water Cleanup Standard for fluoride is 1.5 mg/L. A site-specific
16 equilibrium geochemistry assessment was performed to establish a Surface Water Remediation
17 Level that could be measured as close as possible to the source of contamination from the
18 historic landfills. A detailed description of this assessment is described in the Cleanup Action
19 Plan. Based on the equilibrium geochemistry assessment, meeting a Surface Water
20 Remediation Level for fluoride of 100 mg/L at the point of measurement for each historic
21 landfill will achieve the Marine Surface Water Cleanup Standard at the point of compliance in
22 the Strait of Georgia.

23 Because the groundwater in the vicinity of the historic landfills was determined to be
24 non-potable, the Groundwater Cleanup Standard for fluoride was established using a site-
25 specific risk assessment in accordance with WAC 173-340-720(6). The 'incidental surface
26 water ingestion by a child' scenario was determined to be the reasonable maximum exposure

1 scenario for the purpose of establishing the standard. A fluoride toxicology literature review
2 found that an acute, safe exposure concentration (reference dose) for fluoride ingestion would
3 range from 5 mg F/kg body weight per day (mg/kg-day) to 16 mg/kg-day for a 3-year-old
4 child. However, because the groundwater cleanup level must be calculated for chronic and
5 acute effects using MTCA Equation 720-1, the IRIS published chronic reference dose of 0.06
6 mg/kg-day was used. With this approach, the resulting fluoride ground water cleanup level
7 was found to be 117 mg/L. Under MTCA, a groundwater cleanup standard shall not exceed a
8 surface water cleanup level; therefore, the more restrictive Surface Water Remediation Level
9 of 100 mg/L was chosen for the fluoride Groundwater Cleanup Standard.

10 The Soil Cleanup Standard for fluoride was calculated using the three-phase
11 partitioning model under WAC 173-340-747(4) using the 100 mg/L Groundwater Cleanup
12 Standard, 100 mg/L Surface Water Remediation Level and site specific data. This assessment
13 is discussed in greater detail in the Cleanup Action Plan.

14 **D. Exception to Cleanup Standards:** Intalco and Ecology recognize that the
15 work to be performed under this Decree is required to be performed on steep slopes that may
16 be potentially vulnerable to slope failure. In the event that slope failure occurs during the
17 cleanup action prior to Intalco's final attainment of the Cleanup Standards set forth in
18 paragraph VI.C of this Decree, Ecology and Intalco shall jointly determine: (1) whether
19 continuing with the Scope of Work and meeting the cleanup standards in this Decree presents
20 an unreasonable risk to the environment or human health and safety; and (2) whether ceasing
21 the Scope or Work prior to final attainment of the Cleanup Standards poses an unreasonable
22 risk of exposure to contaminants by humans or the environment through exposure pathways. If
23 the parties jointly determine that the risk of exposure to contaminants by humans or the
24 environment is reasonable and that meeting the cleanup standards poses an unreasonable risk
25 to the environment or human health and safety, Ecology will certify the cleanup action to be
26 complete; PROVIDED HOWEVER that certifying the action complete shall not prevent

1 Ecology from pursuing additional remedies consistent with the Re-Opener Clause contained in
2 this Decree.

3 E. Scope of Work. Intalco, through its contractors and subcontractors as
4 necessary, shall accomplish the following work:

5 (1) Obtain any and all state, federal, or local permits required by applicable
6 law;

7 (2) Prepare and comply with a site health and safety plan in accordance with
8 current requirements of OSHA, WISHA, and their implementing regulations;

9 (3) Excavate the waste material from the Beach I and Beach II Landfills and
10 restore the slopes to natural bluff conditions. As set forth in greater detail in the CAP (Exhibit
11 B), specific components of the remedial action for the Beach I and Beach II Landfills are:

12 a. Excavation of approximately 6,500 cubic yards (cy) of TSCA waste and
13 7,500 cy of adjacent soils from Beach II and disposal of the material in the on-site Dangerous
14 Waste Triple-lined Landfill.

15 b. Excavation of non-hazardous waste material, approximately 16,000 cy
16 from Beach I and 62,000 cy from Beach II, until native soil deposits are identified and disposal
17 of the waste material in the Solid Waste Double-Lined or Dangerous Waste Triple-lined
18 Landfills.

