

Northside LF

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OFFICE OF REGIONAL COUNSEL  
EPA - REGION 8

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

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NOV 01 1990

CLERK, U.S. DISTRICT COURT  
SPOKANE, WASHINGTON

UNITED STATES OF AMERICA  
ON BEHALF OF THE U.S.  
ENVIRONMENTAL PROTECTION  
AGENCY,

and the  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY

Plaintiffs,

v.

CITY OF SPOKANE

Defendant.

CS-90-0462 JLQ

CIVIL ACTION NO.

CONSENT DECREE

ATTEST A True Copy  
JAMES R. LARSEN, Clerk  
United States District Court  
Eastern District of Washington  
*James R. Larsen*  
Deputy Clerk

DEPARTMENT OF JUSTICE  
OCT 11 1990



FOR COUNCIL MEETING OF: August 13, 1990

Notify Prior to Meeting:  
Spokane Valley Advisory Council? ☐  
Other? \_\_\_\_\_

TO: **MAYOR AND CITY COUNCIL**

- ☒ For Action
- ☐ For Information

**RECEIVED**

AUG 8 1990

**CITY CLERK'S OFFICE**  
SPOKANE, WA

AGENCY CATEGORY

- ☐ Hearing
- ☐ Annexation
- ☐ Report
- ☐ Contract
- ☐ Resolution
- ☐ Emergency Ord.
- ☐ First Rdg. Ord.
- ☐ Report of City Manager

RECOMMENDATION

- ☐ Accept
- ☒ Approve
- ☐ Deny
- ☐ Place on File
- ☐ Set Hearing
- ☐ Date For:
- ☐ Defer/Continue
- ☐ To:
- ☐ Council Direction

Clerk's File # OPR 90-765  
(OPR 89-738)  
Submitting Dept File # \_\_\_\_\_

**AGENDA WORDING:**

Approve signing of the Consent Decree between U.S. Environmental Protection Agency/Washington State Department of Ecology and the City of Spokane for superfund remediation on the Northside Landfill.

**BACKGROUND:**

The Northside Landfill was placed on the U.S. EPA superfund list in 1986. Since that time numerous studies and investigations have taken place. The last 120 days the City, EPA and DOE have negotiated a Consent Decree and Scope of Work outlining the City's obligations in the required clean-up of the Northside Landfill.

**RECOMMENDATION:**

Approve signing by appropriate city officials.

**ENVIRONMENTAL FINDING:** N/A

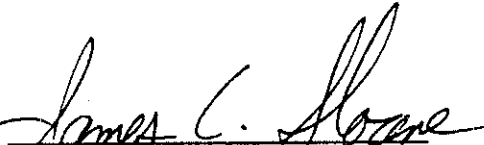
**FISCAL IMPACT:** \$30 - 38 million dollars

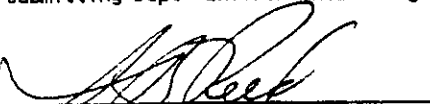
**BUDGET ACCOUNT #:** 450 1450 141


**ATTACHMENTS:** Consent Decree and Scope of Work (not available at time of packet distribution)

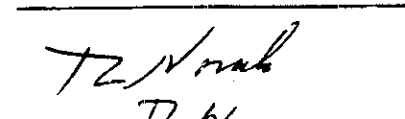
**SIGNATURES OF:**

  
Submitting Dept Environmental Progs

  
City Attorney

  
Manager, Engineering Services

  
Finance

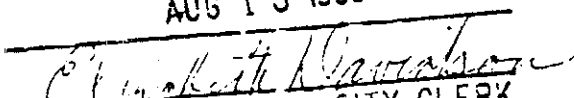
  
City Manager

**COUNCIL ACTION:**

**DISTRIBUTION:**

- Solid Waste Mgt
- Envir. Progs.
- Legal
- U.S. EPA
- Wash State DOE

APPROVED BY  
SPOKANE CITY COUNCIL:  
AUG 13 1990

  
CITY CLERK



Reviewed &  
Approved 9/4/90  
DCHH

FSH

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA  
ON BEHALF OF THE U.S.  
ENVIRONMENTAL PROTECTION  
AGENCY,  
and the  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY  
  
Plaintiffs,  
  
v.  
  
CITY OF SPOKANE  
  
Defendant.

CIVIL ACTION NO.

CONSENT DECREE

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I.

BACKGROUND

1. The United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), and the State of Washington Department of Ecology ("Ecology"), together as Government Plaintiffs, have filed a Complaint against the City of Spokane ("City") in this Court. The United States has filed its action pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607; and Ecology pursuant to Section 107 of CERCLA, 42 U.S.C. 9607.

2. The United States and Ecology in their Complaint seek, pursuant to their respective authorities, (1) reimbursement of response costs incurred to date by U.S. EPA and Ecology at the Northside Landfill in Spokane, Washington; (2) an injunction requiring the City to perform remedial work at the Site, as provided in the Record of Decision ("ROD") signed on September 30, 1989, by the U.S. EPA Regional Administrator, Region 10, and concurred in by Ecology, and in conformity with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300 (as amended); (3) recovery of costs that will be incurred by U.S. EPA and Ecology in connection with such

1 remedial work; and (4) award to U.S. EPA and Ecology the cost of  
2 their suit and such other relief as the Court finds appropriate.

3 3. The United States, on behalf of the Administrator  
4 of U.S. EPA, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
5 placed the Northside Landfill Site in Spokane, Washington (the  
6 "Site" as specifically defined in Paragraph 23.0 of this Consent  
7 Decree) on the National Priorities List ("NPL"), which is set  
8 forth at 40 C.F.R. Part 300, Appendix B and by publication in the  
9 Federal Register on June 10, 1986, 51 Fed. Reg. 21054 (1986).

10 4. In response to a release of hazardous substances  
11 at or from the Site, the City of Spokane on February 11, 1986,  
12 commenced a Remedial Investigation and Feasibility Study  
13 ("RI/FS") pursuant to a Memorandum of Agreement with the State of  
14 Washington Department of Ecology.

15 5. Investigations conducted by or on behalf of U.S.  
16 EPA, Ecology, and the City of Spokane in 1982 identified  
17 hazardous substances in the groundwater at and around the Site.  
18 Contamination included metals (iron, manganese, and lead) and  
19 volatile organic compounds ("VOCs") (trichloroethylene, 1,1,1-  
20 trichlorethane, and tetrachloroethylene).

21 6. In September 1985, the U.S. EPA notified the City  
22 of its status as a Potentially Responsible Party ("PRP"). U.S.  
23 EPA and Ecology agreed that Ecology would be the lead agency,  
24 while U.S. EPA would serve in a technical capacity. However,  
25 Ecology and the City of Spokane were unable to negotiate  
26  
27



1 completion of an RI/FS and, at Ecology's request, U.S. EPA  
2 assumed the role of lead agency in February 1988.

3 7. The City of Spokane completed RI and FS Reports in  
4 November 1988, pursuant to the Order on Consent signed by U.S.  
5 EPA and the City in March 1988.

6 8. On February 28, 1989, U.S. EPA, pursuant to  
7 Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the  
8 completion of the RI/FS and of the proposed plan for remedial  
9 action and provided opportunity for public comment to be  
10 submitted in writing to the agency by March 31, 1989, or orally  
11 at a public meeting held in Spokane, Washington, on March 15,  
12 1989. U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. §  
13 9617, has kept a transcript of the public meeting and has made  
14 this transcript available to the public.

15 9. Pursuant to Section 122(j) of CERCLA,  
16 42 U.S.C. § 9622(j), U.S. EPA notified the Federal natural  
17 resource trustees of negotiations with the City of Spokane on the  
18 subject of addressing the release or threatened release of  
19 hazardous substances at the Site, and U.S. EPA has encouraged the  
20 participation of the Federal natural resource trustees in such  
21 negotiations.

22 10. After consultation with Ecology, U.S. EPA  
23 published the proposed plan for remedial action for public  
24 comment. Certain persons provided comments on U.S. EPA's  
25 proposed plan for remedial action, and to such comments U.S. EPA  
26 provided a summary of responses. After consideration of the

1 proposed plan for remedial action and the public comments  
2 received, U.S. EPA reached a decision on a final remedial action  
3 plan, and the City has agreed to implement such plan.

4 11. The decision by U.S. EPA on the final remedial  
5 action plan is embodied in a final ROD executed on September 30,  
6 1989, to which Ecology has given its written concurrence, and is  
7 attached hereto as Appendix 1.

8 12. Pursuant to Section 121(d)(1) of CERCLA, 42 U.S.C.  
9 § 9621(d)(1), U.S. EPA, Ecology and the City ("the Settling  
10 Parties") agree that the remedial action plan adopted by U.S. EPA  
11 and embodied herein will attain a degree of cleanup of waste  
12 materials, hazardous substances, pollutants, and contaminants  
13 released into the environment and control of further releases  
14 which, at a minimum, assures protection of human health and the  
15 environment at the Site.

16 13. The City received a variance from State Minimum  
17 Functional Standards for Solid Waste Handling (MFS), WAC 173-  
18 304, which postpones the regulatory deadline and thereby allows  
19 disposal of solid waste at Northside Landfill in cells that do  
20 not meet MFS requirements until December 31, 1991. After the  
21 deadline, however, the City may dispose of solid waste at  
22 Northside Landfill only in cells that fulfill MFS requirements,  
23 and only if continued disposal does not adversely impact the  
24 remedial action plan or threaten human health or the environment.

25 14. The Settling Parties believe that the remedial  
26 action adopted by Government Plaintiffs is in accordance with

1 Section 121 of CERCLA, 42 U.S.C. § 9621 and will provide a level  
2 or standard of control for such hazardous substances, pollutants,  
3 or contaminants that at least attains legally applicable or  
4 relevant and appropriate standards, requirements, criteria, or  
5 limitations under federal environmental law or state  
6 environmental or facility siting law in accordance with Section  
7 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2). Government  
8 Plaintiffs believe the remedial action is in accordance with the  
9 NCP, 40 C.F.R. Part 300.

10 15. In October of 1989, the U.S. EPA and Ecology  
11 executed a Superfund/Hazardous Waste Cleanup Memorandum of  
12 Agreement ("Cleanup Memorandum of Agreement"), which is attached  
13 hereto as Appendix 2 and incorporated into this Consent Decree.  
14 All parties recognize that the Cleanup Memorandum of Agreement  
15 extends no benefits or rights to any party, including the City,  
16 and that by attachment and incorporation hereto, the City is not  
17 made a party to the Cleanup Memorandum of Agreement.

18 16. In accordance with Section 121(f)(1)(F) of CERCLA,  
19 42 U.S.C. § 9621(f)(1)(F), and the Cleanup Memorandum of  
20 Agreement between Ecology and the U.S. EPA, U.S. EPA notified  
21 Ecology of negotiations with the City regarding the scope of the  
22 remedial design and remedial action for the Site, and met with  
23 Ecology prior to the start of negotiations with the City to  
24 discuss goals, starting points, and bottom line positions for  
25 negotiations.

1           17. The City agrees to implement the remedial action  
2 adopted by Government Plaintiffs in the ROD. Government  
3 Plaintiffs have determined that the Work required under the  
4 Consent Decree will be done properly by the City, that the Work  
5 is consistent with the ROD, CERCLA, and the NCP, and that the  
6 City is qualified to implement the remedial action contained in  
7 the ROD.

8           18. The Settling Parties recognize, and the Court by  
9 entering this Consent Decree finds, that implementation of this  
10 Consent Decree will expedite the cleanup of the Site, will avoid  
11 prolonged and complicated litigation between the Settling  
12 Parties, and that entry of this Consent Decree is therefore in  
13 the public interest.

14                   The Settling Parties have agreed to the entry  
15 of this Consent Decree;

16           NOW, THEREFORE, it is hereby Ordered and Decreed:

17  
18                   II.

19                   JURISDICTION

20           19. This Court has jurisdiction over the subject  
21 matter of these actions pursuant to 28 U.S.C. §§ 1331, 1345, and  
22 42 U.S.C. §§ 9604, 9606, 9607, and 9613(b). This Court also has  
23 personal jurisdiction over the City. For purposes of this  
24 Consent Decree and the underlying Complaint, the City waives all  
25 objections and defenses that it may have to jurisdiction of the  
26 Court or to venue in this District. The Complaint states claims

1 against the City upon which relief may be granted. The City  
2 shall not challenge this Court's jurisdiction to enter and  
3 enforce this Consent Decree. The Settling Parties request that a  
4 single judge be assigned to decide all issues arising out of this  
5 Consent Decree.

6 20. Ecology enters into this Consent Decree pursuant  
7 to Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607,  
8 and the regulations adopted pursuant thereto. U.S. EPA enters  
9 into this Consent Decree pursuant to Sections 104, 106, 107 and  
10 122 of CERCLA, 42 U.S.C. §§ 9604, 9606 9607, and 9622.

11  
12 III.

13 PARTIES BOUND

14 21. This Consent Decree applies to and is binding upon  
15 the undersigned Parties and their successors, assigns, officers,  
16 employees, agents and trustees. The undersigned representative  
17 of each Party to this Consent Decree certifies that he or she is  
18 fully authorized by the Party or Parties whom she or he  
19 represents to enter into the terms and conditions of the Consent  
20 Decree and to execute and legally bind that Party to it.

