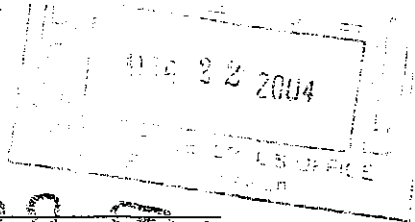
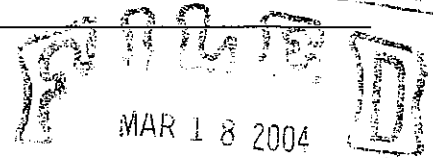


FS. 445



The Honorable



KIM M. EATON, YAKIMA COUNTY CLERK

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

INW COMPANY, SHELL OIL
COMPANY, ATOFINA CHEMICALS,
INC., CHEVRON CHEMICAL
COMPANY, OCCIDENTAL CHEMICAL
CORPORATION, PUREGRO COMPANY,
T H AGRICULTURE & NUTRITION,
LLC, UNIVAR USA, INC., WILBUR-
ELLIS COMPANY, and THE
BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendants.

No. 04 2 00908 1

CONSENT DECREE

Ecology Docket # DE 1214

CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P O Box 40117
Olympia, WA 98504-0117
FAX (360) 536-6760

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- Exhibit B – Schematic Diagram of Site
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I. INTRODUCTION

A. In entering into this Consent Decree ("Decree"), the mutual objective of the Washington State Department of Ecology ("Ecology"), and the parties listed in Exhibit A ("Defendants") is to provide for Remedial Actions (as defined herein) at the Yakima Valley Spray/U-Haul Facility ("Site") where there has been a release or threatened release of Hazardous Substances. Ecology and the Defendants shall be referred to collectively herein as the "Parties." A schematic diagram of the Site is attached to this Decree as Exhibit B.

B. To facilitate such Remedial Actions, the Site has been divided by this Decree into two Operable Units ("OU"). OU-1 consists of the property currently owned and operated by Defendant INW Company (formerly known as U-Haul Company of Inland Northwest) and located at 1108-1122 South First Street in Yakima, Washington, consisting of approximately 3.7 acres. OU-1 is also referred to herein as the "Property." OU-2 consists of that portion of the railroad right-of-way owned by The Burlington Northern Santa Fe Railway Company ("BNSF") that is shown on Exhibit B as lying immediately to the west and north of OU-1. OU-2 is also referred to herein as the "Railroad Corridor."

C. This Decree requires the Defendants to undertake the following Remedial Actions at the Site, which are described in more detail in Section VI of this Decree and in the Final Cleanup Action Plan ("CAP"), a copy of which is attached to this Decree as Exhibit C:

- (1) Excavation and removal of soils per CAP impacted by pesticides, petroleum hydrocarbons ("TPH"), perchloroethylene ("PCE"), heavy metals and other Hazardous Substances;
- (2) Treatment of TPH and PCE in deeper soils through air sparging or bioventing;
- (3) Surface capping of soils with clean fill;
- (4) Groundwater monitoring.
- (5) Air monitoring during construction.

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

3 D. The Complaint in this action is being filed simultaneously with this Decree. An
4 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
5 However, the Parties wish to resolve the issues raised by Ecology's Complaint. The Parties
6 agree that settlement of these matters without litigation is reasonable, in the public interest, and
7 consistent with the Washington Model Toxics Control Act ("MTCA"), Ch. 70.105D RCW.
8 The Parties further agree that entry of this Decree is the most appropriate means of resolving
9 the matters raised in Ecology's Complaint and this Decree.

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

12 F. This Decree is entered into by the Defendants solely for the purpose of
13 settlement and compromise of disputed claims. By entering into this Decree, Defendants do
14 not admit, the factual allegations and hereby deny the legal claims set forth in Ecology's
15 Complaint, nor do the Defendants admit any liability to the State of Washington or to any third
16 party arising out of the Site and/or its environmental condition, or out of the transactions and
17 occurrences alleged in the Complaint.

18 G. This Decree shall not therefore be construed as proof of liability or
19 responsibility for any releases of Hazardous Substances or costs for Remedial Actions, nor an
20 admission of any facts; provided, however, that the Defendants shall not challenge the
21 jurisdiction of Ecology in any proceeding to enforce this Decree.

22 H. By entering into this Decree, the Parties do not intend to discharge non-settling
23 persons or entities (other than those persons included in the definition of Other Covered
24 Persons) from any liability they may have with respect to matters alleged in the Complaint or
25 addressed in this Decree. The Parties retain the right to seek reimbursement, contribution
26

1 and/or indemnity, in whole or in part, from any such other persons or entities for sums
2 expended by the Parties at this Site, including but not limited to sums expended or paid under
3 this Decree.

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

6 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as
7 follows:

8 II. JURISDICTION

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

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

16 C. Ecology has determined that a release or threatened release of Hazardous
17 Substances has occurred at the Site which is the subject of this Decree.

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

22 E. The actions to be taken pursuant to this Decree are necessary to protect public
23 health, welfare, and the environment.

24 F. Defendants have agreed to undertake the actions specified in this Decree and
25 consent to the entry of this Decree under authority of MTCA.
26

1 III. PARTIES BOUND

2 This Decree shall apply to and be binding upon the Parties, their successors and
3 assigns. The undersigned representative of each Party hereby certifies that he or she is fully
4 authorized to enter into this Decree and to execute and legally bind such Party to comply with
5 the Decree. Defendants agree to undertake all actions required by the terms and conditions of
6 this Decree and not to contest the State's jurisdiction regarding this Decree. No change in
7 ownership or corporate status, and no change in ownership of the Site, shall alter the
8 responsibility of any Defendant under this Decree. Defendants shall provide a copy of this
9 Decree to the primary consultant(s) and/or contractor(s) retained to perform work required by
10 this Decree and shall require that all work undertaken by such consultant(s) and/or
11 contractor(s) shall be in compliance with this Decree.

12 IV. DEFINITIONS

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

15 A. CERCLA shall mean the federal Comprehensive Environmental Response,
16 Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

17 B. Consent Decree or Decree means this Consent Decree together with all of its
18 Exhibits. All Exhibits are integral and enforceable parts of this Decree.

19 C. Day shall mean a calendar day unless expressly stated to be a Working Day;
20 however, should a deadline fall on a weekend or a state holiday, the deadline shall be construed
21 to continue to the next Working Day.

22 D. Defendants means the Parties identified in Exhibit A of this Decree.
23 "Defendant" means any one of the Defendants.

24 E. Ecology means the Washington State Department of Ecology.

25 F. Facility shall have the same meaning as given to that term by MTCA. RCW

26 70.105D.020(4)

1 G. Hazardous Substance shall have the same meaning as given to that term by
2 MTCA, RCW 70.105D.020(7).

3 H. MICA shall mean the Washington Model Toxics Control Act, Ch. 70.105D
4 RCW.

5 I. Operable Unit 1 or OU-1 means the property currently owned by Defendant
6 INW Company (formerly known as U-Haul Company of Inland Northwest) located at 1108-
7 1122 South First Street in Yakima, Washington, consisting of approximately 3.7 acres, as
8 shown schematically in Exhibit B

9 J. OU-1 Parties means all of the Defendants listed on Exhibit A with the exception
10 of The Burlington Northern and Santa Fe Railway Company ("BNSF").

11 K. Operable Unit 2 or OU-2 means that portion of the railroad right-of-way owned
12 by BNSF that is shown schematically on Exhibit B.

13 L. Other Covered Persons means any and all officers, directors, attorneys,
14 employees, shareholders, assigns, partners, parents, subsidiaries, affiliates, divisions, business
15 units, agents, representatives, predecessors in interest, and successors in interest of each
16 Defendant.