19 c. Conduct a confirmatory soil monitoring program following the Landfill
20 Closure Program – Construction Quality Assurance/Construction Quality Control and
21 Sampling and Analysis Plan (Exhibit F) to confirm the removal of contaminants of concern
22 below the Cleanup Standards stated in this Decree.

23 d. Revegetate and implement erosion control on newly exposed slope
24 faces.

25 e. Regrade and backfill steep slopes to provide slope protection within
26 vicinity of the adjacent access roads.

1 f. Place signage on the property at the confluence of the seeps at the base
2 of the Beach I Landfill (and in the same location at the Beach II Landfill if seeps resurface)
3 with the following warning, "Former landfill. Do not drink water." Ecology shall review and
4 approve the signage prior to its placement on the property.

5 (4) Stabilize the eroding slopes on the Closed Construction Debris Landfill.
6 Install a low-permeability, multilayer cap system to prevent infiltration and reduce flow of
7 groundwater within the limits of the landfill. As set forth in greater detail in the CAP (Exhibit
8 B), specific components of the remedial action for the Closed Construction Debris Landfill
9 consist of:

10 a. Stabilize the Closed Construction Debris Landfill to improve the seismic
11 stability of the landfill unit.

12 b. Installation of an engineered, low permeability cap over the entire
13 historical footprint of the landfill.

14 c. Grading of the upper slopes of the Closed Construction Debris Landfill
15 to control surface water flow and the construction of drainage ditches/swales to prevent surface
16 erosion and promote long term stability of the engineered cap.

17 d. Place signage on the property along the intermittent stream at the base of
18 the Closed Construction Debris Landfill with the following warning, "Former landfill. Do not
19 drink water." Ecology shall review and approve the signage prior to its placement on the
20 property.

21 (5) Construct a WAC 173-350 cover system on the Solid Waste Double-
22 Lined Landfill as described in the facility Solid Waste Permit. When completely filled to
23 capacity, construct a RCRA Subtitle D (40 CFR 258) cover system on the RCRA Dangerous
24 Waste Triple-Lined Landfill as described in the Part B Dangerous Waste Permit Application.
25 Specific components of the required cover systems are:
26

1 a. Installation of an engineered, multi-layer cap consisting of (from top to
2 bottom) a soil subgrade material layer, a needle-punched geosynthetic clay layer, a 60 mil
3 textured high density polyethylene geomembrane, a geocomposite drainage layer, and a 24
4 inch vegetative layer.

5 b. Construction of side slopes at a 3 horizontal to 1 vertical (3H:1V) slope.

6 c. Around the perimeter and to the top of each landfill, development of
7 access roads with associated drainage.

8 d. Installation of passive gas vents at a frequency of one per acre of landfill
9 (exclusive of side slopes) to release any potential landfill-generated gases.

10 F. **Restrictive Covenant.** Intalco shall record a restrictive covenant (WAC 173-
11 340-440) for the Site as defined in this Consent Decree within ninety (90) days after
12 completing remediation of the Closed Construction Debris Landfill, or no later than December
13 31, 2006, whichever occurs first. The covenant shall address both the restriction on use of
14 portions of the Site and restrictions on groundwater withdrawal. The restrictive covenant shall
15 be in the same form and have the same substance as the restrictive covenant attached as Exhibit
16 E. If Intalco opts to use a form of restrictive covenant that is not identical to Exhibit E, then
17 Intalco shall submit its form to Ecology for review and obtain written approval of Ecology
18 prior to recording the covenant.

19 Solid Waste Double-Lined Landfill Closure. Intalco shall also record maps and a
20 statement of fact concerning the location of the closed Solid Waste Double-Lined Landfill as
21 part of the deed with the Whatcom County Recorder's Office no later than ninety (90) days
22 after the closure in accordance with WAC 173-350-400(6).

23 Dangerous Waste Triple-Lined Landfill Closure. Intalco shall record within sixty (60)
24 days of Landfill closure a notation on the deed to the property that encompasses this Landfill
25 that will in perpetuity notify any potential purchaser of the property, or any portion thereof
26 impacted by this Landfill, that the land has been used to manage dangerous wastes and the land

1 has restrictions under 40 CFR Subpart G regulations. Intalco shall also file, within sixty (60)
2 days of Landfill closure, a survey plat showing location, type and quantity of hazardous waste
3 disposed within this Landfill with the local zoning authority.

