

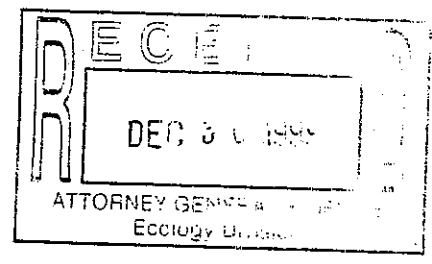
FINAL CONSENT Decree
FOR UPLAND WORK

Gas Works Park

SIT 8.4

1999

STATE OF WASHINGTON
SUPERIOR COURT



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

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

THE CITY OF SEATTLE and PUGET
SOUND ENERGY,

Defendant.

NO. ~~99-2-52532-9SEA~~

CONSENT DECREE

Table of Contents

- I. INTRODUCTION
- II. JURISDICTION
- III. PARTIES BOUND
- IV. DEFINITIONS
- V. STATEMENT OF FACTS
- VI. WORK TO BE PERFORMED
- VII. DESIGNATED PROJECT COORDINATORS
- VIII. PERFORMANCE
- IX. ACCESS
- X. SAMPLING, DATA REPORTING, AND AVAILABILITY
- XI. PROGRESS REPORTS
- XII. RETENTION OF RECORDS
- XIII. TRANSFER OF INTEREST IN PROPERTY
- XIV. RESOLUTION OF DISPUTES
- XV. AMENDMENT OF CONSENT DECREE
- XVI. EXTENSION OF SCHEDULE
- XVII. ENDANGERMENT
- XVIII. INDEMNIFICATION
- XIX. COMPLIANCE WITH APPLICABLE LAWS

- 1 XX. REMEDIAL AND INVESTIGATIVE COSTS
- 2 XXI. IMPLEMENTATION OF REMEDIAL ACTION
- 3 XXII. FIVE YEAR REVIEW
- 4 XXIII. PUBLIC PARTICIPATION
- 5 XXIV. DURATION OF DECREE
- 6 XXV. CLAIMS AGAINST THE STATE
- 7 XXVI. LAND USE RESTRICTIONS
- 8 XXVII. COVENANT NOT TO SUE
- 9 XXVIII. CONTRIBUTION PROTECTION
- 10 XXIX. EFFECTIVE DATE
- 11 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

- 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
- 7 Exhibit A Site Diagram
 - 8 Exhibit B Cleanup Action Plan
 - 9 Exhibit C Scope of Work and Schedule
 - 10 Exhibit D Public Participation Plan
 - 11 Exhibit E Restrictive Covenant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION

A. Gas Works Park and certain adjacent property in Seattle, Washington (hereinafter referred to as "the Site" and depicted on Exhibit A attached hereto) is the former location of a coal and oil gasification plant that operated from 1906 to 1956. The City of Seattle (herein "the City") purchased the Gas Works Park property from the Washington Natural Gas Company (now Puget Sound Energy) in 1962 and developed it into a park, which opened in 1976. Studies conducted at the Site in the late 1970s and 1980s indicated the presence of soil and groundwater contamination from the former gas plant operation. The Washington State Department of Ecology (herein "Ecology"), through execution of an Agreed Order dated August 1, 1997, required the City and PSE to complete both a Focused Feasibility Study (herein "FFS") of cleanup alternatives and a Cleanup Action Plan (herein "CAP") (both attached hereto and incorporated herein as Exhibit B) describing the recommended cleanup alternatives. Ecology, the City and PSE are collectively referred to herein as "the Parties."