17 M. Parties means the Washington State Department of Ecology and the Defendants.

18 N. Remedial Action or Remedy shall have the same meaning as given to those
19 terms by MTCA, RCW 70.105D.020(21), and shall include the Remedial Action required by
20 the Cleanup Action Plan (Exhibit C to this Decree) and any and all previous Remedial Actions
21 conducted at the Site, including but not limited to the Remedial Investigation/Feasibility Study
22 and other Remedial Actions conducted by the Defendants.

23 O. Site means the Yakima Valley Spray/U-Haul Facility that is shown
24 schematically on Exhibit B. The Site includes Operable Unit 1 and Operable Unit 2, as those
25 terms are defined in this Section.
26

1 P. Work Plan means the Engineering Design Report(s) (including all attachments)
2 approved by Ecology for the Site as of the Effective Date of this Decree and at any time in the
3 future.

4 Q. Yakima Railroad Area ("YRRA") means that area roughly defined to include
5 the area from "B" Street to Washington Avenue and from 9th Avenue to Interstate 82 within
6 the City of Yakima, Washington. In general the area is bounded northerly by Lincoln Avenue;
7 easterly by the irregular trace of 4th Street to Pacific Avenue; 10th Street to Nob Hill
8 Boulevard; Rudkin Road to Valley Mall Boulevard; a line running due south from the southern
9 end of Rudkin Road to the point where it intersects a line running due east from the eastern end
10 of Ahtanum Road; and westerly by the irregular trace of 3rd Avenue to West Washington
11 Avenue and 8th Avenue to Summitview Avenue; then Pierce Street to Lincoln Avenue
12 (northern boundary) and defined by Ecology as the Yakima Railroad Area Site.

13 **V. STATEMENT OF FACTS**

14 Ecology makes the following findings of fact without any express or implied
15 admissions by the Defendants:

16 A. OU-1 is a 3.7-acre commercial-zoned tract in south central Yakima. The Property
17 is a combination of several real estate parcels, designated as Parcels A, B and C for ease of
18 reference, as shown on Attachment 1 to the Cleanup Action Plan (Exhibit C to this Decree).
19 Some of the past ownership and operations and sources of historical contamination for each parcel
20 are briefly summarized below.

21 B. Yakima Valley Spray and its predecessors (collectively "YVS") operated an
22 agricultural chemical formulation and distribution business on Parcel C of OU-1 from about 1909
23 to 1973. Parcel C occupies roughly the northwest corner of the Property. The YVS formulation
24 plant was located on Parcel C, along with a pit that received lime sulfur, pesticide, petroleum
25 products, and other waste from YVS operations. The pit was located to the west of a warehouse
26

1 formerly used by Shell Oil Company. Historic maps and aerial photos show the existence of YVS
2 aboveground storage tanks both on Parcel C and in the adjacent Railroad Corridor. The Site
3 history also indicates that a 6,000-gallon aboveground tank located just inside the northern
4 boundary of Parcel C was used for storage and distribution of PCE from about 1968 to 1973. The
5 YVS plant burned down in 1973 and YVS dissolved in 1974.

6 C. Parcel B occupies roughly the center and northeast corner of the Property. A
7 bulk petroleum products storage and distribution business was operated on this parcel by
8 Washington Refining Company from about 1912 to 1955, and by its successor-in-interest,
9 Shell Oil Company, from 1955 to 1971. Historic aerial photographs confirm the presence of
10 six vertical tanks and one horizontal aboveground tank on Parcel B, to the south of the YVS
11 plant. A Shell gasoline service station was located on the east side of Parcel B on South First
12 Street.

13 D. Parcel A occupies roughly the southern third of the Property. Various
14 businesses operated on this parcel, including a salvage yard and farm and heavy equipment
15 sales and service business operated by Webb Tractor, Inc.

16 E. Ownership of all three parcels subsequently was consolidated in Webb Tractor,
17 Inc., which sold the parcels to INW Company on or about June 1, 1984. INW Company
18 currently owns and operates a truck and trailer rental business.

19 F. BNSF is the past and present owner and operator of the Railroad Corridor
20 immediately west of OU-1 and the right-of-way immediately north of OU-1. BNSF leased a
21 portion of the Railroad Corridor to YVS for barrel storage.

22 G. Ecology initially identified INW Company as a potentially liable person ("PLP")
23 for the Site under authority of RCW 70.105D 040(1). In 1991, under Enforcement Order #91TC-
24 C453, Ecology required that INW Company conduct a Remedial Investigation/Feasibility Study
25 ("RI/FS") of the Site.

1 H. A Steering Committee was formed by INW Company, Shell Oil Company,
2 Snokist Growers and other former YVS shareholders (collectively referred to as "Snokist"), and
3 certain former YVS customers and suppliers (collectively referred to as the "Formulation
4 Customer Group" as described in Exhibit A). The Steering Committee engaged an environmental
5 consultant. The consultant performed the RI work, the Steering Committee parties paid for the
6 work, and Ecology approved the RI in August 1995.

7 I. The Steering Committee subsequently authorized the consultant to conduct an FS
8 for the Site. The work was performed, the Steering Committee parties paid for the work, and a
9 draft FS was submitted to Ecology on March 10, 1995. The draft FS identified various cleanup
10 alternatives for the remediation of the Site. Ecology provided comments on the draft FS to the
11 Steering Committee in November 1995. Snokist subsequently withdrew from the Steering
12 Committee and did not participate further.

13 J. In August 1995, Ecology requested the Steering Committee's voluntary
14 participation, and in October 1995, the YVS/U-Haul Facility was selected as a demonstration pilot
15 project for review by the MTCA Advisory Committee formed under Washington State House Bill
16 1810. During the pilot project period, from mid-August 1995 through December 1996, the
17 Steering Committee authorized its consultant to prepare and submit several alternative cleanup
18 scenarios to Ecology for consideration. Ecology evaluated these submittals but ultimately decided
19 not to accept the alternative approaches. On November 25, 1997, Ecology required INW
20 Company to submit the final FS by February 2, 1998. The FS was never finalized.

21 K. Ecology and the Steering Committee continued to meet, correspond and negotiate
22 over a cleanup action plan. There was sufficient information in the draft FS, combined with
23 information from meetings and Steering Committee submittals after February 2, 1998, to allow
24 Ecology to make a cleanup action decision for the Site. Therefore, Ecology prepared a draft
25
26

1 Cleanup Action Plan ("CAP"), on which the Steering Committee provided comments. Ecology
2 subsequently issued the Final CAP attached as Exhibit C.

3 L. Ecology named additional PLPs for the Site during 2002. Those PLPs included
4 Shell Oil Company and its business unit, Shell Chemical Company, and the members of the
5 Formulation Customer Group listed in Exhibit A to this Decree, all of whom (except Chevron
6 Chemical, which had not previously been made aware of its potential liability) had participated
7 with INW Company in the Steering Committee that funded the RI/FS. In 2003, Ecology
8 named BNSF as a PLP with respect to the Site. The Defendants listed in Exhibit A formed a
9 PLP Group that is implementing the CAP under this Decree.

10 VI. WORK TO BE PERFORMED

11 This Decree contains a program designed to protect public health, welfare and the
12 environment from the known release, or threatened release, of hazardous substances or
13 contaminants at, on, under or from the Site. The work to be performed is briefly summarized
14 below and is more specifically described in the Cleanup Action Plan (Exhibit C to this Decree)
15 and in the Project Schedule (Exhibit D to this Decree). The Exhibits are incorporated by
16 reference in this Decree. To effectuate the work to be performed in the most efficient manner,
17 and to act in a manner that is consistent with agreements reached between the Defendants
18 (which agreements do not involve the Department of Ecology), certain Defendants have
19 elected to accept responsibility for, and to take the lead in, performing particular
20 responsibilities under the Decree. Thus, the OU-1 Parties agree to perform the work at OU-1,
21 and BNSF agrees to perform the work at OU-2. The Defendants acknowledge that the cleanup
22 is being performed pursuant to MTCA 70.105D.040, and further acknowledge that their
23 internal division of responsibility does not operate to relieve them of any legal responsibilities
24 under MTCA, for the performance of the obligations under this Decree.