4 **G. Monitoring.** Surface water monitoring of the constituents of concern named in
5 this Consent Decree shall be performed at the Beach I, Beach II (if seeps resurface in the
6 future), and Closed Construction Debris Landfills. Groundwater monitoring shall be
7 performed at the Solid Waste Double-Lined Landfill and Dangerous Waste Triple-Lined
8 Landfill.

9 (1) At the Closed Construction Debris Landfill, surface water monitoring
10 shall be conducted following completion of construction of the cap for a period of five (5)
11 years. The monitoring shall be conducted in 2007, 2009, and 2011 twice annually, once during
12 the dry season and once during the wet season, to demonstrate the effectiveness of the removal
13 of the waste. At the end of the five year period, Ecology and Intalco shall evaluate the need for
14 continued monitoring. Surface water monitoring results shall be submitted to Ecology in both
15 printed copy and electronic format. The electronic format shall follow protocols established
16 for the Ecology Environmental Information Management System (EIM).

17 (2) At the Beach I and Beach II Landfills, monitoring of the surface water
18 seeps shall be conducted following the removal of the landfill waste. For the first five years
19 following removal of the waste, the monitoring shall be conducted in 2007, 2009, and 2011,
20 twice annually, once during the dry season and once during the wet season, to demonstrate the
21 effectiveness of the removal of the waste. At the end of five years further monitoring shall be
22 determined after an evaluation of data by Ecology and Intalco. The electronic format shall
23 follow protocols established for the Ecology EIM.

24 (3) At the Solid Waste Double-Lined Landfill, groundwater monitoring
25 shall follow the facility closure plan as directed in WAC 173-350-400(7)(a)(iii). Groundwater
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1 monitoring shall be submitted to Ecology in both printed copy and electronic format. The
2 electronic format shall follow protocols established for the Ecology EIM.

3 (4) At the Dangerous Waste Triple-Lined Landfill, groundwater monitoring
4 shall follow the facility closure plan in compliance with WAC 173-303-400 and 40 CFR 265,
5 Subpart F. Groundwater monitoring shall be submitted to Ecology in both printed copy and
6 electronic format. The electronic format shall follow protocols established for the Ecology
7 EIM.

8 H. **Sediment Studies.** Sediment monitoring in the Strait of Georgia has been
9 completed under the National Pollution Discharge Elimination System (NPDES) permit
10 program and during the Site feasibility study by Intalco. The results of sediment sampling
11 completed in the near shore area for the feasibility study are below the Sediment Management
12 Standards. Sediment sampling completed by Intalco under the NPDES program showed minor
13 contamination of PCBs and PAHs. Intalco has implemented numerous control measures and
14 BMPs to prevent material excavated on the slopes of the landfill from migrating to the beach at
15 the toe of the landfills. Intalco has also conducted numerous sediment studies indicating that
16 concentrations currently at the beach are not at elevated levels which would pose risk.
17 Therefore, no additional sediment monitoring shall be required as long as there is no
18 observation of excavated material migrating to the beach during remediation.

19 If an unintended release of material does occur, then Intalco will collect sediment
20 samples in the vicinity of the release to test whether they are posing a risk to the aquatic
21 environment. Initial analyses of these samples include chemistry only, and then if necessary,
22 appropriate bioassay tests would follow. If sediment sampling is required, a Sediment
23 Sampling and Analysis Plan shall follow the guidance provided in the Sediment Source
24 Control Standards Users Manual, Appendix B: Sediment Sampling and Analysis Plan (Ecology
25 2003) and current Puget Sound Estuary Program Protocols. After approval of the Plan by
26 Ecology, Intalco shall perform sediment sampling during the first stable time period (June thru

1 September). Sediment sampling can be performed in conjunction with NPDES sediment
2 sampling. The Sediment Data Report shall be submitted to Ecology one hundred and eighty
3 (180) days following the sample event and shall be submitted in both paper and electronic
4 format. The electronic format shall conform to Ecology's Sediment Quality Information
5 System (SEDQUAL) template format.