21 22. The City shall provide a copy of this Consent  
22 Decree to each person authorized to represent the City with  
23 respect to the Site or the Work and shall condition all contracts  
24 and subcontracts entered into hereunder upon performance of the  
25 Work in conformity with the terms of this Consent Decree. The  
26 City shall nonetheless be responsible for ensuring that its

1 contractors and subcontractors perform the Work contemplated  
2 herein in accordance with this Consent Decree. With regard to  
3 the activities undertaken pursuant to this Consent Decree, each  
4 contractor and subcontractor shall be deemed to be related by  
5 contract to the City within the meaning of Section 107(b)(3) of  
6 CERCLA, 42 U.S.C. § 9607(b)(3). Thus, as to acts or omissions of  
7 contractors, the City shall not assert a defense based upon  
8 CERCLA Section 107(b)(3), 42 U.S.C. § 9607(b)(3).

9 23. Any conduct by the U.S. EPA or Ecology described  
10 herein by means of the words "shall," "may," "will," etc., shall  
11 not impose an obligation or duty on the United States, including  
12 the U.S. EPA, or the State of Washington, including Ecology, and  
13 shall operate as a condition precedent to a duty of the the City  
14 to perform some act or to refrain from acting.

#### 15 16 IV.

#### 17 DEFINITIONS

18 24. Unless noted to the contrary, the terms of this  
19 Consent Decree shall have the meaning assigned to those terms by  
20 the CERCLA, 42 U.S.C. § 9601 et seq., and its implementing  
21 regulations. Whenever the terms listed below are used in this  
22 Consent Decree and the Exhibits and Appendix attached hereto, the  
23 following definitions shall apply:

24 A. "Alternative Water Supplies" shall have the  
25 meaning set forth in Section 101(34) of CERCLA, 42 U.S.C.  
26 § 9601(34), and as specified in the ROD and SOW.

1           B. "ARAR" means a federal or state standard,  
2 requirement, criterion, or limitation that is identified in the  
3 ROD as legally applicable or relevant and appropriate to cleanup  
4 of the Site, within the meaning of 42 U.S.C. § 9621(d). "ARAR"  
5 also means any new or modified standard, requirement, criterion  
6 or limitation promulgated or modified after the ROD was signed if  
7 U.S. EPA determines that compliance with such new or modified  
8 standard, requirement, criterion or limitation is applicable or  
9 relevant and appropriate and necessary to ensure that the  
10 remedial action is protective of human health and the environment  
11 pursuant to the NCP.

12           C. "Architect" or "Engineer" means the company or  
13 companies retained by the City to prepare the construction plans  
14 and specifications necessary to accomplish the remedial action  
15 described in the ROD and SOW which are attached to this Consent  
16 Decree as Appendices 1 and 4, respectively.

17           D. "CERCLA" shall mean the Comprehensive  
18 Environmental Response, Compensation, and Liability Act of 1980,  
19 as amended, 42 U.S.C. § 9601 et seq.

20           E. "City" shall mean the City of Spokane.

21           F. "Consent Decree" or "Decree" means this Decree  
22 and all Exhibits and Appendices attached hereto.

23           G. "Contractor" or "Subcontractor" means the  
24 company or companies retained by or on behalf of the City to  
25 undertake and complete the Work required by this Decree. Each  
26 Contractor and Subcontractor shall be deemed to be related by

1 contract to the City within the meaning of Section 107(b) of  
2 CERCLA, 42 U.S.C. § 9607(b).

3 H. "Day" shall mean a calendar day unless  
4 expressly stated to be a working day. "Working day" shall mean a  
5 day other than a Saturday, Sunday, or federal, state or local  
6 legal holiday. In computing any period of time under this  
7 Consent Decree, where the last day would fall on a Saturday,  
8 Sunday, or federal, state or local legal holiday, the period  
9 shall run until the end of the next working day.

10 I. "Dispute Resolution Memorandum of Agreement"  
11 means the Memorandum of Agreement, attached hereto as Appendix 6,  
12 between the U.S. EPA and Ecology regarding the resolution of  
13 disputes that arise during the implementation of the Consent  
14 Decree.

15 J. "Ecology" means the State of Washington,  
16 Department of Ecology.

17 K. "Future Costs" means all costs, except  
18 Oversight Response Costs incurred (including indirect costs) by  
19 the United States and the State with regard to the Site after the  
20 effective date of this Consent Decree, including costs incurred  
21 pursuant to Sections VII [Five Year Review], VIII [Additional  
22 Work], X [Access], XIV [Endangerment], and XV [Future Response].

23 L. "Government Plaintiffs" shall mean the State  
24 of Washington Department of Ecology and the United States of  
25 America, on behalf of EPA, acting alone or together.



1 M. "Hazardous substance" shall have the meaning  
2 provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3 N. "Institutional Controls" refers to the land  
4 use restrictions and other regulations, ordinances, covenants,  
5 and controls developed pursuant to the Consent Decree to maintain  
6 the integrity and prevent the unauthorized disturbance of the  
7 cap, groundwater extraction wells, treatment facilities, and  
8 other structures that will be constructed at the Site as part of  
9 the remedial actions and other measures taken to implement the  
10 remedial actions.

11 O. "Memorandum of Agreement" means the  
12 Superfund/Hazardous Waste Cleanup Memorandum of Agreement  
13 executed by U.S. EPA and Ecology, and attached hereto as Appendix  
14 2.

15 P. "National Oil and Hazardous Substances  
16 Pollution Contingency Plan" ("NCP") shall be used as that term is  
17 used in 40 C.F.R. Part 300, and any revisions thereof.

18 Q. "Northside Landfill Site" ("Site"), or the  
19 term "on-site," means the "facility" as that term is defined in  
20 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and includes the  
21 five landfill units as described in the ROD (Appendix 1): Refuse  
22 Unit, Skimming Unit, Old Burn Unit, Sewage Sludge Unit, and  
23 Aquifer Unit, all areas to which contaminants released at the  
24 Site have migrated, and all areas in very close proximity to, but  
25 not necessarily contiguous with, the contamination that are  
26 necessary for implementation of the response action. The

1 landfill encompasses approximately three hundred forty-five acres  
2 of land in Spokane County, and is located in the northwest corner  
3 of the City of Spokane, Washington, about one-half mile east of  
4 the Spokane River, as shown on the map attached as Appendix 3.  
5 The term "off-site" shall mean all other areas and locations.

6 R. "Oversight Response Costs" shall mean all  
7 costs, including indirect costs, incurred by the United States  
8 and Ecology in overseeing the Work, including, but not limited  
9 to, the costs of reviewing or developing plans, reports and other  
10 items pursuant to this Consent Decree and verifying the Work.

11 S. "Paragraph" shall mean a portion of this  
12 Consent Decree identified by an Arabic numeral.

13 T. "Past Response Costs" shall mean all costs,  
14 including indirect costs, incurred by the United States and  
15 Ecology with regard to the Site prior to the effective date of  
16 the Consent Decree.

17 U. "Pollutants and Contaminants" shall have the  
18 meaning provided in Section 101(33) of CERCLA,  
19 42 U.S.C. § 9601(33).

20 V. "Record of Decision" or "ROD" shall mean the  
21 U.S. EPA Record of Decision (Appendix 1) relating to the Site  
22 signed on September 30, 1989, by the Regional Administrator, U.S.  
23 EPA Region 10, and concurred with by Ecology, and all attachments  
24 thereto.

25 W. "Remedial Action" shall have the meaning  
26 provided in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and

1 in particular, shall mean all Work required by this Consent  
2 Decree, including the Scope of Work as set forth in Appendix 4,  
3 and all attachments thereto and plans and schedules thereunder,  
4 and all amendments to any of the above made in accordance with  
5 this Consent Decree.

6 X. "Remedial Design/Remedial Action Work Plan"  
7 ("RD/RA Work Plan") shall mean the plans and their attachments,  
8 which describe studies, plans, and remedial actions to be  
9 undertaken at and around the Site, and includes all studies,  
10 plans, standards, schedules, specifications, and drawings  
11 prepared pursuant to this Consent Decree. Remedial  
12 Design/Remedial Action Work Plan also means the documents  
13 described in the preceding sentence developed by Government  
14 Plaintiffs where so designated.

15 Y. "Remedial Investigation/Feasibility Study  
16 ("RI/FS") shall be used as each term is defined in 40 C.F.R.  
17 § 300.5.

18 Z. "Response Costs" shall mean any past, future,  
19 and oversight costs incurred by Government Plaintiffs pursuant to  
20 CERCLA U.S.C. § 9601 et seq., and as defined in this Section.

21 AA. "Schedule of Deliverables" shall mean the  
22 schedule for submission of plans and reports as specified in the  
23 Project Management Plan required in the SOW.

24 BB. "Scope of Work" or "SOW" shall mean the scope  
25 of work for implementation of the remedial design, remedial  
26

1 action, and operation and maintenance of the remedial action at  
2 the Site, as set forth in Appendix 4.

3 CC. "Section" shall mean a portion of this  
4 Consent Decree identified by a Roman numeral and including one or  
5 more paragraphs.

6 DD. "Settling Parties" shall mean the United  
7 States, the State of Washington, and the City.

8 EE. "State" shall mean the State of Washington.

9 FF. "United States" shall mean the United States  
10 of America, including the United States Environmental Protection  
11 Agency.

12 GG. "U.S. DOJ" means the United States Department  
13 of Justice.

14 HH. "U.S. EPA" shall mean the United States  
15 Environmental Protection Agency.

16 II. "Work" shall mean activities required by the  
17 Consent Decree, including the design, construction, and  
18 implementation, in accordance with Section VI hereof, of the  
19 tasks described in the Scope of Work, and any schedules or plans  
20 required to be submitted pursuant thereto.

21  
22 V.

23 GENERAL PROVISIONS

24 25. Objectives of the Parties

25 The objectives of the Settling Parties in entering into  
26 this Consent Decree are to protect public health, welfare, and

1 the environment from releases or threatened releases of hazardous  
2 substances from the Site by the investigation, development,  
3 design, and implementation of remedial and monitoring programs by  
4 the City.

5           26. Effect of Settlement

6           The City denies the allegations in the Complaint and  
7 any and all legal and equitable liability under any federal or  
8 state statute, regulation, ordinance or common law for any  
9 response costs or damages arising from conditions presented by  
10 the Site. The City's participation in the settlement process  
11 shall not be considered an admission of liability for any  
12 purpose. The entry of this Consent Decree shall not be construed  
13 to be an acknowledgment by the Settling Parties that the release  
14 or threatened release concerned constitutes an imminent and  
15 substantial endangerment to the public health or welfare or the  
16 environment, or to create any rights in, or grant any cause of  
17 action to, any person not a party to this Consent Decree.

18           27. Commitments of the City

19           A. The City agrees to finance and perform all  
20 Work at the Site, including the RD/RA work set forth in Section  
21 VI, and to reimburse the Government Plaintiffs for response costs  
22 as provided herein.

23           B. The Work set forth in Section VI shall be  
24 completed in accordance with the standards, specifications, and  
25 within the time periods as prescribed in Section VI and in the  
26 SOW, which is incorporated herein by reference.

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2  
3           28.   Permits and Approvals

4           A.   All activities undertaken by the City pursuant  
5 to this Consent Decree shall be performed in accordance with the  
6 requirements of applicable, relevant, and appropriate laws  
7 identified in the ROD and as defined in this Consent Decree, as  
8 required by § 121(d) of CERCLA, 42 U.S.C. § 9621(d), as well as  
9 in accordance with all applicable permits for work conducted off-  
10 site, federal laws, and regulations. The United States has  
11 determined, and the State of Washington has concurred, that the  
12 obligations and procedures authorized under this Consent Decree  
13 are consistent with the authority of the United States under  
14 applicable law to establish appropriate remedial measures for the  
15 Site.

16           B.   The Government Plaintiffs have determined that  
17 no federal, state, or local permits are required for work  
18 conducted entirely on-site as described in the SOW. However, the  
19 substantive requirements of the permits required by the ARARs  
20 identified in the ROD and as defined in this Consent Decree shall  
21 be met. The City shall submit timely applications and requests  
22 for and take all other actions necessary to obtain all permits or  
23 approvals necessary for off-site work under federal, state, or  
24 local laws.

25           C.   The Settling Parties agree that if the City or  
26 its Contractors arrange for the storage, treatment, disposal, or

1 transportation of any hazardous substance off-site, then the City  
2 will, as required, obtain the U.S. EPA Administrator's written  
3 approval of the use of any such off-site facility, and will  
4 comply with the applicable provisions of 40 U.S.C. § 9621(d)(3),  
5 40 C.F.R. Parts 261, 262, 263, 264, and any relevant U.S. EPA  
6 policies or guidances.

7 D. The standards and provisions of Section XVIII  
8 describing Force Majeure shall govern delays in obtaining permits  
9 required for the work and also the denial of any such permits.  
10 However, the City is required to make complete and timely  
11 application for permits and must provide, in a timely manner,  
12 additional information as required by the regulatory agency  
13 pursuant to any applicable permitting laws and regulations.

14 E. The City shall include in all contracts or  
15 subcontracts entered into for Work required under this Consent  
16 Decree, provisions stating that such contractors or  
17 subcontractors, including their agents and employees, shall  
18 perform all activities required by such contracts or subcontracts  
19 in compliance with all applicable laws and regulations.

20 F. This Consent Decree is not, and shall not be  
21 construed to be, a permit issued pursuant to any federal or state  
22 statute or regulation.

23 29. Conveyance of the Site/Institutional Controls

24 A. The restrictions and obligations set forth in  
25 this Consent Decree or developed under it shall run with the land  
26 and shall be binding upon any and all persons who acquire any

1 interest in any property included in those portions of the Site  
2 owned by the City. Within thirty (30) calendar days of approval  
3 by the Court of this Decree, the City of Spokane as a Settling  
4 Defendant and owner of the Site shall record a copy of this  
5 Decree with the Auditor's Office, Spokane County, State of  
6 Washington. The City shall send a copy of the recorded notice to  
7 the Government Plaintiffs within five (5) days of recording.