1 A. Soil Excavation and Treatment. Areas to be excavated or treated at OU-1 of the
2 Site include all areas where soil contaminant concentrations exceed the cleanup levels of
3 Table 2 of the CAP. Areas to be excavated or treated at OU-2 of the Site include all areas
4 consistent with the CAP.

5 B. Designated Wastes. Excavated materials need to be designated per the
6 Washington State dangerous waste regulations and Ecology's letter of November 25, 1997 to
7 INW Company's attorney, and disposed of at an appropriate accepting facility.

8 C. PCE Impacted Soil. PCE is a contaminant of concern in the six-square-mile
9 YRRA, within which the Site is located. PCE is present in groundwater underlying the
10 YRRA, and in soils at various locations throughout the YRRA, including the Site. The OU-1
11 Parties shall perform cleanup of PCE-impacted soil located on the Property (OU-1) in
12 accordance with the cleanup level set forth in the CAP and generally required at YRRA sites.
13 PCE-impacted soil is also present on the BNSF Railroad Corridor (OU-2). BNSF shall
14 perform cleanup of PCE-impacted soil located on OU-2. The PCE soil cleanup on OU-2 shall
15 be tied only to the soil cleanup level for DDT in accordance with the methodology specified in
16 the CAP

17 D. Excavation Procedures. The lime-sulfur disposal pit shall be excavated as
18 specified in the CAP. Disposal pit excavation shall be planned so that excavation reaches its
19 deepest (18-20 feet) during periods of low groundwater (early December to mid-April). If the
20 pit is not fully excavated during the first excavation year, the Site shall be safely secured until
21 the following year for continued excavation. Provisions relating to soil screening and
22 unearthed concrete slabs are contained in the CAP.

23 E. Site Buildings. Soil contamination is present under two buildings on OU-1, the
24 former Shell Oil warehouse (Parcel B) and the Webb building (Parcel A). Impacted soil next
25 to and beneath the two buildings shall be remediated as specified in the CAP. Demolished
26

1 building materials and floors shall be sampled and characterized for hazardous substances and
2 disposed of appropriately

3 F. Railroad Corridor (OU-2) Soil contamination extends beyond the westerly and
4 northern boundary of the Property (OU-1) onto the Railroad Corridor (OU-2). Soil
5 contamination shall be remediated between the westerly boundary of OU-1 and the offset zone
6 for the BNSF spur tracks, and between the northern and southern boundaries as shown
7 schematically on Exhibit B. The applicable soil cleanup levels shall be those specified in the
8 CAP. Soil contamination within OU-2 that lies outside the off-set zone shall be remediated by
9 removal in accordance with the cleanup levels in the CAP. PCE-impacted soils above
10 applicable cleanup levels shall be remediated throughout OU-2 where co-located with DDT-
11 impacted soils above applicable cleanup levels. Within the off-set zone, PCE and TPH soils
12 exceeding cleanup levels shall be remediated by removal or by air sparging or bioventing. The
13 Defendants shall coordinate with each other to resolve access, safety, construction, excavation,
14 vehicle traffic, stockpiling, bioventing/air sparging construction and timing issues. Access
15 shall be provided in accordance with the provisions of Article IX.

16 G. Shanno Ditch/Sewer Line/Utilities Rerouting and reinstallation planning for
17 the irrigation ditch, sewer line, and any other utilities shall be addressed in the Work Plan.
18 Impacted soils around and under these structures shall be excavated, especially in the area of
19 the former YVS disposal pit, as specified in the CAP

20 H. Soil Stockpiling and Cleanup Logistics. The Work Plan shall address Site
21 staging, soil screening, and the stockpiling of excavated soils, as specified in the CAP

22 I. Backfill. Excavated pits, or parts thereof, shall not be backfilled until the results
23 of confirmational sampling have been reviewed, analyzed, and approved by Ecology. Backfill
24 requirements are specified in the CAP and shall be addressed in the Work Plan.

1 J. Bioventing/Air Sparging The Defendants shall include, as part of the Work
2 Plan, an engineering plan or plans for any bioventing or air sparging system or systems that
3 may be used to meet the requirements of the CAP. The necessity for and design of such
4 systems for OU-1 and OU-2 shall be considered independently of one another. Bioventing or
5 air sparging shall be implemented for petroleum products and PCE remediation in areas that
6 are not fully excavated to the applicable soil cleanup levels, except as otherwise agreed to and
7 approved by Ecology. Bioventing/air sparging shall continue until those levels are met.

8 K. Groundwater Requirements. Groundwater monitoring requirements are set
9 forth in Section 5.2 of the CAP. Five new monitoring wells shall be installed and developed as
10 specified in the CAP. Three of the new wells shall be shallow (29 feet) and two shall be
11 deeper (60 feet and 90 feet). The five new monitoring well locations shall be determined in
12 consultation with Ecology. The Work Plan shall contain a Sampling and Analysis Plan in
13 accordance with WAC 173-340-410, -820, -830, and -840 that addresses soil, groundwater and
14 air analyses.

15 L. Containment of Site Pollutants. Methods to minimize all releases during active
16 remediation work shall be developed in the Work Plan and shall be implemented during active
17 and passive remediation activities at the Site, as specified in the CAP.

18 M. Surface Cap. After final backfill, a surface cap of clean fill shall be installed
19 to the pre-existing grade, in accordance with the CAP.

20 N. Institutional Controls. Institutional controls shall be implemented in accordance
21 with the CAP.

22 O. Periodic Review. The Defendants shall submit monthly cleanup progress
23 reports to Ecology from the beginning of excavation to the installation of the last monitoring
24 well. The OU-1 Parties and BNSF shall coordinate their reporting so that Ecology receives a
25 single monthly progress report for each reporting period. Thereafter, the Defendants shall
26

1 submit quarterly progress reports to Ecology in accordance with WAC 173-340-410(1)(c) and
2 the CAP. Defendants may request reductions in any sampling and/or analytical requirements,
3 subject to written approval by Ecology, which approval shall not be unreasonably withheld.
4 Groundwater analyses and bioventing or air sparging data shall be submitted to Ecology within
5 30 Days after receipt of complete validated analytical results.

6 P. Scope and Remedial Actions. The Defendants agree not to perform any
7 Remedial Actions outside the scope of this Decree unless the Parties agree to amend the Scope
8 of Work to cover these actions. All work conducted under this Decree shall be done in
9 accordance with Ch. 173-340 WAC and the CAP unless otherwise provided herein, and shall
10 be considered consistent with applicable laws and regulations if approved by Ecology

11 VII. DESIGNATED PROJECT COORDINATORS

12 A. The project coordinator for Ecology is:

13	Dick Bassett	phone: (509) 454-7839
14	Department of Ecology	fax: (509) 575-2809
15	Central Regional Office	e-mail: rbas461@ecy.wa.gov
16	15 West Yakima, Suite 200	
17	Yakima, Washington 98902-3452	

18 B. The project coordinators for the OU-1 Parties and BNSF shall be identified to
19 Ecology no later than 20 days after the effective date of this Decree. The Parties shall
20 coordinate schedules and other actions, as required by Paragraph IX.B of this Decree.

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

1 work required by this Decree. The project coordinators may agree to minor modifications to
2 the work to be performed without formal amendments to this Decree. Minor modifications
3 shall be documented in writing by Ecology.

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

6 VIII. PERFORMANCE

7 All work performed pursuant to this Decree shall be under the direction and
8 supervision, as necessary, of a professional engineer, geologist, hydrogeologist, or equivalent,
9 with experience and expertise in hazardous waste site investigation and cleanup. Any
10 construction work must be under the supervision of a professional engineer. Defendants shall
11 notify Ecology in writing as to the identity of such persons and of the primary consultant
12 and/or contractor to be used in carrying out the terms of this Decree, in advance of their active
13 involvement at the Site.