B. In entering into this Consent Decree (herein "Decree"), the mutual objective of Ecology, the City, and PSE (collectively the City and PSE are referred to herein as Defendants) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendants to undertake the following remedial actions:

(1) Design, install and operate an *in-situ* groundwater air sparging and soil vapor extraction system in the benzene source area to remediate contaminated soil, and groundwater as described in the CAP, attached and incorporated herein as Exhibit B);

(2) Design and install a protective vegetated soil cover over unpaved open areas in the north-central and southeastern portions of the Park (as described in the CAP;

1 (3) Perform compliance monitoring to determine the effectiveness of remedial
2 actions. This includes the monitoring of natural attenuation processes in the western
3 portion of the Park;

4 (4) Implement the institutional controls and site use restrictions specified in
5 the CAP;

6 (5) Continue the removal of any upwelling tar sources as they are discovered;

7 (6) Continue free product recovery within the proposed benzene treatment
8 zone;

9 (7) Implement the institutional controls described in the Final Cleanup Action
10 Plan (Exhibit B).

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

13 C The Complaint in this action is being filed simultaneously with this Decree. An
14 answer has not been filed, and there has not been a trial on any issue of fact or law in this
15 case. However, the parties wish to resolve the issues raised by Ecology's complaint by
16 entering into a settlement pursuant to RCW 70.105D.040(4). In addition, the parties agree
17 that settlement of these matters without litigation is reasonable and in the public interest and
18 that entry of this Decree is the most appropriate means of resolving these matters.

19 D In signing this Decree, Defendants agree to its entry and agree to be bound by
20 its terms.

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

25 F This Decree shall not be construed as proof of liability or responsibility for any
26 releases of hazardous substances or cost for remedial action nor as an admission of any

1 facts; provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in
2 any proceeding to enforce this Decree.

3 G. The Court is fully advised of the reasons for entry of this Decree, and good
4 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
5 FOLLOWS:

6 II. JURISDICTION

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

9 B. Authority is conferred upon the Washington State Attorney General by
10 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if; after
11 public notice and hearing, Ecology finds the proposed settlement would lead to a more
12 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
13 settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

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

20 E. The actions to be taken pursuant to this Decree are necessary to protect public
21 health, welfare, and the environment, and will lead to a more expeditious cleanup of
22 hazardous substances in accordance with RCW 70.105D.040(4)(a).

23 F. The Defendants have agreed to undertake the actions specified in this Decree to
24 resolve their liability to the State of Washington and consent to the entry of this Decree under
25 the MTCA.

26 III. PARTIES BOUND

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

11 IV. DEFINITIONS

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

14 A. Site: The Site commonly referred to as Gas Works Park, is located at 2000
15 N. Northlake Way in Seattle, Washington. The Site is more particularly described in Exhibit A
16 to this Decree which is a detailed site diagram. The Site only includes the terrestrial areas of
17 Gas Works Park and does not include areas that are submerged or seasonally submerged by
18 the waters of Lake Union.

19 B. Parties: Refers to Ecology, the City and PSE.

20 C. Defendants: Refers collectively to the City and PSE.

21 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
22 exhibits to the Decree are entered into pursuant to RCW 70.105D.040(4). All exhibits are
23 integral and enforceable parts of this Consent Decree. The terms "Consent Decree" or
24 "Decree" shall include all Exhibits to the Consent Decree.

25 V. STATEMENT OF FACTS

1 Ecology makes the following finding of facts without any express or implied admissions
2 by Defendants.

3 1. The City is the current owner of the Site, located at 2000 N. Northlake Way,
4 Seattle, Washington.

5 2. PSE or its predecessors were a former owner and operator of a facility that was
6 located at the Site.

7 3. The Site is the location of a former manufactured gas plant (herein "MGP")
8 facility.

9 4. Operation of this MGP facility for 50 years (1906-1956) and subsequent park
10 construction left soil underlying the Site contaminated with a number of hazardous materials,
11 including polynuclear aromatic hydrocarbons (herein "PAHs"), and volatile organic compounds
12 (herein "VOCs").

13 5. The release of hazardous substances to soil has contaminated the shallow
14 ground water beneath the Site with dense non-aqueous phase liquids (herein "DNAPL"), PAHs
15 and VOCs.