8 B. Those portions of the Site owned by the City  
9 and described herein may be freely alienated, provided that at  
10 least sixty (60) days prior to the date of such alienation, the  
11 City notifies Government Plaintiffs of such proposed alienation,  
12 the name of the grantee, a copy of the proposed contract between  
13 the grantor and grantee, and a description of the City's  
14 obligations under this Consent Decree, if any, to be performed by  
15 such grantee. In the event of such alienation, all of the City's  
16 obligations pursuant to this Decree shall continue to be met by  
17 the City and, subject to approval by the U.S. EPA, the grantee.

18 C. Any deed, title, or other instrument of  
19 conveyance regarding those portions of the Site owned by the City  
20 shall contain a notice that the Site is the subject of this  
21 Consent Decree, setting forth the style of the case, case number,  
22 and the Court having jurisdiction herein. Said notation shall  
23 also notify any potential purchasers of property contained within  
24 the Site that:

25 (1) The land has been used to manage  
26 hazardous substances, and the hazardous substances, including



1 those listed in the ROD attached and incorporated into this  
2 Consent Decree, remain under the cap.

3 (2) Post-remedial action land use is  
4 restricted such that use of the property must never be allowed to  
5 disturb the integrity of the cap, or any other component of any  
6 containment system, pump and treat system, or the function of the  
7 Site's monitoring system, unless the Regional Administrator for  
8 U.S. EPA Region 10, after consultation with Ecology, finds that  
9 the disturbance:

10 a. is necessary to the proposed use of  
11 the property and will not increase the potential hazard to human  
12 health or the environment; or

13 b. is necessary to reduce a threat to  
14 human health or the environment.

15 (3) Restrictions upon the use of groundwater  
16 beneath the Site must also comply with all additional present and  
17 future restrictions placed on the use of such groundwater by the  
18 City of Spokane and Spokane County.

19 D. The City shall perform all actions necessary  
20 and appropriate to implement the above-referenced Institutional  
21 Controls, as defined in Paragraph 29, on the respective  
22 properties including, but not limited to, the recording of  
23 notices, plot plans, and other similar documents, and giving  
24 notice to local zoning authorities or other governmental  
25 entities. The City shall report to the Government Plaintiffs  
26

1 concerning its performance of all such actions, as provided in  
2 Section XI of this Decree.

3  
4 30. Incorporation of Documents

5 All exhibits, appendices, and attachments to this  
6 Consent Decree and any and all reports, plans, specifications,  
7 schedules, and other documents required by the terms of this  
8 Consent Decree and approved by U.S. EPA in accordance with the  
9 provisions of this Consent Decree (including its exhibits,  
10 appendices, and attachments) are incorporated into this Consent  
11 Decree and enforceable under it, except the Cleanup Memorandum of  
12 Agreement. Such documents also include those described in  
13 Paragraph 24.X, which are developed by Government Plaintiffs  
14 where so designated.

15  
16 VI.

17 PERFORMANCE OF THE WORK BY  
18 THE CITY

19 31. All remedial design work to be performed by the  
20 City pursuant to this Consent Decree shall be under the direction  
21 and supervision of a registered professional engineer or licensed  
22 architect with experience in hazardous waste management. The  
23 names, titles, and qualifications of the City's supervising  
24 architects or engineers to be used in carrying out the remedial  
25 design work to be performed pursuant to this Consent Decree are  
26 listed in the attached SOW.

1           32. All remedial action work to be performed by the  
2 City pursuant to this Consent Decree shall be under the direction  
3 and supervision of a registered professional engineer. The  
4 names, titles, and qualifications of the City's supervising  
5 contractor, and the names of principal contractors and/or  
6 subcontractors proposed to be used in carrying out the work to be  
7 performed pursuant to this Consent Decree are identified in the  
8 attached SOW.

9           33. Should the City decide to substitute different  
10 supervising architects or engineers, principal contractors and/or  
11 subcontractors for carrying out any of the Work pursuant to this  
12 Consent Decree after the effective date of this Consent Decree,  
13 the City shall notify Government Plaintiffs, in writing, within  
14 thirty (30) days prior to initiation of the relevant work by that  
15 different party. Such notification shall set forth the names,  
16 titles, and qualifications of the relevant parties. U.S. EPA  
17 shall notify the City within fourteen (14) days of receipt of  
18 notification, of its approval or disapproval and, if applicable,  
19 state the reason(s) justifying disapproval. If U.S. EPA  
20 disapproves of the selection of any supervising party named  
21 above, the City shall resubmit the name, title, and  
22 qualifications of a substitute party within thirty (30) days of  
23 receipt of U.S. EPA's disapproval. U.S. EPA shall, within  
24 fourteen (14) days of receipt of this information, provide the  
25 City with written notice of U.S. EPA's approval or disapproval.

1 This procedure shall continue until U.S. EPA notifies the City of  
2 U.S. EPA's approval of the substitute party.

3 34. The Scope of Work ("SOW") for the completion of  
4 remedial design and remedial action at the Site is attached and  
5 incorporated into and made an enforceable part of this Consent  
6 Decree (Appendix 4).

7 35. The following work shall be performed by the City:

8 A. Within sixty (60) calendar days of the  
9 effective date of this Consent Decree, the City shall submit the  
10 Project Management Plan which shall include a schedule for  
11 submission of work plans, reports and other documentation  
12 ("Schedule of Deliverables") to Government Plaintiffs. Within  
13 ninety (90) calendar days of this Consent Decree, the City shall  
14 submit the Sampling and Analysis Plan, Quality Assurance Project  
15 Plan, and Health and Safety Plan. Additional work plans,  
16 reports, and other documentation shall be submitted to Government  
17 Plaintiffs as required by the SOW and Schedule of Deliverables.  
18 The Project Management Plan, Schedule of Deliverables, RD/RA Work  
19 Plan, work plans, reports and other documentation shall be  
20 developed in conformance with the ROD, the SOW, U.S. EPA  
21 Superfund Remedial Design and Remedial Action Guidance, the NCP,  
22 and any additional guidance documents provided by U.S. EPA.

23 B. The Schedule of Deliverables shall include,  
24 but not be limited to, a schedule for submittal of the following  
25 project plans: (1) Project Management Plan; (2) Sampling and  
26

1 Analysis Plan (SAP); (3) Quality Assurance Project Plan (QAPP);  
2 (4) Health and Safety Plan (HSP); (5) Groundwater Extraction and  
3 Treatment Plan, which includes a Pilot Groundwater Extraction  
4 Program Plan and a Groundwater Treatment and Discharge Plan, and  
5 an Extraction System Performance Monitoring Plan; (6) Additional  
6 Site Characterization Plan, which shall include an Old Burn Unit  
7 Report and Summary Report, shall also include a Sludge Unit  
8 Report if an MFS cell is desired, and may include a SAP Addendum,  
9 QAPP Addendum, and HSP Addendum, Old Burn Unit Report, Sludge  
10 Unit Report, and Summary Report; and (7) Landfill Closure Plan,  
11 which includes a Capping Plan, Landfill Gas Control and  
12 Utilization Plan, MFS Compliant Cell Implementation Plan,  
13 Groundwater Monitoring Plan, Institutional Controls Plan,  
14 Contingency Plan, Construction Management Plan, Post Closure  
15 Operations and Management Plan, and Land Use Plan. Each  
16 individual plan shall include a schedule for implementation of  
17 the RD/RA tasks identified in that plan.

18 C. Within forty-five (45) calendar days of  
19 receipt of any document required by this Decree, U.S. EPA shall,  
20 in writing and after consultation with Ecology, either: (1)  
21 approve the submission, or; (2) disapprove the submission and  
22 notify the City of deficiencies. U.S. EPA shall notify the City  
23 in writing of approval or disapproval of the document or any part  
24 thereof. In the event that a longer review period is required,  
25 U.S. EPA shall notify the City of that fact within twenty-five  
26 (25) calendar days of receipt of the document. Nothing in this

1 provision shall negate U.S. EPA's right to approve or disapprove  
2 a submission by the City should U.S. EPA exceed the time periods  
3 stated in this Paragraph.

4 D. In the event of approval by U.S. EPA, the City  
5 shall proceed to take any action required by the approved plan,  
6 report, or other item.

7 E. Upon receipt of a notice of disapproval by  
8 U.S. EPA, the City shall, within forty-five (45) days, correct  
9 the deficiencies and resubmit the plan, report, or other item for  
10 approval; or provide notice of dispute pursuant to Section XIX  
11 below. The City may request additional time to make revisions to  
12 a disapproved document depending on the nature and scope of the  
13 revisions requested by EPA. EPA's decision whether to grant the  
14 City additional time is not subject to dispute resolution.  
15 Notwithstanding the notice of disapproval, the City shall proceed  
16 to take any action required by any non-deficient portion of the  
17 submission specifically approved by EPA in writing.

18 F. If, upon resubmission, the plan, report or  
19 item is not approved by U.S. EPA, U.S. EPA may, after  
20 consultation with Ecology, either: (1) require the City to make  
21 additional revisions to the plan, report or item; or (2) modify  
22 the City's resubmission to cure the deficiencies. U.S. EPA may  
23 deem the City to be in violation of this Consent Decree upon such  
24 resubmission pursuant to Section XX, Stipulated Penalties.  
25 Implementation of U.S. EPA approved portions of the submission  
26  
27

1 shall not relieve the City of its liability for stipulated  
2 penalties under Section XX.

3 G. In the event of a disapproval and subsequent  
4 modification by U.S. EPA under subparagraph F, the City shall  
5 proceed to take any action required by the plan, report or other  
6 item modified or revised.

7 H. A copy of the fully-approved Project  
8 Management Plan shall be filed with this Court and shall be  
9 deemed incorporated into and made an enforceable part of this  
10 Consent Decree. All work shall be conducted in accordance with  
11 CERCLA, the NCP, the ROD, U.S. EPA Superfund Remedial Design and  
12 Remedial Action Guidance, the SOW and the requirements of this  
13 Consent Decree, including the standards, specifications, and  
14 Schedule of Deliverables contained in the Project Management  
15 Plan.

16 I. When an U.S. EPA or Ecology action is a  
17 condition precedent to the City's action under this Decree or the  
18 SOW, the City shall not be obligated to perform such action  
19 unless and until U.S. EPA or Ecology, as appropriate, perform the  
20 precedent action. Any delay by U.S. EPA or Ecology in performing  
21 any precedent action shall result in an equal postponement of  
22 subsequent deadlines for required work by the City. The City may  
23 request an additional postponement of such deadlines if justified  
24 by any such delay by U.S. EPA or Ecology. U.S. EPA's decision  
25 whether to grant additional time is not subject to dispute  
26 resolution.

J. Except as expressly provided herein, EPA's decisions to disapprove or modify any plan, report or item submitted by the City shall be subject to dispute resolution.

36. The Settling Parties acknowledge and agree that neither the SOW nor the RD/RA Work Plan constitutes a warranty or representation of any kind by U.S. EPA or Ecology that the SOW or RD/RA Work Plan will achieve the performance standards set forth in the ROD and in this Consent Decree and shall not foreclose U.S. EPA or Ecology from seeking performance of all terms and conditions of this Consent Decree, including the applicable performance standards.

37. The Performance Goals and Cleanup standards are described in the ROD and SOW, and include:

A. Groundwater Cleanup Levels

	U.S. EPA Maximum Contaminant Levels and Guidelines MCLs and (MCLGs) <sup>1</sup> (Ug/L)	Washington State Class I Domestic Water Supply Standards <sup>2</sup> (Ug/L)
Chloroform <sup>3</sup>	100	100
1,1,1-Trichloroethane (TCA)	200 (200)	200
Trichloroethylene (TCE)	5	5

<sup>1</sup>U.S. EPA MCLs and Maximum Contaminant Level Goals (MCLGs) per 50 Fed. Reg. 46936 (November 13, 1985)

<sup>2</sup>State Board of Health Drinking Water Regulations, revised September 1989 (WAC 248-54)

<sup>3</sup>Lowest observed effect level



1 Tetrachloroethylene (PERC) 5  
2 Trans-1,2-dichloroethylene 100 6  
3 Vinyl Chloride 2 2

4  
5 B. Landfill Cap

6 The City shall meet all federal, state, and local  
7 requirements pertaining to landfill closure, including State  
8 Minimum Functional Standards for Solid Waste Handling,  
9 WAC Chapter 173-304.

10 VII.

11 U.S. EPA PERIODIC REVIEW TO ASSURE  
12 PROTECTION OF HUMAN HEALTH AND ENVIRONMENT

13 38. To the extent required by Section 121(c) of  
14 CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations,  
15 Government Plaintiffs shall review the remedial action at the  
16 Site at least every five (5) years after the entry of this  
17 Consent Decree to assure that human health and the environment  
18 are being protected by the remedial action being implemented.  
19 Prior to certification of completion of the remedial action, the  
20 City shall conduct the requisite studies, investigations, or  
21 other response actions as determined necessary by U.S. EPA, after  
22 consultation with Ecology, in order to permit U.S. EPA to conduct

23 <sup>4</sup>Requires periodic monitoring by community water systems

24 <sup>5</sup>U.S. Environmental Protection Agency, 1989, EPA Proposed  
25 National Primary and Secondary Drinking Water Regulations,  
26 54 Fed. Reg. 22062 (May 22, 1989)

27 <sup>6</sup>No MCLs or MCLGs currently proposed or promulgated

1 the review of the Site required by Section 121(c) of CERCLA. If  
2 upon such review, U.S. EPA determines prior to the certification  
3 of the completion of the work that further response action is  
4 appropriate at the Site in accordance with Sections 104 or 106 of  
5 CERCLA, 42 U.S.C. §§ 9604 and 9606, then the City shall implement  
6 such action in accordance with Section VIII [Additional Work].  
7 Any dispute regarding the necessity for or scope of such further  
8 response action shall be subject to the dispute resolution  
9 provisions in Section XIX if U.S. EPA seeks to require the City  
10 to perform the additional work.