14 IX. ACCESS

15 A. Ecology's Access. INW Company shall grant reasonable access to Ecology or
16 any Ecology authorized representatives to enter and freely move about the Property (OU-1) at
17 all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and
18 contracts specifically relating to the work being performed pursuant to this Decree; reviewing
19 Defendants' progress in carrying out the terms of this Decree; conducting such tests or
20 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
21 other documentary type equipment to record work done pursuant to this Decree; and verifying
22 the data submitted to Ecology by the Defendants. Likewise, BNSF shall grant reasonable
23 access to Ecology or any Ecology-authorized representatives to enter and freely move about
24 the Railroad Corridor (OU-2) for all of the aforesaid purposes, subject to all applicable rules
25 and safety standards. Ecology shall give advance notice to BNSF to the extent practicable and
26

1 reasonably necessary under the circumstances, so that all appropriate safety measures and
2 precautions may be considered and implemented prior to such access.

3 B. Defendants' Access and Mutual Cooperation. The OU-1 Parties shall grant
4 reasonable access to BNSF and its consultants and contractors, and BNSF shall likewise grant
5 reasonable access to the OU-1 Parties and their consultants and contractors, for the purpose of
6 performing Remedial Actions at their respective Operable Units. The Defendants shall
7 mutually cooperate with each other in the performance of their Remedial Action obligations
8 under the CAP. Such access and cooperation shall apply to, but not be limited to, scheduling;
9 completion of excavations; construction, operation and maintenance of treatment systems;
10 confirmational sampling, monitoring well construction, maintenance and sampling; reporting
11 and other actions necessary to performance of the CAP.

12 C. Compliance with Health and Safety Plans. All Parties with access to the Site
13 pursuant to the above paragraphs shall comply with approved health and safety plans.

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

15 A. Submittals of Groundwater Data. Defendants shall make the final results of all
16 sampling, laboratory reports, and/or test results generated by them, or on their behalf, available
17 to Ecology and shall submit these results in a format compatible with Ecology's environmental
18 information monitoring ("EIM") system and Section XI of this Decree.

19 B. Sampling Schedule. The Groundwater Compliance Monitoring Program shall
20 comply with WAC 173-340-410 and shall consist of protection monitoring, performance
21 monitoring and confirmational monitoring. Groundwater cleanup levels and constituents,
22 frequencies, and locations of groundwater sampling are described in the Groundwater
23 Compliance Monitoring Plan (Appendix G to Work Plan). All sampling and monitoring shall
24 also comply with the Sampling and Analysis Plan (Appendix B to Work Plan) required by the
25 CAP. Groundwater shall be monitored for at least five years after groundwater cleanup levels
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1 are achieved and the air sparging/bioventing system(s) is shut down. The Remedial Action
2 shall be considered permanent and complete if confirmational monitoring at the end of the
3 five-year period demonstrates that cleanup levels are being maintained in compliance wells.
4 All groundwater monitoring wells at the Site shall thereafter be decommissioned in preparation
5 for Site closure. Ecology may direct that certain wells be transferred to Ecology for longer-
6 term YRRA monitoring purposes. In such event, Ecology will assume ownership, control and
7 responsibility for such wells, including further sampling and eventual decommissioning

8 C. Modification or Termination of Schedule. A Defendant may at any time request
9 that groundwater sampling be modified or terminated. The Defendant(s) shall describe, in any
10 request for modification or termination of the groundwater sampling schedule, the reasons for
11 the requested modification or termination, supported by such data and other information as
12 deemed appropriate. Implementation of the requested modification or termination shall be
13 subject to Ecology's approval, which approval shall not be unreasonably withheld. Ecology's
14 determination shall be subject to the dispute resolution process set forth in Section XIV of this
15 Decree.

16 D. Split or Duplicative Samples. If requested by Ecology, Defendants shall allow
17 split or duplicate samples to be taken by Ecology and/or its authorized representatives of any
18 samples collected by Defendants pursuant to the implementation of this Decree. Defendants
19 shall notify Ecology seven (7) Days in advance of any sample collection or work activity at the
20 Site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants
21 or their authorized representatives of any samples collected by Ecology pursuant to the
22 implementation of this Decree, provided it does not interfere with the Department's sampling.
23 Without limitation on Ecology's rights under Section IX, Ecology shall endeavor to notify
24 Defendants prior to any sample collection activity.

1 **XI. PROGRESS REPORTS**

2 A. Defendants shall submit to Ecology written periodic progress reports which
3 describe the actions taken during the previous reporting period to implement the requirements
4 of this Decree. The OU-1 Parties and BNSF shall coordinate with one another to the extent
5 practicable, such that a single Site-wide progress report is provided to Ecology for each
6 reporting period. The progress reports shall include the following:

7 (1) A list of on-Site activities that have taken place during the period since the last
8 progress report;

9 (2) Detailed description of any deviations from required tasks not otherwise
10 documented in project plans or amendment requests;

11 (3) Description of all deviations from the Schedule (Exhibit D) during the current
12 period and any planned deviations in the upcoming period;

13 (4) For any deviations in schedule, a plan for recovering lost time and maintaining
14 compliance with the schedule;

15 (5) All final sampling data (including laboratory analysis) received by the
16 Defendants during the period since the last progress report and an identification of the source
17 of the sample; and

18 (6) A list of deliverables for the upcoming reporting period if different from the
19 schedule.

20 B. Defendants shall submit progress reports to Ecology on a monthly basis from
21 the beginning of excavation to the installation of the last monitoring well. Subsequent progress
22 reports shall be submitted on a quarterly basis during the five-year confirmation period and any
23 extension thereof, and may be combined with the quarterly groundwater monitoring and
24 bioventing/air sparging reports. Defendants may request that progress reports be submitted
25 less frequently, subject to Ecology's approval, which approval shall not be unreasonably
26 withheld.

1 C. All progress reports shall be submitted by the tenth Day of the period in which
2 they are due after the effective date of this Decree. Unless otherwise agreed to, progress
3 reports and any other documents submitted pursuant to this Decree shall be sent by regular
4 mail to Ecology's project coordinator. The submission date shall be deemed to be the date that
5 the progress report is mailed.

6 XII. RETENTION OF RECORDS

7 Defendants or their designated environmental consultant(s) shall preserve, during the
8 pendency of this Decree and for ten (10) years from the date this Decree is terminated as
9 provided in Section XXVII, all final records, reports, documents, and underlying data, not
10 including drafts or any confidential and privileged materials, in their possession specifically
11 relating to the implementation of this Decree and shall insert in contracts with project
12 contractors and subcontractors a similar record retention requirement. Upon reasonable and
13 written request of Ecology, Defendants or their designated environmental consultant shall
14 make all such non-archived records available to Ecology and allow access for review. All such
15 archived records shall be made available to Ecology within a reasonable period of time after
16 retrieval from archives.

17 XIII. TRANSFER OF INTEREST IN PROPERTY

18 A. During the effective period of this Decree, as set forth in Section XXVI, no
19 voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other
20 interest in the Property (OU-1) shall be consummated by INW Company without provision for
21 continued compliance with the requirements of this Decree.

22 B. Prior to transfer of any legal or equitable interest in all or any portion of the
23 Property, and during the effective period of this Decree, as set forth in Section XXVI, INW
24 Company shall provide a copy of this Decree to any prospective purchaser, lessee, transferee,
25 assignee, or other successor in interest of the Property; and, at least thirty (30) Days prior to
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1 any transfer, INW Company shall notify Ecology and designated representatives of Shell Oil
2 Company and the Formulation Customer Group of said contemplated transfer; provided, that
3 this Paragraph shall not apply to the granting by INW of any security interest.