16 6. The concentrations of hazardous substances in soil and ground water at the Site
17 exceed the 1×10^{-6} risk-based cleanup levels for human-health and the environment, as
18 promulgated under Chapter 173-340 WAC.

19 VI. WORK TO BE PERFORMED

20 This Decree contains a program designed to protect public health, welfare and the
21 environment from the known release, or threatened release, of hazardous substances or
22 contaminants at, on, or from the site

23 1. The Defendants shall perform the remedial actions specified in detail in the
24 Scope of Work and Schedule (Exhibit C) and the Cleanup Action Plan (Exhibit B). These
25 exhibits are incorporated herein by reference and are an integral and enforceable part of this
26 Decree. A summary of the work program to be performed is as follows:

1 • A new vegetated soil cover will be placed over unpaved
2 open areas in the north-central and southeastern portions of the
3 Site and institutional controls will be set into place by the City to
protect its integrity. The soil cover will serve as a protective barrier
between park users and chemicals of concern.

4 • The groundwater at the southeast part of the Site is
5 contaminated with oil, benzene, and other organics. The remedial
6 action will consist of a system of air sparging and soil vapor
7 extraction. This action will allow contaminant concentrations in
8 groundwater to meet surface water criteria at discharge points into
9 Lake Union within 27 years. Institutional controls will be set in
10 place by the City to prevent any use of groundwater at the Site
11 other than for remediation.

12 • The groundwater at the western portion of the Site is
13 contaminated with PAHs. The FFS concluded that natural
14 attenuation is reducing the concentrations of these chemicals to
15 surface water cleanup criteria prior to their discharge into Lake
16 Union. The City and PSE will be required to demonstrate that
17 attenuation of dissolved PAHs is occurring at the western portion of
18 the Site at a rate sufficient to meet surface water criteria within a
19 reasonable restoration time frame. The effectiveness of
20 attenuation as a remedial action will be evaluated during the first
21 Periodic Review. Should attenuation not be progressing as
22 anticipated, other more active remedial actions may be required.

23 • Due to concerns expressed during the public comment
24 period, limited monitoring of MW-19 and MW-17 for chemicals of
25 concern will be required.

26 • In 1997, the City and PSE characterized known and
suspected tar seeps at the Park and conducted an interim action
which removed and destroyed by thermal desorption as much of
this material as practicable. The following year, additional tar
surfaced from the general area of the previous excavations and
was removed and treated. The City and PSE will continue to
remove and treat any residual tar, that might seep from these and
other areas.

2. The schedule in the Scope of Work sets out timelines for:

- a. Submission of draft and final Engineering Design Reports;
- b. Remedial Action Construction/Implementation; and
- c. Operation, maintenance, monitoring and reporting on the remedial

actions

1 3. The Defendants agree not to perform any remedial actions outside the scope of
2 this Decree unless the parties agree to amend the scope of work to cover these actions. All
3 work conducted under this Decree shall be done in accordance with Ch. 173-340 WAC unless
4 otherwise provided herein.

5 VII. DESIGNATED PROJECT COORDINATORS

6 The project coordinator for Ecology is:

7 Name: Craig Thompson
8 Address: DEPARTMENT OF ECOLOGY
9 P.O. Box 47600
 Olympia, WA 98054-7600
 (360) 407-7234

10 The project coordinator for PSE is:

11 Name: Steve Secrist
12 Address: PUGET SOUND ENERGY
 815 Mercer Street
 M/S MER-04S
13 Seattle, WA 98109

14 The project coordinator for the City is:

15 Name: Robin V. Kordik
16 Address: SEATTLE PARKS AND RECREATION DEPARTMENT
 2911 Second Avenue, 4th Floor
17 Seattle; WA 98121-1079
 (206) 233-7938

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

1 performed without formal amendments to this Decree. Minor modifications will be
2 documented in writing by Ecology.