6 I. **Work Outside of this Decree.** Regarding the Site, once this Decree is entered
7 with the Court, Defendant agrees not to perform any remedial actions outside of the scope of
8 this Decree unless the Defendant receives approval from Ecology to do so. All work
9 conducted by Defendants under this Decree shall be done in accordance with Chapter 173-340
10 WAC unless otherwise provided herein.

11 **VII. DESIGNATED PROJECT COORDINATORS**

12 The project coordinator for Ecology is:

13 Paul Skyllingstad
14 Department of Ecology – Industrial Section
15 P.O. Box 47706
Olympia, WA 98504-7706

16 The project coordinator for Defendant is:

17 Ms. Robyn Gross
18 Alcoa Inc.
201 Isabella Street
Pittsburgh, PA 15212

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

1 project coordinators may agree to minor changes to the work to be performed without formal
2 amendments to this Decree. Minor changes will be documented in writing by Ecology.
3 Substantial changes shall require amendment of this Consent Decree.

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

6 VIII. PERFORMANCE

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

13 Any construction work performed pursuant to this Decree shall be under the
14 supervision of a professional engineer or a qualified technician under the direct supervision of
15 a professional engineer. The professional engineer must be registered in the State of
16 Washington, except as provided in RCW 18.43.130.

17 IX. ACCESS

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

1 for those properties within the Site not owned or controlled by Defendant where remedial
2 activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology
3 authorized representative shall give reasonable notice before entering any Site property owned
4 or controlled by Defendant unless an emergency prevents such notice. All Parties who access
5 the Site pursuant to this paragraph shall comply with the approved Health and Safety Plans
6 required by this Consent Decree and any applicable Intalco facility-specific health and safety
7 procedures and requirements. However, Ecology employees and their representatives shall not
8 be required to sign any liability release or waiver as a condition of Site property access.

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

10 With respect to the implementation of this Decree, Defendant shall make the results of
11 sampling, laboratory reports, and/or test results generated by it or on its behalf available to
12 Ecology and shall submit these results in accordance with Section XI of this Decree.

13 Sampling data shall be submitted to Ecology according to the requirements of Exhibit F
14 and WAC 173-340-840(5). These submittals shall be provided to Ecology in accordance with
15 Section XI of this Decree.

16 If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by
17 Ecology and/or its authorized representative of any samples collected by Defendant pursuant to
18 the implementation of this Decree. Defendant shall verbally notify Ecology three (3) days in
19 advance of any sample collection or work activity at the Site. Upon such notification, if
20 Ecology states that it does not desire to take split or duplicate samples, Intalco may
21 immediately proceed with the sampling. Ecology shall, upon request, allow split or duplicate
22 samples to be taken by Defendant or its authorized representative of any samples collected by
23 Ecology pursuant to the implementation of this Decree provided it does not interfere with
24 Ecology's sampling. Without limitation on Ecology's rights under Section IX, Ecology shall
25 notify Defendant three (3) days prior to any sample collection activity unless an emergency
26 prevents such notice.

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

4 **XI. PROGRESS REPORTS**

5 Defendant shall submit to Ecology written monthly Progress Reports that describe the
6 actions taken during the previous month to implement the requirements of this Decree. This
7 requirement will end once the Closed Construction Debris Landfill remediation is complete.
8 The Progress Reports shall include the following:

- 9 A. A list of on-site activities that have taken place during the month;
- 10 B. Detailed description of any deviations from required tasks not otherwise
11 documented in project plans or amendment requests;
- 12 C. Description of all deviations from the Schedule (Exhibit G) during the current
13 month and any planned deviations in the upcoming month;
- 14 D. For any deviations in schedule, a plan for recovering lost time and maintaining
15 compliance with the schedule;
- 16 E. All raw data (including laboratory analyses) received by Defendant during the
17 past month and an identification of the source of the sample; and
- 18 F. A list of deliverables for the upcoming month if different from the Schedule.

19 All Progress Reports shall be submitted by the tenth (10) day of the month in which
20 they are due after the effective date of this Decree. Progress Reports and any other documents
21 submitted pursuant to this Decree may be submitted electronically. However, Intalco agrees to
22 submit a hard-copy of any progress reports to Ecology's project coordinator via certified mail,
23 return receipt requested, if so requested.