4 XIV. DISPUTE RESOLUTION

5 A. In the event a dispute arises as to an approval, disapproval, proposed
6 modification, determination or other decision or action by Ecology or its project coordinator,
7 the Parties shall utilize the dispute resolution procedure set forth below. The Parties shall bear
8 their own costs, fees and expenses incurred in connection with these procedures.

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

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

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

18 (4) Ecology's program manager (or his or her designee) shall conduct a review of
19 the dispute and shall issue a written decision regarding the dispute within thirty (30) Days of
20 the Defendants' request for review. The program manager's decision shall be Ecology's final
21 decision on the disputed matter.

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

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

6 D Implementation of these dispute resolution procedures shall not provide a basis
7 for delay of any activities required in this Decree, unless Ecology consents in writing to a
8 requested schedule extension, which consent shall not be unreasonably withheld, or the Court
9 so orders.

10 XV. AMENDMENT OF CONSENT DECREE

11 This Decree may only be amended by a written stipulation among the Parties to this
12 Decree that is entered by order of the Court. Such amendment shall become effective upon
13 entry by the Court. Agreement to a request to amend this Decree shall not be unreasonably
14 withheld by any Party. Defendants shall submit any request for an amendment to Ecology for
15 approval. Ecology shall indicate its approval or disapproval in a timely manner after the
16 request for amendment is received. If the amendment to the Decree is substantial, Ecology
17 shall provide public notice and opportunity for comment. In the event of disapproval, Ecology
18 shall state its reasons for disapproval in writing. If Ecology does not agree to a proposed
19 amendment, the disagreement may be addressed through the dispute resolution procedures
20 described in Section XIV of this Decree.

21 XVI. EXTENSION OF SCHEDULE

22 A. An extension of schedule shall be granted only when a request for an extension
23 is submitted within a reasonable time prior to expiration of the deadline for which the
24 extension is requested, and good cause exists for granting the extension. All extensions shall
25 be requested in writing and shall be subject to approval by Ecology, which approval shall not
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1 be unreasonably withheld. The request shall specify the reason(s) the extension is needed. An
2 extension shall only be granted for such period of time as Ecology determines is reasonable
3 under the circumstances. Ecology's decision shall be subject to the dispute resolution
4 procedures in Section XIV of this Decree. A requested extension shall not be effective until
5 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
6 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section
7 XV when a schedule extension is granted.

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

12 (1) Circumstances beyond the reasonable control and despite the due diligence of
13 Defendants, including delays caused by the actions of unrelated third parties, permitting
14 agencies, or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving,
15 or modifying documents submitted by Defendants; or

16 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
17 other unavoidable casualty, acts of war, or other customary force majeure conditions; or

18 (3) Endangerment as described in Section XVII.

19 However, neither increased costs of performance of the terms of this Decree nor
20 changed economic circumstances shall be considered circumstances beyond the reasonable
21 control of Defendants.

22 C. Ecology may extend the schedule for a period generally not to exceed ninety
23 (90) days, except where a longer extension is needed as a result of:

24 (1) Ongoing circumstances beyond the reasonable control of Defendants, acts of
25 God, acts of war, or other force majeure conditions;

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

3 (3) Other circumstances deemed exceptional or extraordinary by Ecology; or

4 (4) Endangerment as described in Section XVII.

5 Ecology shall give Defendants' timely written notification of any extensions granted
6 pursuant to this Decree.

7 XVII. ENDANGERMENT

8 A. In the event Ecology determines that activities undertaken in furtherance of this
9 Decree or any other circumstances or activities are creating or have the potential to create a
10 danger to the health or welfare of the people on the Site or in the surrounding area or to the
11 environment, Ecology may order Defendants to stop further implementation of this Decree for
12 such period of time as needed to abate the danger or may petition the Court for an order as
13 appropriate. During any stoppage of work under this Section, the obligations of Defendants
14 with respect to the work under this Decree which is ordered to be stopped shall be suspended
15 and the time periods for performance of that work, as well as the time period for any other
16 work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of
17 this Decree, for such period of time as Ecology determines is reasonable under the
18 circumstances.

19 B. In the event Defendants determine that activities undertaken in furtherance of
20 this Decree or any other circumstances or activities are creating or have the potential to create
21 an endangerment to the people on the Site or in the surrounding area or to the environment,
22 Defendants may stop implementation of this Decree for such period of time necessary for
23 Ecology to evaluate the situation and determine whether Defendants should proceed with
24 implementation of the Decree or whether the work stoppage should be continued until the
25 danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible.
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1 but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide
2 Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the
3 Defendants' determination, it may order Defendant to resume implementation of this Decree.
4 If Ecology concurs with the work stoppage, the Defendant's obligations shall be suspended and
5 the time period for performance of that work, as well as the time period for any other work
6 dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of
7 this Decree, for such period of time as Ecology determines is reasonable under the
8 circumstances. Any disagreements pursuant to the Section shall be resolved through the
9 dispute resolution procedures in Section XIV.

10 **XVIII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

11 A. Covenant Not to Sue. In consideration of Defendants' respective compliance
12 with the terms and conditions of this Decree, the State of Washington covenants not to institute
13 legal, equitable or administrative actions against Defendants and their Other Covered Persons
14 regarding the release or threatened release of Hazardous Substances at, on or under this Site or
15 the YRRA as to contamination related to the Site. Unless confirmational monitoring indicates
16 that additional Remedial Actions are necessary at the Site to attain cleanup standards set forth
17 in the CAP, within the reasonable restoration time frame set forth in the CAP, and until such
18 cleanup standards are met at this Site, compliance with this Decree shall satisfy Defendants'
19 respective cleanup obligations for the release or threatened release of Hazardous Substances at,
20 on or under the Site or the YRRA as to contamination related to this Site.

21 B. Applicability. The terms and application of this Decree are strictly limited to
22 the Site specifically identified in Exhibit B and the YRRA, and to those Hazardous Substances
23 associated with historic waste practices at the Site and the YRRA, which Ecology has actual or
24 constructive knowledge of being located at this Site or the YRRA as to contamination related
25 to this Site, based on this Decree (including its Exhibits) and the contents of the Documents
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1 listed in Exhibit E of this Decree. This Decree shall not be applicable to any other Hazardous
2 Substance or area, and the State retains all of its authority relative to such substances and areas.

3 The Covenant Not to Sue set forth above shall have no applicability whatsoever to:

4 (1) Criminal liability;

5 (2) Liability for damages to natural resources, excepting beneficial uses of water
6 (including the use of water for agricultural or drinking water purposes); or

7 (3) Any Ecology action against potentially liable parties not included within the
8 coverage of Paragraph A of this Section.

9 C. Ecology's Reservation. Ecology specifically reserves the right to institute legal,
10 equitable or administrative action against Defendants to require them to perform additional
11 Remedial Actions at the Site, and to pursue appropriate cost recovery in accordance with
12 provisions set out in RCW 70.105D.050, under the following circumstances:

13 (1) Upon Defendants' material breach of this Decree, including but not limited to
14 failure of the Remedial Action to meet the cleanup standards identified in the CAP (Exhibit B);

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

18 (3) If factors not known to Ecology at the time of entry of this Consent Decree are
19 discovered and present a previously unknown threat to human health and the environment at
20 the Site, and Defendants, after reasonable notice, fail to take necessary action within a
21 reasonable time provided by Ecology in the notice. For purposes of this Subparagraph, the
22 term "factors not known to Ecology" shall mean the presence of Hazardous Substances at the
23 Site and YRRA unknown to Ecology at the date of entry of this Decree. For purposes of this
24 paragraph, Ecology shall be assumed to have knowledge of this Decree (including its Exhibits)
25 and the contents of the documents listed in Exhibit E to this Decree. The term "previously
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1 unknown threat to human health and the environment" shall not include any threat to any
2 beneficial uses of water (including the use of water for agricultural or drinking water purposes)
3 from Hazardous Substances released at, on, under or from the Site or the YRRA.