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

5 VIII. PERFORMANCE

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

13 IX. ACCESS

14 Ecology or any Ecology authorized representatives shall have the authority to enter and
15 freely move about all property at the Site at all reasonable times for the purposes of, inter alia:
16 inspecting records, operation logs, and contracts related to the work being performed pursuant
17 to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree;
18 conducting such tests or collecting such samples as Ecology may deem necessary; using a
19 camera, sound recording, or other documentary type equipment to record work done pursuant
20 to this Decree; and verifying the data submitted to Ecology by the Defendants. All parties with
21 access to the Site pursuant to this paragraph shall comply with approved health and safety
22 plans.

23 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

24 With respect to the implementation of this Decree, the Defendants shall make the
25 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
26

1 available to Ecology and shall submit these results in accordance with Section XI of this
2 Decree.

3 In accordance with WAC 173-340-840(5), ground water sampling data shall be
4 submitted according to Appendix E: GROUND WATER SAMPLING DATA SUBMITTAL
5 REQUIREMENTS. These submittals shall be provided to Ecology in accordance with
6 Section XI of this Decree.

7 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken
8 by Ecology and/or its authorized representatives of any samples collected by Defendants
9 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
10 in advance of any sample collection or work activity (except routine maintenance and
11 oversight) at the Site. Ecology shall, upon request by one or both of the Defendants, allow
12 split or duplicate samples to be taken by Defendants or their authorized representatives of any
13 samples collected by Ecology pursuant to the implementation of this Decree provided it does
14 not interfere with the Department's sampling. Without limitation on Ecology's rights under
15 Section IX, Ecology shall notify Defendants seven (7) days prior to any sample collection
16 activity.

17 XI. PROGRESS REPORTS

18 Defendants shall submit to Ecology written monthly progress reports that describe the
19 actions taken during the previous month to implement the requirements of this Decree. The
20 progress reports shall include the following:

- 21 A. A list of on-site activities that have taken place during the month;
- 22 B. Detailed description of any deviations from required tasks not otherwise
23 documented in project plans or amendment requests;
- 24 C. Description of all deviations from the schedule contained in Exhibit C during the
25 current month and any planned deviations in the upcoming month;

1 D. For any deviations from the schedule, a plan for recovering lost time and
2 maintaining compliance with the schedule;

3 E. All raw data (including laboratory analysis) received by the Defendants during the
4 past month and an identification of the source of the sample;

5 F. A list of deliverables for the upcoming month if different from the schedule; and
6 All progress reports shall be submitted by the tenth day of the month in which they are
7 due after the effective date of this Decree Unless otherwise specified, progress reports and
8 any other documents submitted pursuant to this Decree shall be sent by certified mail, return
9 receipt requested, to Ecology's project coordinator.

10 XII. RETENTION OF RECORDS

11 Defendants shall preserve, during the pendency of this Decree and for ten (10) years
12 from the date this Decree is no longer in effect as provided in Section XXIV, all records,
13 reports, documents, and underlying data in their possession relevant to the implementation of
14 this Decree and shall insert in contracts with project contractors and subcontractors a similar
15 record retention requirement. Upon request by Ecology, Defendants shall make all non-
16 archived records that are not legally privileged available to Ecology and allow Ecology access
17 for review. All such archived records shall be made available to Ecology within a reasonable
18 period of time.

19 XIII. TRANSFER OF INTEREST IN PROPERTY

20 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
21 or other interest in any portion of the Site shall be consummated without provision for
22 continued operation and maintenance of any containment system, treatment system, and
23 monitoring system installed or implemented pursuant to this Decree.

24 Prior to transfer of any legal or equitable interest in all or any portion of the property,
25 and during the effective period of this Decree, Defendants shall serve a copy of this Decree
26 upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of

1 the property; and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology
2 of said contemplated transfer.

3 XIV. RESOLUTION OF DISPUTES

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

7 (1) Upon receipt of the Ecology project coordinator's decision, the Defendants have
8 fourteen (14) days within which to notify Ecology's project coordinator of their objection to the
9 decision.