11 39. The City shall be provided with an opportunity to  
12 confer with U.S. EPA or Ecology on any response action required  
13 during U.S. EPA's five (5) year review process and to submit  
14 written comments for the record during the public comment period.  
15 After the period for submission of written comments is closed,  
16 the Regional Administrator, U.S. EPA Region 10, shall, after  
17 consultation with Ecology, in writing, either affirm, modify, or  
18 rescind the determination of the need for further response  
19 action.

## 20 21 VIII.

### 22 ADDITIONAL WORK

23 40. In the event that U.S. EPA or the City determines  
24 that additional response work, including that identified during  
25 the CERCLA Section 121(c) review process and as referred to in  
26 Section VII of this Consent Decree, is necessary to meet the

1 Performance Goals and Cleanup Standards described in Section VI  
2 above, or to protect human health or the environment,  
3 notification of such additional work will be provided to the  
4 Project Coordinator for the other Party, and to Ecology.

5 41. Any additional work determined to be necessary by  
6 the City is subject to approval by U.S. EPA and to review and  
7 comment by Ecology. Any additional work determined to be  
8 necessary by Ecology is subject to the preconditions stated in  
9 Paragraph 51.C.

10 42. Any additional work determined to be necessary by  
11 the City and approved by U.S. EPA, or determined to be necessary  
12 by U.S. EPA to meet the Performance or Cleanup Standards, shall  
13 be completed by the City in accordance with the standards,  
14 specifications, and schedules approved by U.S. EPA, after  
15 consultation with Ecology.

16 43. Unless otherwise stated by U.S. EPA, within thirty  
17 (30) days of receipt of notice by U.S. EPA that additional work  
18 is necessary, the City shall submit for approval by U.S. EPA and  
19 for review and comment by Ecology, a work plan for the additional  
20 work. The plan shall conform to the ROD, SOW, U.S. EPA Superfund  
21 Remedial Design and Remedial Action Guidance, the NCP, and any  
22 additional guidance documents provided by U.S. EPA. Upon  
23 approval pursuant to the procedures set forth in Paragraph 35  
24 Section VI, the City shall implement the plan for additional work  
25 in accordance with the schedule contained therein.

1           44. Disputes with regard to the need for or  
2 appropriateness of any additional work determined to be necessary  
3 by any Settling Party shall be subject to the dispute resolution  
4 procedures in Section XIX. The City shall not accrue any  
5 stipulated penalties during any good faith dispute concerning  
6 decisions invoked pursuant to Section XIX of this Consent Decree  
7 regarding the necessity for or scope of additional work. EPA  
8 shall make the final determination regarding whether the dispute  
9 is in good faith, and such decision shall not be subject to  
10 dispute resolution.  
11

12                               IX.

13                               QUALITY ASSURANCE, SAMPLING

14           45. Prior to the commencement of any construction or  
15 monitoring project under this Consent Decree, and in accordance  
16 with the schedule and requests delineated in or established  
17 pursuant to the SOW, the City shall submit a Quality Assurance  
18 Project Plan ("QAPP") to U.S. EPA, and to Ecology for review and  
19 comment, that is consistent with the ROD, the SOW, and applicable  
20 guidance and guidelines, including U.S. EPA's "Interim Guidelines  
21 and Specifications For Preparing Quality Assurance Project Plans"  
22 (QAMS-005/80), U.S. EPA's Data Quality Objective Guidance  
23 (EPA/540/G87/003 and 004), and subsequent amendments to such  
24 guidelines. U.S. EPA, after review of the City's QAPP(s) and  
25 consultation with Ecology, will notify the City within twenty-  
26 one (21) days of receipt of QAPP(s) of any required

1 modifications, conditional approval, disapproval, or approval of  
2 the QAPP(s). Upon notification of disapproval or any need for  
3 modifications, the City shall make all required modifications in  
4 the QAPP(s). Sampling data generated consistent with the QAPP(s)  
5 shall not be challenged as to admissability on the basis of any  
6 matter contained in the QAPP(s) by any Settling Party, in any  
7 proceeding under Paragraph XIX of this Decree.

8           46. The City shall designate an independent Quality  
9 Assurance Official (QA Official). This QA Official shall be  
10 independent of the construction contractor and shall conduct a  
11 quality assurance program during the construction phase of the  
12 project. The City shall include in the SOW a Construction  
13 Quality Assurance Project Plan (CQAPP).

14           47. The City shall assure that U.S. EPA and Ecology  
15 personnel or authorized representatives are allowed access to any  
16 laboratory, laboratory worker, laboratory record, and item of  
17 equipment utilized in implementing this Consent Decree. The City  
18 shall also require each laboratory selected to submit a QAPP for  
19 Government Plaintiffs' review. The City shall have a designated  
20 laboratory analyze samples submitted by U.S. EPA or Ecology for  
21 quality assurance monitoring. The frequency and extent of such  
22 requests for analyses by U.S. EPA shall not exceed those required  
23 by U.S. EPA under the Contract Laboratory Program.

24           48. The City shall make available to Government  
25 Plaintiffs the results of all sampling and/or tests or other data  
26 generated by the City with respect to the implementation of this

1 Consent Decree, and shall submit these results in monthly  
2 progress reports as described in Section XI of this Consent  
3 Decree.

4           49. At the request of U.S. EPA or Ecology, the City  
5 shall allow split or duplicate samples to be taken by U.S. EPA or  
6 Ecology or their authorized representatives, of any samples  
7 collected by the City pursuant to the implementation of this  
8 Consent Decree. As required by 42 U.S.C. § 9604(e)(4)(b), U.S.  
9 EPA, Ecology and their representatives shall provide to the City  
10 a receipt for all samples taken; provide, if requested, a portion  
11 of all samples taken; and provide a copy of the results of any  
12 analysis made of samples taken. The City shall notify Government  
13 Plaintiffs not less than fourteen (14) days in advance of any  
14 sample collection activity under this Consent Decree. When  
15 reasonable under the circumstances, Government Plaintiffs shall  
16 notify the City not less than fourteen (14) days in advance of  
17 any sampling collection activity under this Consent Decree and  
18 provide the City an opportunity to be present during any such  
19 activity. In addition, any Settling Party shall have the right  
20 to take any additional samples that the Settling Party deems  
21 necessary.

22           50. Notwithstanding any provision of this Consent  
23 Decree, Government Plaintiffs hereby retain all of their  
24 respective information gathering and inspection authorities and  
25 rights under CERCLA, RCRA, and any other applicable statute or  
26 regulations.

1  
2 X.

3 ACCESS

4 51. From the date of lodging of this Consent Decree  
5 until U.S. EPA certifies completion of the Work pursuant to  
6 Section XXVII, Government Plaintiffs and their representatives  
7 and contractors shall have the authority at all times to enter  
8 and move freely about the Site and any property to which access  
9 is required for the implementation of this Consent Decree, to the  
10 extent access to the property is controlled by or available to  
11 the City, for the purposes of conducting activities authorized by  
12 or related to this Consent Decree. When reasonable under the  
13 circumstances, Government Plaintiffs agree to provide the City at  
14 least 48 hours oral notice prior to entering the Site under this  
15 Consent Decree.

16 A. For Government Plaintiffs, these activities  
17 include, but are not limited to:

- 18 (1) Monitoring the Work or any other  
19 activities taking place on the property;  
20 (2) Verifying any data or information  
21 submitted to the United States;  
22 (3) Conducting investigations, tests, or  
23 collecting samples as it may deem necessary relating to  
24 contamination at or near the Site;  
25 (4) Obtaining samples;

1 (5) Using a camera, sound recording, or  
2 other documentary type of equipment to record work done pursuant  
3 to this Consent Decree; and

4 (6) Inspecting and copying records,  
5 operating logs, contracts, or other documents relating to the  
6 Site.

7 B. U.S. EPA may assess the need for planning and  
8 implementing additional response actions at or near the Site.  
9 Ecology may assess and recommend to U.S. EPA the need for  
10 implementing additional response actions at or near the Site.

11 C. Ecology may conduct independent investigations  
12 or plan and implement additional response actions at or near the  
13 Site as it may deem necessary relating to contamination at the  
14 Site, as long as such actions are consistent with remedial  
15 activities identified in the ROD and this Consent Decree, and in  
16 only those instances that arise as matters of State law and are  
17 not preempted by federal law. Ecology must obtain EPA's prior  
18 authorization of any proposed additional response action.

19 52. To the extent that the Site or any other area  
20 where work is to be performed under this Consent Decree is owned  
21 or controlled by persons other than the City, the City shall use  
22 its best efforts to secure from such persons signed access  
23 agreements for the City, its contractors and agents, as well as  
24 for Government Plaintiffs and their authorized representatives or  
25 agents, as necessary to effectuate this Consent Decree. For  
26 purposes of this paragraph "best efforts" includes, but is not



1 limited to, seeking judicial assistance and the payment of money  
2 in consideration of access. If access is not obtained within  
3 forty-five (45) days of the date of entry of this Consent Decree,  
4 the City shall notify Government Plaintiffs, in writing, within  
5 five (5) days after the close of such period regarding both the  
6 lack of such agreements and the effort made to obtain them. The  
7 Government Plaintiffs may thereafter assist the City in obtaining  
8 access. Once U.S. EPA has obtained access, U.S. EPA may  
9 designate the City as its representative solely for the purpose  
10 of access, pursuant to CERCLA and the NCP. The City shall, in  
11 accordance with Sections XVI and XVII herein, indemnify and  
12 reimburse the United States and the State of Washington for all  
13 costs incurred by either party in obtaining access.

14           53. Government Plaintiffs reserve the right to request  
15 at some future time that the City obtain access to properties not  
16 yet identified at the time that this Consent Decree is entered.  
17 If U.S. EPA or Ecology identifies that such access is necessary,  
18 either agency shall so notify the City in writing. The  
19 procedures set forth in Paragraph 52 shall apply if the City is  
20 unsuccessful in obtaining access upon such request.

21           54. At a minimum, the City shall provide the necessary  
22 labor, equipment, materials, and technical expertise to provide  
23 and maintain access to critical areas (e.g., monitoring wells,  
24 the groundwater pump and treat system) on the Site under all  
25 weather conditions. This may include an access road through the  
26

1 landfill, a loop road around the perimeter of the landfill, and  
2 any bench roads to on-site areas.

3           55. If the work includes the installation and  
4 operation of monitoring wells, pumping wells, treatment  
5 facilities, or other response actions, the City shall ensure for  
6 purposes of its own property, and shall use its best efforts and  
7 authority under law and this Consent Decree to ensure for  
8 purposes of any other property that no conveyance of title,  
9 easement, or other interest in the property shall be consummated  
10 without provisions for the continued operation of such wells,  
11 treatment facilities, or other response actions on the property,  
12 and also provide that the owners of any property where monitoring  
13 wells, pumping wells, treatment facilities, or other response  
14 actions are located shall notify Government Plaintiffs and the  
15 City by Certified Mail, at least thirty (30) days prior to any  
16 conveyance, of the property owner's intent to convey any interest  
17 in the property and of the provisions made or to be made for the  
18 continued operation of monitoring wells, pumping wells,  
19 treatment facilities, or other response actions installed  
20 pursuant to this Consent Decree.

21           56. Notwithstanding any provision of this Consent  
22 Decree, the Settling Parties retain all of their respective  
23 access authorities and rights under CERCLA, RCRA, and any other  
24 applicable statute or regulations.

25  
26                           XI.

XI REPORTING REQUIREMENTS

57. The City shall provide or cause the contractor or agent to provide to Government Plaintiffs for their review, written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) include all results of sampling and tests and all other data received by the City during the course of the Work; (3) include all plans and procedures completed under the RD/RA Work Plan during the previous month; (4) describe all actions, data, plans, and other deliverables which are scheduled for the next two (2) months and provide other information relating to the progress of construction as is customary in the industry; (5) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the SOW or RD/RA Work Plan, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to Government Plaintiffs by the tenth day of every month following the effective date of this Consent Decree.

58. If the date for submission of any item or notification required by this paragraph falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

1           59. Upon the occurrence of any event during  
2 performance of the work which has not been approved by EPA under  
3 this Consent Decree, the ROD or SOW, and which, pursuant to  
4 Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. 300.63,  
5 requires reporting to the National Response Center, the City  
6 shall within twenty-four (24) hours promptly orally notify the  
7 U.S. EPA Remedial Project Manager ("RPM") or On-Scene Coordinator  
8 ("OSC"), or in the event of the unavailability of the U.S. EPA  
9 RPM or OSC, the Emergency Response Section, Region 10, United  
10 States Environmental Protection Agency, in addition to the  
11 reporting required by Section 103 of CERCLA. The U.S. EPA  
12 official receiving the report shall contact the Ecology RPM  
13 within twenty four (24) hours of receiving notice, and promptly  
14 follow with written notice. Within twenty (20) calendar days of  
15 the onset of such an event, the City shall furnish to U.S. EPA,  
16 and to Ecology for review, a written report setting forth the  
17 events which occurred and the measures taken and to be taken in  
18 response thereto. Within thirty (30) days of the conclusion of  
19 such an event, the City shall submit to Government Plaintiffs a  
20 report setting forth all actions taken to respond thereto. The  
21 twenty (20) and thirty (30) day reports required by this  
22 Paragraph may be incorporated into the City's regular monthly  
23 reports under Paragraph 57.