4 D. Defendants' Reservation. Each Defendant hereby reserves any and all rights
5 against any person not a Party to this Decree or who is not an Other Covered Person, with
6 respect to matters arising out of or related to the Site, including but not limited to claims under
7 MTCA, CERCLA or any other statute, regulation or the common law, for contribution, cost
8 recovery, indemnification, or any other claim or cause of action whatsoever.

9 XIX. CONTRIBUTION PROTECTION

10 With regard to claims for contribution against any Defendant for Matters Addressed in
11 this Decree, or with regard to the Site, the Parties hereto agree that each Defendant and its
12 Other Covered Persons are entitled to all of the protection from any actions or claims as is
13 provided by MTCA, RCW 70.105D.040(4)(d), by CERCLA Section 107, 42 U.S.C. § 9607,
14 and Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as otherwise provided by law. The
15 contribution protection conferred in this Section and by operation of law shall not be frustrated
16 by the use of non-CERCLA or non-MTCA theories to seek relief in the nature of contribution
17 or indemnification. For the purpose of this section, "Matters Addressed" shall include:

18 (1) all past and future Remedial Actions, including without limitation any and all
19 related monitoring and reporting activities whether performed by Ecology or any other person,
20 arising from a release or threatened release of Hazardous Substances at, on, under or from the
21 Site or the YRRA as to contamination related to this Site; and

22 (2) all past and future costs incurred by Ecology or any other person, with respect
23 to a release or threatened release of Hazardous Substances at, on, under or originating from the
24 Site or the YRRA as to contamination related to this Site, and including without limitation any
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1 such measures performed and any such costs incurred by any person under any consent decree
2 or enforcement order entered before or after this Decree.

3 **XX. INDEMNIFICATION**

4 Defendants agree to indemnify and save and hold the State of Washington, its
5 employees, and agents harmless from any and all claims or causes of action for death or
6 injuries to persons or for loss or damage to property arising from or on account of the negligent
7 acts or omissions of Defendants, their officers, employees, agents, or contractors in
8 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 of
10 action arising out of the negligent acts or omissions of the State of Washington, or the
11 employees or agents of the State, in implementing this Decree. The State of Washington shall
12 give notice to Defendants as soon as practicable of any claim or cause of action for which the
13 State will or may seek indemnification hereunder and shall not resolve or attempt to resolve
14 any such claim except on such terms as are just and reasonable and only after reasonable
15 consultation with Defendants.

16 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

17 A. All actions carried out by Defendants pursuant to this Decree shall be done in
18 accordance with all applicable federal, state, and local requirements, including requirements to
19 obtain necessary permits, except as provided in Paragraph B of this Section.

20 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
21 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
22 local government permits or approvals for the Remedial Action under this Decree that are
23 known to be applicable at the time of entry of the Decree have been included in the CAP, and
24 are binding and enforceable requirements of the Decree. Pursuant to RCW 70.105D.090(1),
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1 Defendants are exempt from the procedural requirements of such laws with respect to the
2 Remedial Action required by this Decree.

3 C. Defendants have a continuing obligation to determine whether additional
4 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
5 Remedial Action under this Decree. In the event either Defendants or Ecology determine that
6 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
7 required for the remedial action under this Decree, they/it shall promptly notify the other
8 Party(ies) of this determination. Ecology shall determine whether Ecology or Defendants shall
9 be responsible to contact the appropriate state and/or local agencies. If Ecology so requires,
10 Defendants shall promptly consult with the appropriate state and/or local agencies and provide
11 Ecology with written documentation from those agencies of the substantive requirements those
12 agencies believe are applicable to the Remedial Action.

13 D. If, after review of written documentation received from the relevant agencies,
14 Ecology determines that additional substantive requirements must be met by Defendants for
15 purposes of conducting the Remedial Action required by this Decree, Ecology shall inform
16 Defendants in writing of these requirements and shall make a determination, after consultation
17 with Defendants, on how best to meet those requirements. Once established by Ecology, the
18 additional requirements shall be enforceable requirements of this Decree. Defendants shall not
19 begin or continue the part of the Remedial Action potentially subject to the additional
20 requirements until Ecology makes its final determination. Ecology shall ensure that notice and
21 opportunity for comment are provided to the public and appropriate agencies prior to
22 establishing the substantive requirements under this section.

23 E. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
24 exemption from complying with the procedural requirements of the laws referenced in RCW
25 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
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1 for the State to administer any federal law, the exemption shall not apply and the Defendants
2 shall comply with both the procedural and substantive requirements of the laws referenced in
3 RCW 70.105D.090(1), including any requirements to obtain permits.

4 F. Any determination by Ecology under this Section shall be subject to the dispute
5 resolution procedures of Section XIV of this Decree.

6 XXII. ECOLOGY'S COSTS

7 The Defendants agree to pay the following costs incurred by Ecology pursuant to this
8 Decree and with respect to the Site.

9 A. Ecology's Past Site Costs. The Defendants shall pay Ecology the amount of
10 \$275,000 in full and complete settlement of any and all liability for Ecology's Site-related
11 costs incurred prior to entry of this Decree. Payment shall be made within ninety (90) Days
12 after the effective date of this Decree.

13 B. Yakima Railroad Area Costs. The Defendants shall pay Ecology the amount of
14 \$188,404 in full and complete settlement of any and all liability for past or future costs
15 allocated to the Site, either prior to or subsequent to entry of this Decree, for investigations or
16 other Remedial Actions relating to or arising from the YRRA as to contamination related to
17 this Site. Payment shall be made within (90) Days after the effective date of this Decree.

18 C. Ecology's Future Site Costs. The Defendants agree to reimburse Ecology for its
19 reasonable future costs incurred for work performed by Ecology or its contractors for or at the
20 Site under authority of MTCA subsequent to the effective date of this Decree for oversight or
21 performance of Remedial Actions conducted under this Decree. Ecology shall attempt, to the
22 extent practicable, to describe separately OU-1 and OU-2 costs. Ecology costs shall include
23 costs of direct activities and support costs of direct activities as defined in WAC 173-340-
24 550(2). The Defendants agree to pay the required amount within ninety (90) Days of receiving
25 from Ecology an itemized statement of costs that includes a summary of costs incurred. an
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1 identification of involved staff, and the amount of time spent by involved staff members on the
2 project. A general statement of work performed shall be provided upon request. Itemized
3 statements shall be prepared quarterly. Failure to pay the required amount within ninety (90)
4 Days of receipt of the itemized statement shall result in interest charges. Any disputes arising
5 from Ecology's claimed future costs shall be subject to the dispute resolution process of
6 Section XIV of this Decree.

7 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

8 If Ecology determines that Defendants have failed without good cause to implement the
9 Remedial Action, Ecology may, after reasonable notice to Defendants, perform any or all
10 portions of the Remedial Action that remain incomplete. Ecology's determination shall be
11 subject to the dispute resolution process of Section XIV of this Decree. If Ecology performs
12 all or portions of the Remedial Action because of the OU-1 Parties' and/or BNSF's failure to
13 comply with their obligations under this Decree, the Defendant(s) that has(have) agreed to
14 primary responsibility for that operable unit shall reimburse Ecology for its reasonable costs
15 actually incurred in doing such work in accordance with Paragraph XVIII.C; provided, that
16 Defendants are not obligated under this Section to reimburse Ecology for costs incurred for
17 work inconsistent with or beyond the scope of this Decree. However, this Section shall not
18 relieve Defendants of any liability otherwise applicable under MTCA 70.105D.040 (2).