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

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

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

20 B. If Ecology's final written decision is unacceptable to Defendants, Defendants
21 have the right to submit the dispute to the Court for resolution. The Parties agree that one
22 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
23 arising under this Decree. In the event Defendants present an issue to the Court for review,
24 the Court shall review the action or decision of Ecology on the basis of whether such action or
25 decision was arbitrary and capricious and render a decision based on such standard of review.

1 C. The Parties agree to only utilize the dispute resolution process in good faith and
2 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

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

6 XV. AMENDMENT OF CONSENT DECREE

7 This Decree may only be amended by a written stipulation among the Parties to this
8 Decree that is entered by the Court or by order of the Court. Such amendment shall become
9 effective upon entry by the Court. Agreement to amend this Decree shall not be unreasonably
10 withheld by any Party to the Decree.

11 Defendants shall submit any request for an amendment to this Decree to Ecology for
12 approval. Ecology shall indicate its approval or disapproval in a timely manner but not more
13 than thirty (30) days after the request for amendment is received. If the amendment to the
14 Decree is substantial, Ecology will provide public notice and opportunity for comment.
15 Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any
16 proposed amendment, the disagreement may be addressed through the dispute resolution
17 procedures described in Section XIV of this Decree.

18 XVI. EXTENSION OF SCHEDULE

19 A. An extension of schedule shall be granted only when a request for an extension
20 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
21 deadline for which the extension is requested, and good cause exists for granting the
22 extension. All extensions shall be requested (unless the extension is requested as part of the
23 dispute resolution procedure), in writing. The request shall specify the reason(s) the extension
24 is needed.

25 An extension shall only be granted for such period of time as Ecology determines is
26 reasonable under the circumstances. A requested extension shall not be effective until

1 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
2 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to
3 Section XV when a schedule extension is granted.

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

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

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

14 (3) Endangerment as described in Section XVII.

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

18 C. Ecology may extend the schedule for a period not to exceed ninety (90) days;
19 provided, however, that it may extend the schedule for a longer period where an extension is
20 needed as a result of:

21 (1) Delays in the issuance of a necessary permit that was applied for in a timely
22 manner; or

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

24 (3) Endangerment as described in Section XVII.

25 Ecology shall give Defendants written notification in a timely fashion of any extensions
26 granted pursuant to this Decree.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XVII. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendants to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Defendants with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. In the event Defendants determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Site or in the surrounding area or to the environment, Defendants may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Defendants should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the Defendants' determination, it may order Defendants to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Defendants' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the

1 circumstances. Any disagreements pursuant to the clause shall be resolved through the
2 dispute resolution procedures in Section XIV.

3 XVIII. INDEMNIFICATION

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

13 XIX. COMPLIANCE WITH APPLICABLE LAWS

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

17 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
18 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
19 local government permits or approvals for the remedial action under this Decree that are
20 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the
21 Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

22 Defendants have a continuing obligation to determine whether additional permits or
23 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
24 action under this Decree. In the event either Defendants or Ecology determines that additional
25 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
26 remedial action under this Decree, it shall promptly notify the other party of this determination.

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

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

15 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
16 exemption from complying with the procedural requirements of the laws referenced in
17 RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is
18 necessary for the State to administer any federal law, the exemption shall not apply and the
19 Defendants shall comply with both the procedural and substantive requirements of the laws
20 referenced in RCW 70.105D.090(1), including any requirements to obtain permits provided,
21 however, that Ecology shall grant an extension of schedule to accommodate both the
22 additional requirements and the time required by Ecology to make its determination.

23 XX. REMEDIAL AND INVESTIGATIVE COSTS

24 The Defendants agree to pay costs incurred by Ecology pursuant to this Decree. These
25 costs shall include work performed by Ecology or its contractors for, or on, the Site under
26 Ch. 70.105D RCW both prior to and subsequent to the issuance of this Decree for

1 investigations, remedial actions, and Decree preparation, negotiations, oversight and
2 administration. Ecology costs shall include costs of direct activities and support costs of direct
3 activities as defined in WAC 173-340-550(2). The Defendants agree to pay the required
4 amount within ninety (90) days of receiving from Ecology an itemized statement of costs that
5 includes a summary of costs incurred, an identification of involved staff or authorized
6 representatives, and the amount of time spent by involved staff members or authorized
7 representatives on the project. A general statement of work performed will be provided upon
8 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs
9 within ninety (90) days of receipt of the itemized statement will result in interest charges.