24 **XII. RETENTION OF RECORDS**

25 During the pendency of this Decree and for ten (10) years from the date this Decree is
26 no longer in effect as provided in Section XXVIII, the Defendant shall preserve records,

1 reports, documents, and underlying data in its possession relevant to the implementation of this
2 Decree. Upon request of Ecology, Defendant shall make all of these records that are not
3 subject to an attorney-client privilege available to Ecology and allow access for review within
4 a reasonable time. If Intalco refuses to provide access to records based on a claim of attorney-
5 client privilege, Ecology shall have the right to petition the Court to review the records being
6 withheld to determine whether such records fall within the attorney-client privilege as that
7 privilege is defined by Washington State law. Within ten days of the filing of this Decree with
8 the Court, Defendant shall also provide written notice to all of its project contractors and
9 subcontractors that they should retain their records for a minimum of ten years pursuant to the
10 terms of this Decree. A similar record retention requirement shall be incorporated into all new
11 contracts with project contractors and subcontractors.

12 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

17 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during
18 the effective period of this Decree, Defendant shall serve a copy of this Decree upon any
19 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
20 least fifteen (15) days prior to any transfer, Defendant shall notify Ecology of the transfer.
21 Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent
22 with this Consent Decree and notify all transferees of the restrictions on the use of the property
23 being transferred.

XIV. RESOLUTION OF DISPUTES

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

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

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

(3) Defendant may then request that Ecology's management review the decision. This request shall be submitted in writing to the appropriate Industrial Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) Ecology's Industrial Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's request for review.

(5) If the Defendant finds Ecology's Industrial Section Manager's decision unacceptable, Defendant may then request final Ecology management review of the decision. This request shall be submitted in writing to the appropriate Toxics Cleanup Program Manager within seven (7) days of receipt of the Industrial Section Manager's decision.

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

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

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

11 D. Implementation of these dispute resolution procedures shall not provide a basis
12 for delay of any activities required in this Decree, unless (1) Ecology agrees in writing to a
13 schedule extension, (2) the activities directly depend on the disputed issue, or (3) the Court so
14 orders.

15 XV. AMENDMENT OF CONSENT DECREE

16 This Decree (but not the Exhibits to the Decree) may only be amended by a written
17 stipulation among the Parties that is entered by the Court, or by order of the Court. Such
18 amendment shall become effective upon entry by the Court. Agreement to amend the Decree
19 shall not be unreasonably withheld by any Party.

20 Defendant shall submit any request for an amendment to Ecology for approval.
21 Ecology shall indicate its approval or disapproval within twenty (20) days after the request for
22 amendment is received. If the amendment to the Decree represents a substantial change,
23 Ecology will provide public notice and opportunity for comment. Ecology's reasons for the
24 disapproval of a proposed amendment to the Decree shall be stated in writing and provided to
25 Defendant. If Ecology does not agree to any proposed amendment, the disagreement may be
26 addressed through the dispute resolution procedures described in Section XIV of this Decree.

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1 C. Ecology shall act upon any written request for extension and give Defendant
2 written notification of its response within twenty (20) days of any extension request. A
3 requested extension shall not be effective until approved by Ecology or, if required, by the
4 Court. Unless the extension is a substantial change, it shall not be necessary to amend this
5 Decree pursuant to Section XV when a schedule extension is granted.

6 D. An extension shall only be granted for such period as Ecology determines is
7 reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety
8 (90) days only as a result of:

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

11 (2) Other circumstances reasonably deemed exceptional or extraordinary by
12 Ecology; or

13 (3) A disputed issue has been submitted in good faith by Intalco for review
14 pursuant to the dispute resolution procedures described in Section XIV of this Decree and that
15 disputed issue is reasonably expected to impact the deadline sought to be extended by more
16 than ninety (90) days; or

17 (3) Endangerment as described in Section XVII.

18 XVII. ENDANGERMENT

19 If, for any reason, Ecology determines that any activity being performed at the Site is
20 creating or has the potential to create a danger to human health or the environment, Ecology
21 may direct Defendant to cease such activities for such period of time as it deems necessary to
22 abate the danger. Defendant shall immediately comply with such direction.