19 **XXIV. FIVE YEAR REVIEW**

20 The Parties shall review the progress of Remedial Action at the Site, including the data
21 accumulated as a result of Site monitoring, as often as is necessary and appropriate under the
22 circumstances. At the conclusion of the five-year groundwater monitoring period described in
23 Paragraph X.B of this Decree, the Parties shall meet to discuss the status of the Remedial
24 Action and the need, if any, for further Remedial Actions at the Site. Ecology reserves the
25 right to require further Remedial Actions at the Site under appropriate circumstances as
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1 described in this Decree. At the conclusion of the five-year groundwater monitoring period,
2 the Defendants may request modification or termination of this Decree and/or confirmation of
3 satisfactory completion of the Remedial Action. Defendants shall provide Ecology with the
4 data and such other information upon which their request is based. Such request shall be
5 subject to Ecology's approval, which approval shall not be unreasonably withheld. Ecology's
6 decision shall be subject to the dispute resolution procedures of Section XIV of this Decree.

7 **XXV. PUBLIC PARTICIPATION**

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

10 A. Prepare drafts of public notices and fact sheets at important stages of the
11 Remedial Action, such as the submission of work plans and engineering design reports.
12 Ecology shall finalize (including editing if necessary) and distribute such fact sheets and
13 prepare and distribute public notices of Ecology's presentations and meetings;

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

19 C. Participate in public presentations on the progress of the Remedial Action at the
20 Site. Participation may be through attendance at public meetings to assist in answering
21 questions, or as a presenter;

22 D. In cooperation with Ecology, arrange and/or continue information repositories
23 to be located at Ecology's Central Regional Office and at the Yakima Public Library. At a
24 minimum, copies of all public notices, fact sheets, and press releases; all quality assured
25 groundwater, surface water, soil sediment, and air monitoring data; and all final reports,
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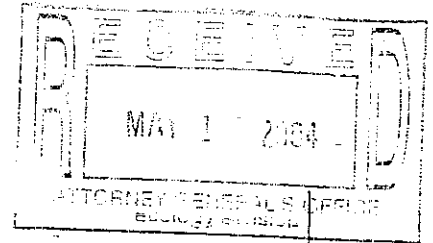
1 supplemental remedial planning documents, and other similar documents relating to
2 performance of the Remedial Action required by this Decree shall be promptly placed in these
3 repositories.

4 **XXVI. DURATION OF DECREE**

5 This Decree shall remain in effect and the Remedial Action described in the Decree and
6 the CAP shall be maintained and continued until the Defendants have received written
7 notification from Ecology that the requirements of this Decree (with the possible exception of
8 maintenance of any surface cap and institutional controls, which may remain in place longer)
9 have been satisfactorily completed. The Remedial Action shall be considered permanent and
10 complete if confirmational monitoring at the end of the five-year groundwater monitoring
11 period described in Paragraph X.B demonstrates that groundwater cleanup levels are being
12 maintained in compliance wells. Defendants may request termination of this Decree and/or
13 confirmation of satisfactory completion of the Remedial Action at the conclusion of the five-
14 year monitoring period, as authorized by Section XXIV of this Decree, or at any other
15 appropriate time. The Covenant Not to Sue and Contribution Protection provided to the
16 Defendants under Sections XVIII and XIX shall survive termination of this Decree.

17 **XXVII. CLAIMS AGAINST THE STATE**

18 Defendants hereby agree that they shall not seek to recover any costs incurred in
19 implementing the Remedial Action required by this Decree and the CAP from the State of
20 Washington or any of its agencies; and further, that the Defendants shall make no claim against
21 the State Toxics Control Account or any Local Toxics Control Account for any costs incurred
22 in implementing this Decree. Except as provided above, however, Defendants expressly
23 reserve any and all right, claims and causes of action to recover any costs, expenses and
24 damages incurred in implementing this Decree from any person who is not a Party or Other
25 Covered Person.
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XXVIII. EFFECTIVE DATE

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

XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

A. This Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree shall lead to a more expeditious cleanup of Hazardous Substances at the Site.

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

XXX. ENTIRE AGREEMENT

This Decree and the attached Exhibits A through E, which are expressly incorporated by reference, represent the entire agreement between the Parties hereto and supersede any prior negotiations or agreements relating to the subject matter of this Decree, whether oral or written.

The signature pages of each of the Parties follow.

IT IS SO ORDERED.

DATED this 18 day of March, 200⁴.

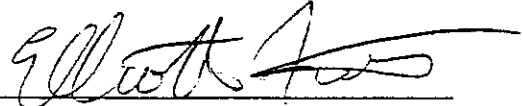
Arthur E. Reuland
SUPERIOR COURT JUDGE

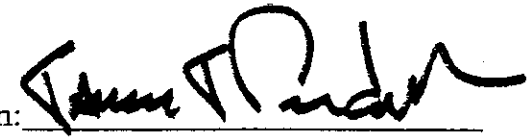
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v. INW Company, et al.*

CHRISTINE O. GREGOIRE,
ATTORNEY GENERAL OF THE
STATE WASHINGTON

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

Sign: 

Sign: 

By: Elliott Furst

By: James Pendowski

Its: Senior Counsel

Its: Toxics Cleanup Program Manager

Date: 3-10-04

Date: 2/23/04

Approved as to Form and
Presented by:

CHRISTINE O. GREGOIRE,
ATTORNEY GENERAL OF THE
STATE WASHINGTON


Sign: 

By: Elliott Furst, WSBA No. 12026
Senior Counsel
Attorneys for Washington State Department of Ecology

Date: 3-10-04

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington,*
2 *Department of Ecology v INW Company, et al.*

3 INW COMPANY

4 Sign: 


5 By: George R. Olds

6 Its: President

7 Date: October 28, 2003

8
9 Approved as to Form and
10 Notice of Presentation Waived:

11 BRYAN CAVE LLP

12 Sign: 

13 By: Troy B. Froderman, Arizona Bar No. 012717
14 Attorneys for INW Company

15 Date: 11/3/03

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v. INW Company, et al.*

SHELL OIL COMPANY,
for itself and on behalf of its
former wholly-owned subsidiary,
Washington Refining Company,
and its business unit, Shell Chemical Company
(collectively, "Shell")

Sign: Frank R. Fossati

By: Remediation Manager

By: Frank R. Fossati

Date: 10-27-2003

Approved as to Form and
Notice of Presentation Waived:

DAVIS WRIGHT TREMAINE LLP

Sign: Richard W. Elliott

By: Richard W Elliott, WSBA No 5605
David Vance Marshall, WSBA No 10582
Attorneys for Shell

Date: 11-11-03

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington,*
2 *Department of Ecology v. INW Company, et al.*

3 THE BURLINGTON NORTHERN AND
4 SANTA FE RAILWAY COMPANY

5 Sign: 

6 By: Gregory W. Stengen

7 Its: Vice President - Safety, Training
8 and Operations Support

9 Date: _____

10 Approved as to Form and
11 Notice of Presentation Waived:


12 BULLIVANT HOUSER BAILEY PC

13 Sign: 

14 By: Thomas D. Adams, WSBA No. 18470
15 Attorneys for The Burlington Northern and Santa Fe Railway Company

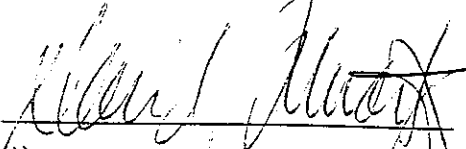
16 Date: NOVEMBER 19, 2003

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23 **APPROVED AS TO FORM**

24 
25 Burlington Northern Santa Fe Law Department

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington,*
2 *Department of Ecology v INW Company, et al*

3 ATOFINA CHEMICALS, INC.

4 Sign: 

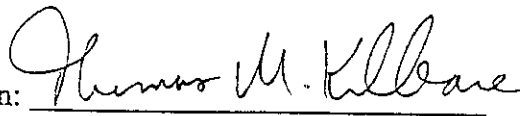
5 By: DAVID SCHWARTZBERG

6 Its: VP HES

7 Date: 11/4/03

8
9
10 Approved as to Form and
11 Notice of Presentation Waived:

12 AIER WYNNE LLP

13 Sign: 

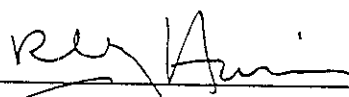
14 By: Thomas M. Kilbane, WSBA No. 11091
15 Attorneys for ATOFINA Chemicals, Inc.