24  
25                           XII.

26                   REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

1           60. Within twenty (20) calendar days of the effective  
2 date of this Consent Decree, Settling Parties shall each  
3 designate a Remedial Project Manager (RPM) and alternate for the  
4 Site, and the Government Plaintiffs may designate other  
5 representatives, including U.S. EPA and Ecology employees, and  
6 federal and state contractors and consultants, to observe and  
7 monitor the progress of activity undertaken pursuant to this  
8 Consent Decree. If the originally designated Project  
9 Coordinator, RPM, or On-Scene Coordinator (OSC) is changed, the  
10 identity of the successor will be provided to the other Settling  
11 Parties at least five (5) working days before the changes become  
12 effective.

13           61. The U.S. EPA RPM shall have the authority lawfully  
14 vested in RPMs and OSCs by the NCP, 40 C.F.R. Part 300. In  
15 addition, the U.S. EPA RPM shall have authority, consistent with  
16 the NCP, to halt, conduct, or direct any work required by this  
17 Consent Decree, and to take any necessary response action when he  
18 determines in his opinion that conditions at the Site may present  
19 an imminent and substantial endangerment to public health or  
20 welfare or the environment. In the event that the U.S. EPA RPM  
21 requires such cessation of work, he then shall have the authority  
22 to require the City to take actions in accordance with the  
23 instructions of the U.S. EPA RPM to avoid or mitigate the  
24 endangerment or release that the U.S. EPA RPM believes may occur.  
25 If the City objects to any order by the U.S. EPA RPM, it may  
26 petition the Court to stay or set aside such order, under the

1 standard of review set forth in Section 113(j) of CERCLA, 42  
2 U.S.C. § 9613(j). The filing of such a petition shall not  
3 operate to stay the effectiveness of such order, nor shall it in  
4 any way operate to preclude U.S. EPA from taking response  
5 actions, or from seeking to enforce such order.

6 62. The Ecology Project Manager shall serve as the  
7 primary representative for Ecology for response actions at the  
8 Site. The Ecology Project Manager shall review data and  
9 documents as provided under the Memorandum of Agreement between  
10 EPA and Ecology Regarding the Primary Technical Review of Certain  
11 Documents, recommend action for decision by the lead agency, and  
12 provide other assistance as requested. The Ecology Project  
13 Manager's period of responsibility continues through design,  
14 remedial action, deletion of the Site from the NPL, cost  
15 recovery, and post-closure compliance monitoring.

16 63. The U.S. EPA RPM may authorize minor field  
17 deviations, which shall be documented in writing, signed by both  
18 the City's Project Coordinator and the U.S. EPA RPM within five  
19 (5) working days of authorization, and U.S. EPA shall send a copy  
20 to Ecology within five (5) working days of authorization. Minor  
21 field deviations may not result in a change in the time period  
22 within which the Work must be performed, pursuant to the Schedule  
23 of Deliverables, SOW or subsequent schedules approved by U.S.  
24 EPA, or in any way adversely affect the quality of the Work.

25 64. To the maximum extent possible, excepting as  
26 specifically provided in this Consent Decree, communications

1 between the City and Government Plaintiffs concerning the  
2 implementation of the Work under this Consent Decree shall be  
3 made between the RPMs.

4  
5 XIII.

6 FINANCIAL RESPONSIBILITY

7 65. The City shall, within ten (10) working days of  
8 the effective date of this Consent Decree and every one hundred  
9 eighty (180) calendar days thereafter, submit to the Government  
10 Plaintiffs financial reports that include cash flow projections  
11 that project the amount of funds that will be necessary to pay  
12 for all work related to performing the work required by this  
13 Decree on a biannual basis for the following year, as well as a  
14 description of the amount and type of funding currently available  
15 to pay such costs. If the amount of funding is less than the  
16 amount projected to be needed for the following 180 day period,  
17 the City shall within thirty (30) calendar days of submittal of  
18 the financial report:

19 A. Obtain or otherwise make available sufficient  
20 money to bring the amount of funds available up to the amount  
21 projected to be needed for the 180 calendar days following  
22 submittal of the financial report; and

23 B. Submit to the Government Plaintiffs an  
24 updated financial report which includes a description of the  
25 amount and type of all additional funding made available.

1           66. The Government Plaintiffs, through their review  
2 and/or approval of financial reports, do not guarantee the  
3 monetary sufficiency of funding obtained or otherwise made  
4 available pursuant to this Section, or the legal sufficiency of  
5 any arrangements made to fund the Work required by this Consent  
6 Decree. Notwithstanding the requirements of this section, the  
7 City remains fully responsible for all its obligations under this  
8 Decree.

9  
10                           XIV.

11                           ENDANGERMENT

12           67. In the event that U.S. EPA determines or concurs  
13 in a determination by another local, state, or federal agency  
14 that activities implementing this Consent Decree, or any other  
15 circumstances or activities, including continued operation of the  
16 landfill, are creating or have the potential to create an  
17 imminent and substantial endangerment to the public health or  
18 welfare or the environment, U.S. EPA may, in writing, order the  
19 City to stop further implementation of this Consent Decree for  
20 such period of time as needed to abate the danger. During any  
21 stoppage of Work under this section, the City's obligations with  
22 respect to the Work ordered to be stopped shall be suspended and  
23 the time periods for performance of that Work, as well as the  
24 time period for any other Work dependent upon the Work which  
25 stopped, shall be extended, for such period of time as U.S. EPA



1 determines is reasonable under the circumstances, in no event  
2 less than the time of the stoppage.

3           68. In the event that the City determines that  
4 activities undertaken in furtherance of this Consent Decree or  
5 any other circumstances or activities are creating or have the  
6 potential to create an imminent and substantial endangerment to  
7 the people on the Site or in the surrounding area or to the  
8 environment, the City may stop implementation of the Consent  
9 Decree for such periods of time necessary for U.S. EPA to  
10 evaluate the situation, consult with Ecology, and determine  
11 whether the City should proceed with implementation of the  
12 Consent Decree or whether the Work stoppage should be continued  
13 until the danger is abated. The City shall notify the RPMs, in  
14 writing, as soon as possible, at the latest by the next working  
15 day, between the hours of 8:00 a.m. and 5:00 p.m. If the  
16 stoppage occurs on a weekend or holiday, notification shall be  
17 the next working day. The City shall provide U.S. EPA, and  
18 Ecology for review and comment, with documentation of its  
19 analysis in reaching its determination that it was necessary to  
20 stop Work. If U.S. EPA disagrees with the determination by the  
21 City, it may order the City to resume implementation of the  
22 Consent Decree. During any stoppage of Work under this  
23 paragraph, the City's obligations shall be suspended, and the  
24 time periods of performance of that Work, as well as the time  
25 period for any other Work dependent upon the Work which was  
26 stopped, shall be extended, pursuant to this Consent Decree, for

1 such period of time as U.S. EPA determines is reasonable under  
2 the circumstances, but in no event less than the time of the  
3 stoppage.

4 69. Any disagreement pursuant to this Section shall be  
5 resolved through the dispute resolution procedures set forth in  
6 Section XIX.

7  
8 XV. FUTURE RESPONSE

9 70. In the event that the City fails to take  
10 appropriate response action as required by this Consent Decree,  
11 U.S. EPA or Ecology may take such action instead. Ecology may  
12 take such action only at the request of U.S. EPA or pursuant to  
13 the conditions set forth in Paragraph 51.C of this Consent  
14 Decree. This Court retains jurisdiction over all matters arising  
15 under this Paragraph pursuant to Section XXVIII [Retention of  
16 Jurisdiction] of this Consent Decree.

17 71. Nothing in the preceding Paragraph shall be deemed  
18 to limit the power and authority of the United States, or this  
19 Court to take, direct, or order all appropriate action to protect  
20 human health and the environment or to prevent, abate, or  
21 minimize an actual or threatened release of hazardous substances  
22 on, at, or from the Site, or prevent or mitigate activities that  
23 are creating or have the potential to create an imminent and  
24 substantial endangerment to the public health or welfare or the  
25 environment.

1           72. Any disagreement pursuant to this Section shall be  
2 resolved through the dispute resolution procedures set forth in  
3 Section XIX.

4  
5                                   XVI.

6                           REIMBURSEMENT OF RESPONSE COSTS

7           73. The City shall pay \$229,289.67 incurred by the  
8 United States prior to the effective date of the Consent Decree.  
9 Payment shall be made within one year of the City's signing of  
10 this Consent Decree to the "EPA Hazardous Substance Trust Fund."  
11 Such payment shall be sent to: EPA Region 10, Attention:  
12 Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania  
13 15251, in the form of a certified or cashier check payable to  
14 "EPA Hazardous Substances Trust Fund," and shall contain the site  
15 name and civil action number. A copy of each check with an  
16 explanatory transmittal letter shall be sent to the Director of  
17 the Hazardous Waste Division, EPA Region 10.

18           74. Nothing herein shall be construed as limiting the  
19 rights of the United States to seek any cost recovery from liable  
20 persons not a party to this Consent Decree. In consideration of  
21 the monies received under Paragraph 73 of this Section, the  
22 United States covenants not to sue the City for such past costs  
23 pursuant to CERCLA, 42 U.S.C. § 9601 et seq.

24           75. The City shall pay all Future and Oversight  
25 Response Costs, as defined in this Consent Decree, incurred by  
26 the United States relating to the Site and not inconsistent with

1 the NCP. Payments to the United States shall be made by the City  
2 on an annual basis and within sixty (60) calendar days of the  
3 submission of itemized cost statements and supporting  
4 documentation, and include any interest due. The United States  
5 shall submit its Future and Oversight costs claims following the  
6 end of each federal fiscal year. Payments shall be made as  
7 specified in Paragraph 73 above, and shall include any interest  
8 due. In consideration of and upon payment of all Future and  
9 Oversight costs as required by this Paragraph, the United States  
10 covenants not to sue the City as specified in Section XXI for  
11 such costs.

12           76. If the City determines that the United States, has  
13 made an accounting error or has incurred a cost that is  
14 inconsistent with the NCP, the City may contest payment of any  
15 amount by initiating the dispute resolution procedures under  
16 Section XIX before payment is due. The written request for  
17 dispute resolution shall specifically identify the contested  
18 costs and provide a detailed explanation of the basis for the  
19 objection. In the dispute resolution process, the City bears the  
20 burden of proving that an accounting error has been made or that  
21 costs incurred are inconsistent with the NCP.

22           77. If any dispute over costs is resolved before  
23 payment is due, the amount due will be adjusted as necessary. If  
24 the dispute is not resolved before payment is due, the City  
25 shall, on or before the due date, pay the full amount of the  
26 contested costs into an escrow account in a bank duly chartered

1 in the State of Washington and shall simultaneously transmit a  
2 copy of the check to the U.S. EPA Project Coordinator. If the  
3 City subsequently prevails in all or part of the dispute, the  
4 City may withdraw from the escrow account the amount upon which  
5 it prevailed in the dispute, plus any interest paid thereon. If  
6 the City does not prevail in all or part of the dispute, the City  
7 shall withdraw the full amount requested by the U.S. EPA under  
8 Paragraph 75 from the escrow account and transmit this amount,  
9 plus any interest due at the rate specified in Paragraph 78, to  
10 U.S. EPA within three days after the completion of dispute  
11 resolution.

12 78. Unless costs are disputed by the City under  
13 Paragraphs 76, if payment of any costs demanded under Paragraph  
14 75 is not received by U.S. EPA when payment is due, interest  
15 shall accrue from the date sixty (60) days after payment is  
16 demanded under Paragraph 75. Interest shall accrue on the unpaid  
17 balance until such costs and accrued interest have been paid in  
18 full. The interest rate shall be the rate specified for interest  
19 on investments of the Hazardous Substances Superfund in Section  
20 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21 79. The City shall pay \$62,629.64 to the State Toxics  
22 Control Account for costs incurred by Ecology prior to the  
23 effective date of this Consent Decree. Payment shall be made  
24 within one year of the City's signing of this Consent Decree.  
25 Such payments, with interest if appropriate, shall be sent to:

26 Department of Ecology  
27 Cashiering Section

P.O. Box 5128  
Lacey, Washington 98503-5128

The payment shall contain the Site name and civil action number.

80. Payment of funds pursuant to Paragraph 79 shall satisfy the City's obligation for past costs incurred by Ecology. In consideration of the monies received under Paragraph 79, Ecology covenants not to sue the City for any past costs. Nothing herein shall be construed as limiting the rights of Ecology to seek any cost recovery from liable persons not a party to this Consent Decree.

81. The City shall pay all Future and Oversight Response Costs, as defined in this Consent Decree, incurred by Ecology relating to the Site and not inconsistent with the NCP. Ecology will send to the City a quarterly summary statement of Ecology's expenses relating to the Site. Within ninety (90) days of receipt of the statement, the City shall pay into the State Toxics Control Account the required sum with interest if appropriate. The payment shall contain the Site name and civil action number. Such payments shall be sent to the address set forth in Paragraph 79.

82. In consideration of and upon payment of all Future and Oversight costs as required by this Paragraph and by Paragraph 81, Ecology covenants not to sue the City as specified in Section XXI for any Future and Oversight costs in overseeing the Work required by this Consent Decree.