23 If, for any reason, Defendant determines that any activity being performed at the Site is
24 creating or has the potential to create a danger to human health or the environment, Defendant
25 may cease such activities. Defendant shall notify Ecology's project coordinator as soon as
26 possible, but no later than twenty-four (24) hours after making such determination or ceasing

1 such activities. Upon Ecology's direction, Defendant shall provide Ecology with
2 documentation of the basis for the determination or cessation of such activities. If Ecology
3 disagrees with Defendant's cessation of activities, it may direct Defendant to resume such
4 activities.

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

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

12 XVIII. COVENANT NOT TO SUE

13 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
14 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
15 actions against Defendant regarding the release or threatened release of hazardous substances
16 covered by this Decree, which are identified in this Decree and in those additional documents
17 attached as exhibits to this Decree.

18 This Decree covers only the Site specifically identified in Exhibit A and those
19 hazardous substances that Ecology knows are located at the Site as of the date of entry of this
20 Decree. This Decree does not cover any other hazardous substance or area. Ecology retains all
21 of its authority relative to any substance or area not covered by this Decree.

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

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

1 B. Reopeners: Ecology specifically reserves the right to institute legal or
2 administrative action against Defendant to require it to perform additional remedial actions at
3 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
4 following circumstances:

5 (1) Upon Defendant's failure to meet the requirements of this Decree, including,
6 but not limited to, failure of the remedial action to meet the cleanup standards identified herein
7 and in the CAP (Exhibit B);

8 (2) Upon Ecology's determination that remedial action beyond the terms of this
9 Decree is necessary to abate an imminent and substantial endangerment to human health or the
10 environment;

11 (3) Upon the availability of new information regarding factors previously unknown
12 to Ecology, including the nature or quantity of hazardous substances at the Site, and Ecology's
13 determination, in light of this information, that further remedial action is necessary at the Site
14 to protect human health or the environment;

15 (4) Upon Ecology's determination that additional remedial actions are necessary to
16 achieve cleanup standards within the reasonable restoration time frame set forth in the CAP
17 and the Consent Decree;

18 (5) If Ecology has certified the cleanup action complete under the "Exception to
19 Cleanup Standards" paragraph in section VI.D of this Decree, then upon Ecology's subsequent
20 reasonable determination that previously unconsidered exposure pathways exist that present an
21 unreasonable risk of exposure to contaminants by humans or the environment; or

22 (6) Upon Ecology's determination that sediment contamination is of concern due to
23 excavated material migrating to the beach during remediation.

24 C. Except in the case of an emergency, prior to instituting legal or administrative
25 action against the Defendant pursuant to paragraph B. above, Ecology shall provide the
26 Defendant with twenty (20) calendar days notice of such action.

1 **XIX. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against Defendant, the Parties agree that
3 Defendant is entitled to protection against claims for contribution for matters addressed in this
4 Decree as provided by RCW 70.105D.040(4)(d).

5 **XX. LAND USE RESTRICTIONS**

6 Pursuant to WAC 173-340-440(4), Defendant agrees to duly execute and record with
7 the office of the Whatcom County Recorder's Office a Restrictive Covenant within the
8 timeframe and in a form and substance as outlined in Section VI.F and Exhibit E of this
9 Decree. The Restrictive Covenant shall restrict future uses of the Site and withdrawal of
10 groundwater from the Site. Defendant will provide Ecology with a copy of the recorded
11 Restrictive Covenant within thirty (30) days of the recording date.

12 **XXI. FINANCIAL ASSURANCES**

13 Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and adequate
14 financial assurance mechanisms to cover all costs associated with the operation and
15 maintenance of the remedial action covered by this Decree for the Site, including institutional
16 controls, compliance monitoring, and corrective measures. Proof of financial assurance must
17 be provided by Defendant within fourteen days of the effective date of this Decree and must
18 include one or more of the following: (1) trust fund; (2) surety bond; (3) letter of credit; (4)
19 financial test; (5) guarantee; (6) standby trust fund; (7) government bond rating test; (8)
20 government financial test; (9) government guarantee; or (10) government fund.