10 XXI. IMPLEMENTATION OF REMEDIAL ACTION

11 If Ecology determines that the Defendants have failed without good cause to implement
12 the remedial action, Ecology may, after notice to Defendants, perform any or all portions of the
13 remedial action that remain incomplete. If Ecology performs all or portions of the remedial
14 action because of the Defendants' failure to comply with their obligations under this Decree,
15 Defendants shall reimburse Ecology for the costs of doing such work in accordance with
16 Section XX, provided that Defendants are not obligated under this section to reimburse
17 Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

18 XXII. FIVE YEAR REVIEW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

XXIII. PUBLIC PARTICIPATION

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

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

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

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

D. In cooperation with Ecology, arrange and/or continue information repositories to be located at The Wallingford Wilmot Library, 4423 Densmore Ave. N, Seattle, WA and Ecology's Headquarters at 300 Desmond Drive SE, Lacey, WA. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air monitoring data; remedial action plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

23
24
25
26

XXIV. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendants have received written notification from Ecology that the requirements of this Decree have been satisfactorily completed, and thereupon, Ecology shall dismiss the Complaint.

1 XXV. CLAIMS AGAINST THE STATE

2 The Defendants hereby agree that, except for any agency of the State of Washington
3 that is a potentially liable person, they will not seek to recover any costs accrued in
4 implementing the remedial action required by this Decree from the State of Washington or any
5 of its agencies; and further, that the Defendants will make no claim against the State Toxics
6 Control Account or any Local Toxics Control Account for any costs incurred in implementing
7 this Decree. Except as provided above, however, Defendants expressly reserve their right to
8 seek to recover any costs incurred in implementing this Decree from any other potentially
9 liable person.

10 XXVI. LAND USE RESTRICTIONS

11 Defendants agree that a restrictive covenant similar to Exhibit E, shall be recorded with
12 the office of the King County Recorder within 10 days of the entry of this Decree and shall
13 restrict future uses of the Site. Defendants will provide a copy of the recorded, restrictive
14 covenant within thirty (30) days of the recording date.

15 XXVII. COVENANT NOT TO SUE

16 In consideration of Defendants' compliance with the terms and conditions of this
17 Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all
18 administrative, legal, and equitable remedies and enforcement actions ("Actions") available to
19 the State against Defendants, for releases or threatened releases of hazardous substances at
20 the Site, provided that such Actions pertain to the type, nature, extent and location of
21 contamination which Ecology knows to be located at the Site as of the date of this Decree, and
22 provided that confirmational monitoring indicates that additional remedial actions are not
23 necessary at the Site to attain the MTCA cleanup standards identified in the Cleanup Action
24 Plan. This covenant is strictly limited to the Site as defined in Exhibit A. Until cleanup
25 standards identified in the Cleanup Action Plan are met at the Site, compliance with this
26

1 Decree shall satisfy Defendants' cleanup obligations for the release or threatened release of
2 hazardous substances covered by the terms of this Decree.

3 The terms and application of this Covenant Not to Sue are strictly limited to the type,
4 nature, extent and location of contamination identified in the FFS and CAP and only to the
5 identified contamination located within the Site. This Covenant Not To Sue does not apply to
6 any contamination of sediments in Lake Union.