83. If the City determines that Ecology has made an accounting error or has incurred a cost that is inconsistent with  
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1 the NCP, the City may contest payment of any amount by initiating  
2 dispute resolution procedures described in Paragraph 107, Section  
3 XIX before payment is due. In the dispute resolution process,  
4 the City bears the burden of proving that an accounting error has  
5 been made or that costs incurred are inconsistent with the NCP.

6 84. If any dispute over cost is resolved before  
7 payment is due, the amount due will be adjusted as necessary. If  
8 the dispute is not resolved before payment is due, the City  
9 shall, on or before the due date, pay the full amount of the  
10 contested costs into an escrow account in a bank duly chartered  
11 in the state and shall simultaneously transmit a copy of the  
12 check to the Ecology RPM. After the dispute resolution process  
13 is concluded, the City shall withdraw from the escrow account the  
14 amount upon which it prevailed in dispute resolution, plus any  
15 interest at the rate specified in Paragraph 78. Amounts due  
16 Ecology according to the dispute resolution process, plus any  
17 interest paid thereon, shall be transmitted to Ecology within  
18 three (3) days after the completion of dispute resolution.

19 85. Unless costs are disputed by the City under  
20 Paragraphs 82 and 83, if payment of any costs demanded under  
21 Paragraph 81 is not received by Ecology when payment is due,  
22 interest shall accrue from the date sixty (60) days after payment  
23 was demanded under Paragraph 81 at the rate established in  
24 Paragraph 78. Interest shall accrue on the unpaid balance until  
25 such costs and accrued interest have been paid in full.

1           86. If Oversight costs are outstanding at the time the  
2 United States and Ecology plan to terminate this Consent Decree,  
3 the City shall, within sixty (60) calendar days of the submission  
4 of an itemized cost statement and supporting documentation by the  
5 United States and/or Ecology, and before termination of this  
6 Consent Decree, pay such Oversight costs and any interest due.

7           87. The Response Costs set forth in Paragraphs 73 and  
8 79 of this Section are not inconsistent with the NCP.

9  
10                           XVII.

11                           INDEMNIFICATION AND INSURANCE

12           88. The City shall indemnify and save and hold  
13 harmless Government Plaintiffs and their officials, agents,  
14 employees, contractors, or representatives from any and all  
15 claims or causes of action arising from or on account of acts or  
16 omissions of the City, its officers, employees, agents,  
17 contractors, subcontractors, representatives, and any persons  
18 acting on their behalf or under their control, in carrying out  
19 activities pursuant to this Consent Decree. Neither the United  
20 States nor Ecology shall be held out as a party to any contract  
21 entered into by or on behalf of the City in carrying out  
22 activities pursuant to this Consent Decree. The proper  
23 completion of Work under this Consent Decree is solely the  
24 responsibility of the City. Neither the City nor any such  
25 contractor shall be considered an agent of the United States or  
26 Ecology.



1           89. U.S. EPA and Ecology shall notify the City of any  
2 such claims or actions within sixty (60) working days of  
3 receiving notice that such a claim or action is anticipated or  
4 has been filed. U.S. EPA and Ecology agree not to act with  
5 respect to any such claim or action without first providing the  
6 City an opportunity to participate.

7           90. Nothing in this Consent Decree shall constitute or  
8 be construed as a release from any claim, cause of action or  
9 demand in law or equity against any person, firm, partnership,  
10 corporation, or state or local government entity not a signatory  
11 to this Consent Order for any liability it may have arising out  
12 of or relating in any way to the generation, storage, treatment,  
13 handling, transportation, release, or disposal of any hazardous  
14 substances, hazardous wastes, pollutants, or contaminants found  
15 at, taken to, or taken from the Site.

16           91. The City waives, and shall indemnify and hold  
17 harmless the United States and the State of Washington with  
18 respect to any claims for damages or reimbursement from the  
19 United States or the State of Washington, or for set-off of any  
20 payments made or to be made to the United States or the State of  
21 Washington, arising from or on account of any contract,  
22 agreement, or arrangement between the City and any person for  
23 performance of work on or relating to the Site, including claims  
24 on account of construction delays.

1           92. Nothing in this Consent Decree shall be construed  
2 as U.S. EPA's preauthorization of any claim against the Hazardous  
3 Substances Superfund.

4           93. For the duration of this Consent Decree, the City  
5 shall satisfy, or ensure that its contractors or subcontractors  
6 satisfy, all applicable laws and regulations regarding the  
7 provision of workmen's compensation insurance for all persons  
8 performing work on behalf of the City in furtherance of this  
9 Consent Decree. Prior to commencement of Work under this Consent  
10 Decree, the City shall provide to Government Plaintiffs  
11 certificates of such insurance and a copy of each insurance  
12 policy.

13           94. The City shall submit to U.S. EPA, within ten (10)  
14 days of the effective date of this Consent Decree, a brief  
15 description of all sources of insurance available for the  
16 Northside Landfill RD/RA Work.

17  
18                               XVIII.

19                               FORCE MAJEURE

20           95. Force majeure is defined for the purposes of this  
21 Consent Decree as an event arising from causes entirely beyond  
22 the control of the City and of any entity controlled by the City,  
23 including its contractors and subcontractors, which delays or  
24 prevents the performance of any obligation under this Consent  
25 Decree despite the exercise of due diligence by the City. Force  
26 Majeure does not include unanticipated or increased costs,

1 changed financial circumstances of the City, or non-attainment of  
2 the performance goals and standards set forth in Section VI  
3 hereof, the ROD, or the SOW.

4           96. When circumstances occur which may delay or  
5 prevent the completion of any phase of the Work or access to the  
6 Site or to any property on which part of the Work is to be  
7 performed, whether or not caused by a force majeure event, the  
8 City shall notify the U.S. EPA and Ecology RPMs orally of the  
9 circumstances within twenty-four (24) hours after it first  
10 becomes aware of them. If the RPM is unavailable, the City shall  
11 orally notify the Director of the Waste Management Division, U.S.  
12 EPA Region 10, and Ecology's Hazardous Waste Cleanup Program  
13 Manager within twenty-four 24 hours of the delay. Within five  
14 (5) working days after the City first becomes aware of such  
15 circumstances, the City shall supply to U.S. EPA and Ecology, for  
16 review and comment, a written explanation of the cause(s) of any  
17 actual or expected delay or noncompliance, the anticipated  
18 duration of any delay, the measures taken and to be taken by the  
19 City to prevent or minimize the delay or correct the  
20 noncompliance, and the timetable for implementation of such  
21 measures. Failure to give timely oral and written notice to U.S.  
22 EPA and Ecology in accordance with this Paragraph, and to provide  
23 the written information in a timely manner, shall constitute a  
24 waiver of any claim of force majeure with respect to the  
25 circumstances in question.

1           97. If U.S. EPA, after consultation with Ecology,  
2 agrees that a delay is or was caused by a force majeure event,  
3 the Settling Parties shall seek modification of the Schedule of  
4 Deliverables, the RD/RA Work Plan and other relevant documents to  
5 provide such additional time as may be necessary (to be  
6 determined by U.S. EPA after consultation with Ecology) to allow  
7 the completion of the specific phase of the Work and/or any  
8 succeeding phase of the Work affected by such delay, which  
9 additional time shall be no longer than the actual delay  
10 resulting from the force majeure event.

11           98. In proceedings on any dispute regarding a delay in  
12 performance or other noncompliance, the City shall have the  
13 burden of proving (1) that the delay or noncompliance is or was  
14 caused by a force majeure event; and (2) that the amount of  
15 additional time requested is necessary to compensate for that  
16 event. The Dispute Resolution procedure set forth in Paragraph  
17 XIX shall govern.

18           99. Delay in achievement of any milestone established  
19 by the Schedule of Deliverables, RD/RA Work Plan and/or other  
20 relevant documents shall not automatically justify or excuse  
21 delay in achievement of any subsequent milestone.  
22

## 23                           XIX.

### 24                           DISPUTE RESOLUTION

25           100. The Parties to this Consent Decree shall attempt  
26 to resolve expeditiously and informally any disagreements  
27

1 concerning implementation of this Consent Decree or any Work  
2 required hereunder. U.S. EPA's interpretation of this Consent  
3 Decree and all documents incorporated pursuant to Paragraph 30,  
4 is binding unless the City invokes dispute resolution procedures  
5 pursuant to Section XIX. Informal negotiations between the  
6 Parties to the dispute may last for a period of up to fourteen  
7 (14) calendar days from the date that written notice of the  
8 existence of the dispute is first given.

9         101. In the event that any dispute arising under this  
10 Consent Decree between U.S. EPA and the City is not resolved  
11 informally within the time period indicated in Paragraph 100,  
12 either Party desiring dispute resolution under this Section shall  
13 give written notice to the other party to the Decree within ten  
14 (10) calendar days of the end of the informal dispute resolution  
15 period.

16         102. Any dispute arising under this Consent Decree  
17 between Government Plaintiffs shall be resolved in accordance  
18 with the separate Dispute Resolution Memorandum of Agreement,  
19 which is incorporated into this Consent Decree and attached  
20 hereto as Appendix 7. Paragraph 12.c of this Memorandum of  
21 Agreement sets forth the timing and contents of U.S. EPA's  
22 written notification to the City stating that Government  
23 Plaintiffs have invoked formal dispute resolution.

24         103. Within ten (10) calendar days of the receipt of  
25 notice of dispute pursuant to Paragraph 101, the Party who gave  
26 the notice shall send on the other Party to this Decree a written

1 statement of the issues in dispute; the relevant facts upon which  
2 the dispute is based, and factual data, analysis, or opinion  
3 supporting its position; and all supporting documentation on  
4 which such Party relies (hereinafter the "Statement of  
5 Position"). Opposing Parties shall send their Statements of  
6 Position, including supporting documentation, no later than ten  
7 (10) calendar days after receipt of the complaining Party's  
8 Statement of Position. In the event that these ten-day time  
9 periods for exchange of Statements of Position may cause a delay  
10 in the Work, they shall be shortened in accordance with written  
11 notice by U.S. EPA; provided, that in all cases the number of  
12 days allowed to prepared Statements of Position shall be the same  
13 for the Party who gave notice and the Opposing Party.

14           104. An administrative record of any dispute under this  
15 Section shall be maintained by U.S. EPA, except for disputes over  
16 response costs that arise between Ecology and the City pursuant  
17 to Paragraph 107 where Ecology shall maintain the administrative  
18 record. The107 record shall include the written notification of  
19 such dispute and the Statements of Positions created pursuant to  
20 Paragraph 103. The record shall be available for review by all  
21 Settling Parties.

22           105. For those disputes involving U.S. EPA and the  
23 City, the Director of the Hazardous Waste Division, Region 10,  
24 shall review the administrative record and issue a final decision  
25 and order resolving the dispute.

1           106. Any decision and order of U.S. EPA pursuant to  
2 Paragraph 105 shall be binding, unless a Notice of Judicial  
3 Appeal is filed by the City with this Court within ten (10)  
4 calendar days of receipt of U.S. EPA's decision and order. In  
5 any event, judicial review will be conducted on the  
6 administrative record, using the standard set forth in 42 U.S.C.  
7 § 9613(j)(2). The City shall bear the burden of proof for  
8 demonstrating that the decision is arbitrary and capricious or  
9 otherwise not in accordance with law. The filing of a judicial  
10 appeal shall not stay the City's obligation to pay stipulated  
11 penalties pursuant to Section XX. After the date of termination  
12 of this Consent Decree specified in Section XXVII hereof,  
13 judicial review will be available only by instituting new  
14 action(s) to the extent permitted by law.

15           107. Any dispute arising under Paragraph 83 of this  
16 Consent Decree between Ecology and the City involving Future and  
17 Oversight Response Costs shall be resolved in accordance with  
18 this Paragraph.

19           A. The City bears the burden of proving that an  
20 accounting error has been made or that costs incurred are  
21 inconsistent with the NCP.

22           B. An administrative record of the dispute under this  
23 Paragraph shall be maintained by Ecology. The record shall  
24 include the written notification of such dispute filed by the  
25 City with the Ecology RPM and the summary statement of Future and  
26

1 Oversight Response Costs submitted to the City by Ecology. The  
2 record shall be available for review by all parties.

3 C. To initiate dispute resolution, the City shall  
4 file a written request for dispute resolution with the Ecology  
5 RPM. Such notice shall specifically identify the contested costs  
6 and provide a detailed explanation of the basis for the  
7 objection. Informal negotiations between the City and Ecology  
8 may last for a period of up to fourteen (14) calendar days from  
9 the date that written notice of the existence of the dispute is  
10 first given.

11 D. If the dispute is not resolved by informal  
12 negotiations, then Ecology shall review the administrative record  
13 and issue a final decision and order resolving the dispute.

14 E. Any decision by Ecology shall be binding, unless a  
15 notice of judicial appeal is filed by the City with this Court  
16 within ten (10) calendar days of receipt of Ecology's decision.  
17 In any event, judicial review will be conducted on the  
18 administrative record. The City shall bear the burden of proof  
19 for demonstrating that the decision by the Ecology Program  
20 Manager is arbitrary and capricious or otherwise not in  
21 accordance with the law. The filing of a judicial appeal shall  
22 not stay the City's obligation to pay stipulated penalties  
23 pursuant to Section XX. After the date of termination of this  
24 Consent Decree specified in Section XXVII hereof, judicial review  
25 will be available only by instituting new action(s) to the extent  
26 permitted by law.