21 If the Defendant opts to provide financial assurance based on proof that its own internal
22 assets are sufficient to cover all costs of this Decree, within fourteen (14) days of the effective
23 date of this Decree, Defendant shall submit to Ecology for review and approval an estimate of
24 the costs that it will incur in carrying out the terms of this Decree, including operation and
25 maintenance and compliance monitoring, and proof of sufficient assets to cover the costs.
26 Defendant shall resubmit such information annually, on the anniversary of the effective date of

1 this Decree, for a period of five (5) years from the date this Decree is filed with the Court. If
2 Ecology determines that such financial information is inadequate, Defendant shall, within
3 thirty (30) days after receipt of Ecology's notice of determination, obtain and present to
4 Ecology for approval one of the other forms of financial assurance listed above.

5 **XXII. INDEMNIFICATION**

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

14 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

15 A. All actions carried out by Defendant pursuant to this Decree shall be done in
16 accordance with all applicable federal, state, and local requirements, including requirements to
17 obtain necessary permits, except as provided in RCW 70.105D.090.

18 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters
19 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing
20 local government permits or approvals for the remedial action under this Decree that are
21 known to be applicable at the time of entry of the Decree have been included in the CAP and
22 are binding and enforceable requirements of the Decree.

23 Defendant has a continuing obligation to determine whether additional permits or
24 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
25 action under this Decree. In the event either Defendant or Ecology determines that additional
26 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the

1 remedial action under this Decree, it shall promptly notify the other party of this determination.
2 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
3 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly
4 consult with the appropriate state and/or local agencies and provide Ecology with written
5 documentation from those agencies of the substantive requirements those agencies believe are
6 applicable to the remedial action. Ecology shall make the final determination on the additional
7 substantive requirements that must be met by Defendant and on how Defendant must meet
8 those requirements. Ecology shall inform Defendant in writing of these requirements. Once
9 established by Ecology, the additional requirements shall be enforceable requirements of this
10 Decree. Defendant shall not begin or continue the remedial action potentially subject to the
11 additional requirements until Ecology makes its final determination.

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

14 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
15 exemption from complying with the procedural requirements of the laws referenced in RCW
16 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
17 for the state to administer any federal law, the exemption shall not apply and the Defendant
18 shall comply with both the procedural and substantive requirements of the laws referenced in
19 RCW 70.105D.090(1), including any requirements to obtain permits.

20 **XXIV. REMEDIAL AND INVESTIGATIVE COSTS**

21 The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree and
22 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
23 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
24 and Decree preparation, negotiations, oversight and administration. These costs shall include
25 work performed both prior to and subsequent to the entry of this Decree. Ecology costs shall
26 include costs of direct activities and support costs of direct activities as defined in WAC

1 173-340-550(2). Defendant agrees to pay the required amount within ninety (90) days of
2 receiving from Ecology an itemized statement of costs that includes a summary of costs
3 incurred, an identification of involved staff, and the amount of time spent by involved staff
4 members on the project. A general statement of work performed will be provided upon
5 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),
6 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will
7 result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly,
8 commencing on the 91st day following receipt. Notwithstanding the above, Intalco is not
9 obligated to reimburse Ecology for costs incurred for work inconsistent with or beyond the
10 scope of this Decree. If Intalco disagrees with any cost item submitted by Ecology for
11 reimbursement, the Parties shall use their best efforts to resolve the disagreement. However,
12 where the Parties are unable to do so, the disagreement may be addressed through the dispute
13 resolution procedures described in Section XIV of this Decree.

14 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

15 If Ecology determines that Defendant has failed without good cause to implement the
16 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all
17 portions of the remedial action that remain incomplete. If Ecology performs all or portions of
18 the remedial action because of the Defendant's failure to comply with its obligations under this
19 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance
20 with Section XXIV of this Decree.