7 A. Reopeners: Ecology specifically reserves the right to institute legal or
8 administrative action against Defendants seeking to require them to perform additional
9 response actions at the Site, and to pursue appropriate cost recovery in accordance with
10 provisions set out in RCW 70.105D.050, under the following circumstances:

11 (1) Upon Defendants' failure to meet the requirements of this Decree,
12 including, but not limited to, failure of the remedial action to meet the cleanup standards
13 identified in the Cleanup Action Plan;

14 (2) Upon Ecology's determination that confirmation monitoring indicates that
15 additional remedial actions are necessary to meet the cleanup standards identified in
16 the CAP;

17 (3) Upon Ecology's determination that action beyond the terms of this Decree
18 is necessary to abate an imminent and substantial endangerment to public health or
19 welfare or the environment;

20 (4) In the event new information becomes available regarding factors
21 previously unknown to Ecology, including the nature or quantity of hazardous
22 substances at the Site, and Ecology determines, in light of this information, that further
23 remedial action is necessary at the Site to protect human health or the environment,
24 and Defendants after notice, fail to take the necessary action within a reasonable time.

25 B. Applicability: Any Covenant Not To Sue concerning work performed under this
26 Consent Decree shall have no applicability whatsoever to:

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

5 XXVIII. CONTRIBUTION PROTECTION

6 By signing this Decree, the parties intend that Defendants will obtain the protection
7 against claims for contribution for matters addressed in this Decree, as is provided by MTCA,
8 RCW 70.105D.040(d)(4).

9 XXIX. EFFECTIVE DATE

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

11 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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

19 STATE OF WASHINGTON
20 DEPARTMENT OF ECOLOGY

21 

22 JAMES J. PENDOWSKI
23 Program Manager
24 Toxics Cleanup Program

25 Dated: 12/22/99

STATE OF WASHINGTON
ATTORNEY GENERAL

26  WSBA#
24777

for Tom Morrill, WSBA #18388
Assistant Attorney General
Attorney for Plaintiff
State of Washington
Department of Ecology
Dated: December 22, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PUGET SOUND ENERGY, INC.

GRAHAM & JAMES LLP/RIDDELL
WILLIAMS PS

By: [Signature]
Its: Director - Energy Svcs
Dated: 12-21-99

[Signature: Harry E. Grant]
HARRY E. GRANT, WSBA #13494
Attorneys for Puget Sound Energy
Dated: December 21, 1999

CITY OF SEATTLE

SEATTLE CITY ATTORNEY

By: [Signature: Peter E. Hapke]
Its: Superintendent
Dated: 12/21/99

[Signature: Peter E. Hapke]
PETER E. HAPKE, WSBA #23159
Assistant City Attorney
Dated: December 21, 1999

DATED this Dec 21 day of _____, 1999.

STEPHEN M. GADDIS
JUDGE
King County Superior Court

7. INSTITUTIONAL CONTROLS AND SITE USE RESTRICTIONS

Institutional controls, as defined by Chapter 173-340-440(1), are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action, or result in exposure to hazardous substances at the site. Institutional controls are incorporated into the cleanup action proposed for the Park because residual concentrations of hazardous substances in soil and groundwater will remain at the site after cleanup action implementation, as described in Section 11 of this Cleanup Action Plan. The following institutional controls will be incorporated into the proposed cleanup action for the Park:

Physical Measures

- Maintenance and improvement (as necessary) of existing fencing around the cracking towers and the northwest area of the Park;
- Inspection and maintenance of the soil cover system; and
- Maintenance and improvement (as necessary) of existing warning signs in place at the Park. These signs warn users not to eat dirt, drink water from Lake Union, wade in Lake Union, or swim in Lake Union.

Restrictive Covenant for the Park and Harbor Patrol Properties

- Restriction of activities that could disturb soils or shallow groundwater at the Park;
- Procedures to be followed for Park projects that may disturb soil or groundwater (such as development of contingency plans for characterization and disposal of hazardous substances);
- Prohibition of extraction of shallow groundwater beneath the site for purposes other than remediation; and
- Construction requirements for any deep wells or borings that might penetrate the glacial till layer, to prevent introduction of shallow contamination into deeper groundwater zones.