108. The invocation of the procedures stated in this Section shall not extend or postpone the City's obligations under this Consent Decree with respect to the disputed issue unless and until U.S. EPA, after consultation with Ecology and in accordance with Section XXIX [modification], finds, or the Court orders, otherwise.

109. In no event will the performance standards for the Work or the ROD be subject to dispute resolution.

## XX.

### STIPULATED PENALTIES

110. Subject to the dispute resolution procedures referenced in Section XIX, the City shall pay stipulated penalties in the amounts set forth in Paragraph 111 for each violation of the requirements of this Consent Decree or of the RD/RA Work Plans approved pursuant to this Consent Decree, unless U.S. EPA determines that such failure is excused under Section XVIII ("Force Majeure"). Any modifications of the time for performance shall be mutually agreed to in writing pursuant to Section XXIX [Modifications].

111. The following stipulated penalties shall be payable per violation per day for the following violations:

A. If the City fails to submit any document required pursuant to and within the specified time schedules in and approved under this Consent Decree; fails to resubmit an adequate document pursuant to Paragraph 35.F by not incorporating

requirements of this Consent Decree, any Remedial Design/Remedial Action Work Plan as defined in Paragraph 24.X, or state or federal law; fails to submit reports under Section XI; fails to establish and maintain financial assurance under Section XIII; fails to pay costs under Section XVI; or, fails to establish and maintain records under Section XXV:

<u>Period of Failure to Comply</u>	<u>Penalty per Violation per Day</u>
1st through 14th day	\$ 500
15th through 30th day	\$1,000
31st day and beyond	\$2,500

B. If the City fails to implement the SOW or an approved plan, except for submittal of the documents and reports referenced in subparagraph A., fails to hire qualified personnel under Section VI; fails to provide access or conduct sampling activities in accordance with Sections IX, X or XXIV respectively; or otherwise fails to take some action specified by the ROD or this Consent Decree:

<u>Period of Failure to Comply</u>	<u>Penalty per Violation per Day</u>
1st through 14th day	\$1,000
15th through 30th day	\$2,000
31st day and beyond	\$5,000

112. Stipulated penalties shall begin to accrue on the day that performance is due or noncompliance occurs, regardless of whether U.S. EPA has notified the City of a violation, and shall continue to accrue through the final day of correction of

1 the noncompliance. Nothing herein shall prevent the simultaneous  
2 accrual of separate penalties for separate violations of this  
3 Consent Decree.

4 113. Following the determination by U.S. EPA that the  
5 City has failed to comply with any requirement of this Consent  
6 Decree, U.S. EPA shall give the City written notification of the  
7 same and describe the noncompliance. This notice shall also  
8 indicate the amount of penalties currently due, and the rate of  
9 accrual for continuous violations.

10 114. All penalties due to U.S. EPA under this Section  
11 shall be payable within thirty (30) calendar days of receipt by  
12 the City of written notification of noncompliance, unless the  
13 City invokes the dispute resolution provisions referenced in  
14 Section XIX. Unless the City continually pays the full penalty  
15 assessed into an escrow account pending dispute resolution,  
16 interest shall begin to accrue on the unpaid balance at the end  
17 of the thirty-day period, at the rate established by the  
18 Department of the Treasury under 31 U.S.C. § 3717. Unless the  
19 City continually pays the full penalty assessed into an escrow  
20 account pending dispute resolution, a handling charge shall be  
21 assessed at the end of each thirty-day late period, and a six (6)  
22 percent per annum penalty charge shall be assessed if the penalty  
23 is not paid within ninety (90) days after it is due.

24 115. Neither the filing of a petition to resolve a  
25 dispute nor the payment of penalties shall alter in any way the  
26

1 City's obligation to fully perform the requirements of this  
2 Consent Decree.

3 116. The City may dispute U.S. EPA's right to the  
4 stated amount of penalties by invoking the dispute resolution  
5 procedures under Section XIX. Penalties shall accrue but need  
6 not be paid to U.S. EPA during the dispute resolution period. If  
7 the District Court becomes involved in the resolution of the  
8 dispute, the period of dispute shall end upon the rendering of a  
9 decision by the District Court regardless of whether any party  
10 appeals such decision. If the City does not prevail upon  
11 resolution, the United States has the right to collect all  
12 penalties which accrue prior to and during the period of dispute.  
13 In the event of an appeal, such penalties shall be placed into an  
14 escrow account (or remain in such account, pursuant to Paragraph  
15 104) until a decision has been rendered by the final court of  
16 appeal. If the City prevails upon resolution, no penalties shall  
17 be payable.

18 117. No penalties shall accrue for violations of this  
19 Consent Decree caused by events determined by U.S. EPA to be  
20 beyond the control of the City as identified in Section XVIII  
21 ("Force Majeure"). The City has the burden of proving force  
22 majeure or compliance with this Consent Decree.

23 118. Stipulated penalties due to U.S. EPA shall be  
24 paid by certified check made payable to "U.S. EPA Hazardous  
25 Substances Superfund" and shall be mailed to U.S. EPA Superfund,  
26 P.O. Box 371003M, Pittsburgh, Pennsylvania, 15251. Copies of the

1 check and transmittal letters shall be mailed to the U.S. EPA  
2 RPM.

3 119. No payments made under this Section shall be tax  
4 deductible.

5 120. This Section shall remain in full force and  
6 effect for the term of this Consent Decree.

7 121. If the City fails to pay stipulated penalties,  
8 the United States may institute proceedings under this Consent  
9 Decree to enforce the stipulated penalties provisions of this  
10 Consent Decree. Notwithstanding the stipulated penalties  
11 provisions of this Section, the United States may elect to, under  
12 this Consent Decree, assess civil penalties and/or bring an  
13 action in U.S. District Court pursuant to Section 109 of CERCLA.  
14 If the United States prevails in any such proceedings, it may  
15 recover costs from the City.

16 122. Payment of stipulated penalties shall not  
17 preclude Government Plaintiffs from electing to pursue any other  
18 remedy or sanction to enforce this Consent Decree, including  
19 seeking additional penalties for civil or criminal contempt  
20 proceedings, and nothing shall preclude Government Plaintiffs  
21 from seeking statutory penalties against the City for violations  
22 of any statutory or regulatory requirements.

23  
24 XXI.

25 COVENANTS NOT TO SUE BY PLAINTIFF

1           123. In consideration of actions that will be  
2 performed and payments that will be made by the City under the  
3 terms of this Consent Decree, and except as otherwise  
4 specifically provided in this Decree, Government Plaintiffs  
5 covenant not to sue the City or its officers, directors,  
6 employees, or agents for Covered Matters. With respect to suits  
7 brought by Government Plaintiffs, Covered Matters shall include  
8 the civil claims with respect to the Site asserted by Plaintiff  
9 United States on behalf of U.S. EPA, under Sections 106 and 107  
10 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and by Ecology under  
11 Section 107 of CERCLA, in the Complaint filed herein. The July  
12 23, 1990 letter from Carol L. Fleskes, Manager, Ecology's Toxics  
13 Cleanup Program, to Irving Reed, Manager, City of Spokane  
14 Engineering Services, is hereby incorporated into this Consent  
15 Decree as Appendix 8. With respect to future liability, this  
16 covenant not to sue shall take effect upon certification by  
17 Government Plaintiffs of the completion of the Remedial Action  
18 concerning the Site, pursuant to Section XXVII of this Consent  
19 Decree.

20           124. "Covered Matters" does not include:

- 21           A. Liability arising from hazardous substances
- 22                 removed from the Site;
- 23           B. Natural resource damages;
- 24           C. Criminal liability;
- 25           D. Claims based on a failure by the City to meet
- 26                 the requirements of this Consent Decree;

1 E. Liability for violations of Federal and State  
2 law which occur during implementation of the  
3 remedial action;

4 F. Any matters for which the United States or  
5 Ecology is owed indemnification under Section  
6 XVII hereof;

7 G. Liability for costs incurred by the United  
8 States or Ecology arising from the past,  
9 present, or future disposal of hazardous  
10 substances outside of this Site;

11 H. Liability arising from continued disposal of  
12 hazardous or solid waste at the Site.

13 125. Additionally and specifically for Ecology,  
14 Covered Matters" does not include the discovery of factors not  
15 known at the time of entry of the Consent Decree which present a  
16 previously unknown threat to human health and the environment.  
17 Ecology

18 126. By signing this Decree, the City resolves its  
19 liability to the United States under CERCLA Section 122 for the  
20 matters addressed in the settlement.

21  
22 XXII.

23 RESERVATION OF RIGHTS

24 127. Notwithstanding any other provision in this  
25 Consent Decree, the United States reserves the right to institute  
26 proceedings in this action or in a new action or to issue an

1 order seeking to compel the City to perform any additional  
2 response work at the Site or necessitated by a release from the  
3 Site, and the United States reserves the right to institute  
4 proceedings in this action or in a new action seeking to  
5 reimburse the United States for its Response Costs relating to  
6 the Site, if:

7           A. for proceedings prior to certification of  
8 completion of the Remedial Action concerning  
9 the Site;

10           (1) conditions at the Site, previously  
11 unknown to the Government Plaintiffs,  
12 are discovered after the entry of this  
13 Consent Decree, or

14           (2) information is received, in whole or in  
15 part, after the entry of this Consent  
16 Decree,

17 and these previously unknown conditions or this information  
18 indicates that the Remedial Action is not protective of human  
19 health and the environment, or;

20           B. for proceedings subsequent to the  
21 certification of completion of the Remedial Action  
22 concerning the Site;

23           (1) conditions at the Site, previously  
24 unknown to the United States, are  
25 discovered after the certification of  
26 completion by U.S. EPA, or



1 (2) information is received, in whole or in  
2 part, after the certification of  
3 completion,

4 and these previously unknown conditions or this information  
5 indicates that the Remedial Action is not protective of human  
6 health and the environment.

7 128. Notwithstanding any other provision in this  
8 Consent Decree, the covenant not to sue in Section XXI shall not  
9 relieve the City of its obligation to meet and maintain  
10 compliance with the requirements set forth in this Consent  
11 Decree, including the conditions in the ROD, which are  
12 incorporated herein. The United States reserves its right to  
13 take response actions at the Site in the event of a breach of the  
14 terms of this Consent Decree and to seek recovery of costs  
15 incurred after entry of the Consent Decree to the extent  
16 authorized by CERCLA: (1) resulting from such a breach; (2)  
17 relating to any portion of the Work funded or performed by the  
18 United States; or (3) incurred by the United States as a result  
19 of having to seek judicial assistance to remedy conditions at or  
20 adjacent to the Site.

21 129. Nothing in this Consent Decree shall constitute  
22 or be construed as a release or a covenant not to sue regarding  
23 any claim or cause of action against any person, firm, trust,  
24 joint venture, partnership, corporation, or other entity not a  
25 signatory to this Consent Decree for any liability it may have  
26 arising out of or relating to the Site. The Settling Parties

1 expressly reserve the right to sue any person other than the  
2 Settling Parties in connection with the Site.

3 130. Ecology's participation in this Consent Decree is  
4 primarily for the purpose of technical support and review of  
5 investigative and remedial action undertaken at the Site.  
6 Ecology acknowledges the goal of complete and efficient remedial  
7 action at the Site and cooperation with EPA and the City.  
8 Pursuant to § 114(a) of CERCLA, 42 U.S.C. § 9614(a), and the  
9 provisions of this Consent Decree, Ecology reserves all rights,  
10 powers and remedies now or hereafter existing at law or in equity  
11 or by statute or otherwise regarding the imposition of any  
12 additional liability or requirements with respect to the release  
13 of hazardous substances at the Site, except as provided in the  
14 covenants not to sue in Section XXI.

15  
16 XXIII.

17 COVENANTS BY THE CITY

18 131. Except as specifically provided herein, the City  
19 hereby covenants not to sue Government Plaintiffs for any claims  
20 related to or arising from conditions at the Site, the Work or  
21 this Consent Decree, including any direct or indirect claim for  
22 reimbursement from the Hazardous Substances Superfund established  
23 pursuant to Section 221 of CERCLA, 42 U.S.C. § 9621. Nothing in  
24 this Consent Decree shall be deemed to constitute pre-  
25 authorization of a claim within the meaning of Section 111 of  
26 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Part 300.

XXIV.

ACCESS TO INFORMATION

132. The City shall provide to U.S. EPA or Ecology upon request all documents and information within its possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to remedial activities. The City shall also make available to U.S. EPA or Ecology for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

133. The City may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies specific documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified the City that the documents or information are not confidential under the standards of Section

1 104(e)(7) of CERCLA, the public may be given access to such  
2 documents or information without further notice to the City.

3 134. No claim of confidentiality shall be made with  
4 respect to any sampling or analytical data or any other documents  
5 or information evidencing conditions at or around the Site.

6 135. The Settling Parties waive any objection to the  
7 admissibility in evidence (without waiving any objection as to  
8 weight) of the results of any analyses of sampling conducted by  
9 or for them at the Site or of other data gathered pursuant to  
10 this Consent Decree that has been verified by the quality  
11 assurance/quality control procedures established pursuant to  
12 Section IX.

13 136. Information acquired or generated by the City in  
14 performance of the Work that is subject to the provisions of  
15 Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall  
16 not be claimed as confidential by the City.

17  
18 XXV.

19 RETENTION OF RECORDS

20 137. Until ten (10) years after U.S. EPA certification  
21 of completion of the Work, the City shall preserve and retain all  
22 records and documents now in its possession or control that  
23 relate in any manner to the Site in any form authorized by State  
24 law. After this document retention period, the City shall notify  
25 the United States and the State at least ninety (90) calendar  
26 days prior to the destruction of any such records or documents,

1 and, at any time upon request by the United States or the State  
2 of Washington, the City shall provide copies of the records or  
3 documents to U.S. EPA or the State of Washington.