21 **XXVI. PERIODIC REVIEW**

22 As remedial action, including groundwater monitoring, continues at the Site, the Parties
23 agree to review the progress of remedial action at the Site, and to review the data accumulated
24 as a result of monitoring the Site as often as is necessary and appropriate under the
25 circumstances. At least every five years after the initiation of cleanup action at the Site, the
26 Parties shall meet to discuss the status of the Site and the need, if any, for further monitoring at

1 the Site. Ecology reserves the right to require further remedial action at the Site in accordance
2 with the Re-Openers Clause of this Decree. At Ecology's written request, a report, which
3 addresses the review criteria in WAC 173-340-420, shall be submitted by Defendant ninety
4 (90) days before every 5-year anniversary of the completion of the Scope of Work provided in
5 V.I.E of this Decree. The periodic review requirements shall remain in effect as long as the
6 institutional controls are required to remain in effect.

7 **XXVII. PUBLIC PARTICIPATION**

8 Ecology shall maintain the responsibility for public participation at the Site. However,
9 Defendant shall cooperate with Ecology, and shall:

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

15 B. Notify Ecology's project coordinator prior to the preparation of all press releases
16 and fact sheets, and before major meetings with the interested public and local governments.
17 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact
18 sheets, and before major meetings with the interested public and local governments. For all
19 press releases, fact sheets, meetings, and other outreach efforts by Defendant that do not
20 receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press
21 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by
22 Ecology;

23 C. Participate in public presentations on the progress of the remedial action at the
24 Site. Participation may be through attendance at public meetings to assist in answering
25 questions, or as a presenter;
26

1 D. In cooperation with Ecology, arrange and/or continue information repositories
2 at the following locations:

3 (1) Ferndale Public Library
4 2222 Main Street
5 Ferndale, WA 98249

6 (2) Department of Ecology
7 Bellingham Field Office
8 1204 Railroad, Suite 200
9 Bellingham, WA 98225

10 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
11 monitoring data; remedial actions plans and reports, supplemental remedial planning
12 documents, and other similar documents relating to performance of the remedial action
13 required by this Decree shall be promptly placed in these repositories. The Public Participation
14 Plan is attached to this Decree as Exhibit H.

15 **XXVIII. DURATION OF DECREE**

16 The remedial program required pursuant to the Decree shall be maintained and
17 continued until Defendant has received written notification from Ecology that the requirements
18 of this Decree have been satisfactorily completed. This Decree shall remain in effect until
19 dismissed by this Court, which is anticipated to take place at the conclusion of the monitoring
20 requirements for Beach I, Beach II and Closed Construction Debris Landfill as required in
21 section VI G(1) and G(2) of this Decree. When dismissed, Section XVIII, Covenant Not to
22 Sue, Section XXVI, Periodic Review, and Section XIX, Contribution Protection, shall survive.

23 **XXIX. CLAIMS AGAINST THE STATE**

24 Defendant hereby agrees 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
26 of its agencies; and further, that the Defendant will make no claim against the State Toxics
Control Account or any Local Toxics Control Account for any costs incurred in implementing

1 this Decree. Except as provided above, however, Defendant expressly reserves its right to seek
2 to recover any costs incurred in implementing this Decree from any other potentially liable
3 person.

4 **XXX. EFFECTIVE DATE**

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

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

7 This Decree has been the subject of public notice and comment under RCW
8 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to
9 a more expeditious clean up of hazardous substances at the Site in compliance with the cleanup
10 standards established under Chapter 173-340 WAC.

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

15 **XXXII. COMPLETION OF TERMS OF AGREED ORDER DE 01 TCPIS 2949**

16 Intalco has completed the remedial investigation and the feasibility study and the other
17 provisions required by Agreed Order DE 01 TCPIS 2949. Therefore, Ecology deems the
18 Agreed Order as satisfied in full.

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26 ///

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

3 *Cullen Stephenson*
4 CULLEN STEPHENSON
5 Program Manager
6 Solid Waste Program

7 Date: 11/15/06

ROB McKENNA
Attorney General

8 *Laura J. Watson* WSSA 28452
9 LAURA J. WATSON
10 Assistant Attorney General

11 Date: 11/21/06

12 INTALCO ALUMINUM CORPORATION

13 *Michael F. Rousseau*
14 MICHAEL F. ROUSSEAU
15 President
16 Intalco Aluminum Corporation

17 Date: Nov. 13, 2006

18 ENTERED this 2nd day of February 2007.

19 STEVEN J. MURA

20 JUDGE
21 Whatcom County Superior Court