4 138. Until certification of completion of the work and  
5 termination of this Consent Decree, the City shall preserve, and  
6 shall instruct its contractors and agents to preserve, all  
7 documents, records, and information of whatever kind, nature, or  
8 description relating to the performance of the Work. Upon  
9 certification of completion of the Work, the City shall deliver  
10 copies of all such documents, records, and information to U.S.  
11 EPA. U.S. EPA has discretion to, after consultation with  
12 Ecology, waive this requirement in whole or in part.

13  
14 XXVI.

15 NOTICES AND SUBMISSIONS

16 139. Whenever, under the terms of this Consent Decree,  
17 written notice is required to be given or a report or other  
18 document is required to be sent by one Party to another, or  
19 service of any papers or process is necessitated by the dispute  
20 resolution provision of Paragraph XIX herein, it shall be  
21 directed to the individuals and the addresses specified below,  
22 unless those individuals or their successors give notice of a  
23 change to the other Parties in writing. Written notice as  
24 specified herein shall constitute complete satisfaction of any  
25 written notice requirement of the Consent Decree with respect to  
26 the United States, U.S. EPA, Ecology, and the City, respectively.

1 As to the United States:

2 Chief, Environmental Enforcement Section  
3 Land and Natural Resources Division  
4 Department of Justice  
5 10th & Pennsylvania Avenue, N.W.  
6 Washington, D.C. 20530  
7 Re: DOJ # 90-11-2-545

8 As to U.S. EPA

9 Remedial Project Manager:  
10 Northside Landfill  
11 HW-113  
12 U.S. Environmental Protection Agency,  
13 Region 10  
14 1200 6th Avenue  
15 Seattle, Washington 98101

16 As to the State:

17 Northside Landfill Project Manager  
18 Department of Ecology  
19 PV-11  
20 Olympia, Washington 98504

21 As to the City:

22 Director, Environmental Programs  
23 City of Spokane  
24 Skywalk Level, Municipal Building  
25 W. 808 Spokane Falls Blvd.  
26 Spokane, Washington 99201-3334

27 and

28 City Attorney  
City of Spokane  
Fifth Floor, City Hall  
W. 808 Spokane Falls Blvd.  
Spokane, Washington 99201

EFFECTIVE AND TERMINATION DATES

140. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by this Court.

141. Certification of Completion of Remedial Action

A. Application

When the City determines that it has completed the Work, it shall submit to Government Plaintiffs a Notice of Completion and a final report as required by the RD/RA Work Plan. The final report must summarize the Work performed, any modification to the RD/RA Work Plan, and the performance standards achieved. The summary shall include or reference any supporting documentation.

B. Certification

Upon receipt of the Notice of Completion of Remedial Action, U.S. EPA and Ecology shall review the accompanying report and any other supporting documentation of the remedial actions taken. Prior to the issuance of a Certification of Completion, U.S. EPA shall undertake a review of the Remedial Action under Sections VII and VIII of this Consent Decree. U.S. EPA shall issue a Certification of Completion for purposes of this Consent Decree, including but not limited to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), within sixty (60) days of receipt of the Notice of Completion by the City if U.S. EPA determines, after

1 consultation with Ecology, that: (1) the City has satisfactorily  
2 completed the Work and has achieved standards of performance  
3 required under this Consent Decree; (2) no additional Work under  
4 Section VIII is necessary; (3) all Response Costs and stipulated  
5 penalties required to be paid under this Consent Decree have been  
6 paid in full by the City; and (4) the terms of this Consent  
7 Decree have been complied with.

8           142. If U.S. EPA determines that a Certificate of  
9 Completion should not be issued or requires more time for review  
10 before making a determination, U.S. EPA shall, within sixty (60)  
11 days of receipt of the Notice of Completion by the City, issue a  
12 written statement of reasons supporting such determination, and  
13 shall specify the actions necessary for issuance of a Certificate  
14 of Completion; or, alternatively, shall issue a written statement  
15 explaining why the agency needs additional time for review before  
16 making a determination. A determination by U.S. EPA not to issue  
17 a Certificate of Completion shall be subject to the dispute  
18 resolution procedures in Section XIX.

19  
20           143. Termination

21           Upon the issuance and filing of the Certification of  
22 Completion, pursuant to Paragraph 140, and a showing that the  
23 other terms of this Consent Decree (other than the post-  
24 termination obligations referred to below) including payment of  
25 all costs and stipulated penalties due hereunder, have been  
26 complied with, this Consent Decree shall be terminated upon



1 motion of the City, provided that the City gives at least ninety  
2 (90) days written notice to the United States and Ecology of its  
3 intent to file such motion; the United States, with Ecology's  
4 concurrence; or a joint motion of the United States (with  
5 Ecology's concurrence) and the City, and order of this Court.  
6 However, the following obligations of the City shall survive the  
7 termination of this Consent Decree and shall be enforceable by  
8 the Settling Parties by re-institution of this action or by  
9 institution of a new action by the United States or Ecology: 1)  
10 the City's obligations to finance and perform required  
11 maintenance and other routine maintenance that would normally be  
12 performed by a property owner (such as patching of pavement, and  
13 caring for vegetation); the City's obligation to continually  
14 monitor groundwaters and surface waters at the Site as set forth  
15 in the SOW and Schedule of Deliverables; the City's obligations  
16 concerning conveyance of the Site and institutional controls  
17 pursuant to Paragraph 29; the City's obligation to continually  
18 comply with state Minimum Functional Standards; and the City's  
19 obligations concerning access authorities pursuant to Section X.  
20

21 XXVIII.

22 RETENTION OF JURISDICTION

23 144. This Court will retain jurisdiction for the  
24 purpose of enabling any of the Settling Parties to apply to the  
25 Court at any time for such further order, direction, and relief  
26 as may be necessary or appropriate for the construction or

1 modification of this Consent Decree, or to effectuate or enforce  
2 compliance with its terms, or to resolve disputes in accordance  
3 with Section XIX hereof.  
4

5 XXIX.

6 MODIFICATION

7 145. No material modification shall be made to this  
8 Consent Decree without written notification to and written  
9 approval of the Settling Parties and the Court. The notification  
10 required by this Section shall set forth the nature of and  
11 reasons for the requested modification. No oral modification of  
12 this Consent Decree shall be effective. Modifications that do  
13 not materially alter the requirements of this Consent Decree may  
14 be made upon the written consent of all Parties, which consent  
15 shall be filed with this Court. U.S. EPA may make minor field  
16 deviations pursuant to Paragraph 63 of this Consent Decree.  
17 Nothing in this Paragraph shall be deemed to alter the Court's  
18 power to supervise or modify this Consent Decree.  
19

20 XXX.

21 CONSISTENCY WITH THE NATIONAL OIL AND HAZARDOUS

22 POLLUTION CONTINGENCY PLAN

23 146. The Government Plaintiffs and the City agree that  
24 if the Government Plaintiffs determine that the Work is properly  
25 performed as set forth in Sections V and VI herein, then the Work  
26

1 is consistent with the provisions of the NCP pursuant to 42  
2 U.S.C. § 9605.

3  
4 XXXI.

5 COMPLIANCE WITH LAWS

6 147. Subject to the limitations of Paragraph 28 of  
7 this Section, all actions carried out by the Settling Parties  
8 pursuant to this Consent Decree shall be done in accordance with  
9 all applicable federal and state statutes, rules, regulations,  
10 and ordinances.

11 XXXII.

12 COMMUNITY RELATIONS

13 148. EPA shall be the lead agency for community  
14 relations. EPA shall consult with Ecology and the City in the  
15 preparation of draft and final fact sheets, press releases and  
16 public notices and shall accommodate, where possible, Ecology's  
17 and the City's concerns prior to release of such information. In  
18 the event of disagreement over the contents of any document  
19 prepared for purposes of community relations, or any other  
20 decision pertaining to community relations, EPA's determination  
21 shall be final and not subject to dispute resolution pursuant to  
22 Section XIX.

23 149. The City shall cooperate with Government  
24 Plaintiffs by assisting in the coordination and implementation of  
25 community relations for the Site. Nothing provided in this  
26 Section shall prevent the City from developing or conducting its

own community relations program, consistent with this Consent Decree, and the Scope of Work.

XXXIII.

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

150. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The Government Plaintiffs will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during at least a thirty (30) calendar day period following such notice. The Government Plaintiffs will file with the court a copy of any comments received and the responses of the Government Plaintiffs to such comments. After the closing of the public comment period, the Government Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The City consents to the entry of this Consent Decree without further notice.

1 XXXIV.

2 SEVERABILITY

3 151. If any provision of this Consent Decree is ruled  
4 invalid, illegal or unconstitutional, the remainder of the  
5 Consent Decree shall not be affected by such ruling.  
6

7 XXXV.

8 SIGNATORIES

9 152. Each undersigned representative of a Party to  
10 this Consent Decree certifies that he or she is fully authorized  
11 to enter into the terms and conditions of this Consent Decree and  
12 to execute and legally bind such party to this document.

13 153. The City shall identify, on the attached  
14 signature page, the name and address of an agent who is  
15 authorized to accept service of process by mail on behalf of that  
16 Party with respect to all matters arising under or relating to  
17 this Consent Decree. The City hereby agrees to accept service in  
18 that manner and to waive the formal service requirements set  
19 forth in Rule 4 of the Federal Rules of Civil Procedure,  
20 including service of a summons, and any applicable local rules of  
21 this Court.  
22

23 SO ORDERED THIS

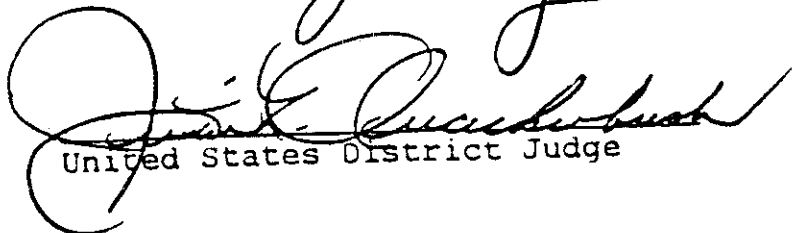
23 23<sup>rd</sup>

23 DAY OF

23 January

23 , 1998.

23 *JK*

24   
25  
26 United States District Judge



1 The parties whose signatures appear below hereby consent to the  
2 terms of this Consent Decree. The consent of the United States  
3 is subject to the public notice and comment requirements of  
4 28 C.F.R. § 50.7 and 42 U.S.C. § 9622.  
5

6 FOR THE UNITED STATES OF AMERICA  
7

8 U.S. DEPARTMENT OF JUSTICE

9 Date: 10.27.90

By: Richard B. Stewart

10 RICHARD B. STEWART  
11 Assistant Attorney General  
12 Environment and Natural Resources  
13 Division  
14 U.S. Department of Justice  
15 Washington, D.C. 20530

16 Date: 10/30/90

By: Donna Duer

17 DONNA DUER  
18 Environmental Enforcement Section  
19 Environment and Natural Resources  
20 Division  
21 U.S. Department of Justice  
22 Washington, D.C. 20530

23 UNITED STATES ATTORNEY

24 Date: 10-31-90

By: Carroll D. Gray

25 JOHN E. LAMP  
26 U.S. Attorney  
27 Eastern District of Washington  
28 CARROLL D. GRAY  
Assistant U.S. Attorney  
P.O. Box 1494  
Spokane, Washington 99210-1494

1 U.S. ENVIRONMENTAL PROTECTION AGENCY

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

By: Authority Delegated to Regional Administrator

3 JAMES M. STROCK  
4 Assistant Administrator for  
5 Office of Enforcement  
6 U.S. Environmental Protection  
7 Agency  
8 401 M Street, S.W.  
9 Washington, D.C. 20460

10 Date: 10-9-90

By: \_\_\_\_\_

11 GERALD A. EMISON  
12 Acting Regional Administrator  
13 U.S. Environmental Protection  
14 Agency, Region 10  
15 1200 Sixth Avenue  
16 Seattle, Washington 98101

17 Date: September 25, 1990

By: \_\_\_\_\_

18 SHARON I. HAENSLY  
19 Assistant Regional Counsel  
20 U.S. Environmental Protection  
21 Agency, Region 10  
22 1200 Sixth Avenue  
23 Seattle, Washington 98101

24 STATE OF WASHINGTON

25 Date: Sept. 5, 1990

By: \_\_\_\_\_

26 CAROL L. FLESKES  
27 Hazardous Waste Investigations  
28 and Cleanup Program Manager,  
Department of Ecology  
Olympia, Washington 98504

29 Date: August 29, 1990

By: \_\_\_\_\_

30 LUCY PHILLIPS  
31 Assistant Attorney General  
32 State of Washington  
33 Olympia, Washington 98504



1 CITY OF SPOKANE

2 Date: August 17, 1990

By: Terry L. Novak

TERRY NOVAK  
City Manager and Agent for Service of  
Process  
City of Spokane  
City Hall, Fifth Floor  
W. 808 Spokane Falls Boulevard  
Spokane, Washington 99201

7 Date: August 17, 1990

By: James C. Sloane

JAMES C. SLOANE  
City Attorney  
City of Spokane  
City Hall, Fifth Floor  
W. 808 Spokane Falls Boulevard  
Spokane, Washington 99201

12 Date: August 27, 1990

By: Irving Reed

IRVING REED  
Manager Engineering Services  
City of Spokane  
Skywalk Level, Municipal Building  
Spokane, Washington, 99201-3334