16 Date: November 12, 2003

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington,*
2 *Department of Ecology v. INW Company, et al.*

3 CHEVRON CHEMICAL COMPANY

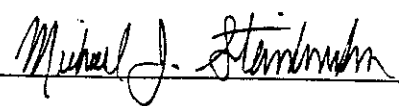
4 Sign: 

5 By: Richard J. Harris

6 Its: Assistant Secretary

7 Date: October 30, 2003

8
9 Approved as to Form and
10 Notice of Presentation Waived:

11
12
13 Sign: 

14 By: Michael J. Steinbrecher, California Bar No. 170790

15 Its: Counsel

16 Date: 29 October 2003

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v INW Company, et al.*

OCCIDENTAL CHEMICAL CORPORATION

Sign: *John L. Hurst III*

By: John L. Hurst III

Its: President

Date: November 12, 2003

Approved as to Form and
Notice of Presentation Waived:

BAKEMEIER, P C.

Sign: *Robert F. Bakemeier*
By: Robert F. Bakemeier, WSBA No. 12574
Attorney for Occidental Chemical Corporation

Date: 13 November 2003

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v INW Company, et al.*

PUREGRO COMPANY

Sign: *Ken A. Smith*
By: Ken A. Smith
Its: Attorney in Fact
Date: 12/30/03

Approved as to Form and
Notice of Presentation Waived:

Sign: *Jill A. Tracy*
By: Jill A. Tracy, California Bar No. 182136
Its: Assistant Counsel
Date: 12/30/03

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v. INW Company, et al.*

T H AGRICULTURE & NUTRITION, LLC

Sign: Joseph L. Wolf, Jr.

By: Joseph L. Wolf, Jr.

Its: President

Date: 11/12/03

Approved as to Form and
Notice of Presentation Waived:

FOLGER, LEVIN & KAHN LLP

Sign: T. Koegel

By: Thomas Koegel, California Bar No. 125852
Attorneys for T H Agriculture & Nutrition, LLC

Date: 11/17/03

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington, Department of Ecology v. INW Company, et al.*

UNIVAR USA INC.

Sign: *Perry T. Kusakabe*

By: Perry T. Kusakabe

Its: Corporate Secretary

Date: 11/3/03

Approved as to Form and
Notice of Presentation Waived:

MILLS MEYERS SWARTLING

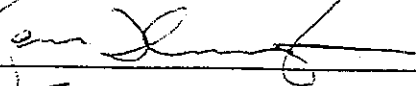
Sign: *Leslie R. Schenck*

By: Leslie R. Schenck, WSBA No. 25955
Attorneys for Univar USA Inc.

Date: 11/4/23

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *State of Washington,*
2 *Department of Ecology v. INW Company, et al.*

3 WILBUR-ELLIS COMPANY

4 Sign: 

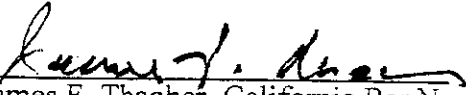
5 By: JAMES D. CRAWFORD

6 Its: VICE PRES. & TREASURER

7 Date: 11/04/03

8
9 Approved as to Form and
10 Notice of Presentation Waived:

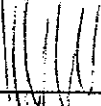
11 THACHER, ALBRECT & RATCLIFF

12 Sign: 

13 By: James F. Thacher, California Bar No. 24604
Attorneys for Wilbur-Ellis Company

14 Date: 11/04/03

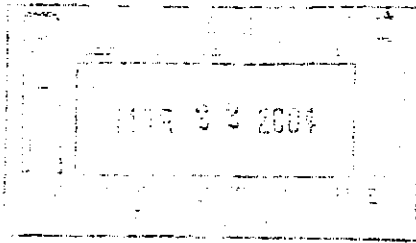
15 MEYER, FLUEGGE & TENNEY, P.S.

16
17 Sign: 

18 By: Walter G. Meyer, WSBA No. 1099
Attorneys for Wilbur-Ellis Company

19 Date: 11/14/03

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FILED
MAR 13 2004

NIM M. EATON, YAKIMA COUNTY CLERK

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

INW COMPANY, SHELL OIL
COMPANY, ATOFINA
CHEMICALS, INC., CHEVRON
CHEMICAL COMPANY,
OCCIDENTAL CHEMICAL
CORPORATION, PUREGRO
COMPANY,
T H AGRICULTURE & NUTRITION,
LLC, UNIVAR USA, INC., WILBUR-
ELLIS COMPANY, and THE
BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendants.

NO. 04 2 00908 1

AGREED ORDER ENTERING
CONSENT DECREE

Ecology Docket # DE 1214

Having reviewed the Joint Motion for Entry of Consent Decree, the Affidavit of Elliott
Furst, and the proposed Agreed Order Entering Consent Decree, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is approved and
entered and that the Court shall retain jurisdiction over the Consent Decree as necessary to
enforce its terms until termination of the Consent Decree.

AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
FAX (360) 586-0760

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IT IS SO ORDERED.

DAIED this 17 day of March, 2004.


SUPERIOR COURT JUDGE

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Presented by:

CHRISTINE O. GREGOIRE
Attorney General

Sign: 3-10-84 Elliott Furst

By: Elliott Furst, WSBA No. 12026
Senior Counsel
Attorney for Washington State
Department of Ecology

Date: 3-10-84

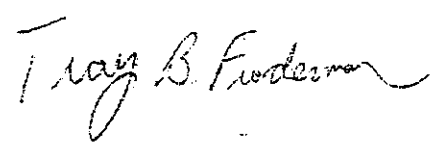
AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
FAX: 1-800-586-6760

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Approved as to Form and
Notice of Presentation Waived:

BRYAN CAVE LLP




Sign:

By: Troy B. Froderman, Arizona Bar No. 012717
Attorneys for INW Company

Date: _____

1 Approved as to Form and
2 Notice of Presentation Waived:

3 DAVIS WRIGHT TREMAINE LLP

4
5 Sign: 
6 By: Richard W Elliott, WSBA No. 5605
7 Davis Wright Tremaine
8 Attorneys for Shell Oil Company

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Date: 1 Feb. 2004

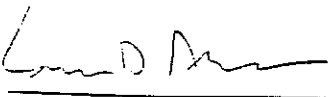
AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
FAX (360) 586-9760

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Approved as to Form and
Notice of Presentation Waived:

BULLIVANT HOUSER BAILEY PC

Sign: 
By: Thomas D. Adams, WSBA No. 18470
Attorneys for The Burlington Northern and
Santa Fe Railway Company

Date: 2/4/2004

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Approved as to Form and
Notice of Presentation Waived:

ATER WYNNE LLP

Sign: *Thomas M. Kilbane*
By: Thomas M. Kilbane, WSBA No. 11091
Attorneys for ATOFINA Chemicals, Inc.

Date: *February 2, 2004*

AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P.O. Box 40087
Olympia, WA 98541-0087
FAX (360) 356-6700

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Approved as to Form and
Notice of Presentation Waived:

Sign: Michael J. Steinbrecher
By: Michael J. Steinbrecher
California Bar No. 170790
Counsel for Chevron Chemical Company

Date: _____

1 Approved as to Form and
2 Notice of Presentation Waived:

3 BAKEMEIER, P.C.

4 Sign: Robert F. Bakemeier
5 By: Robert F. Bakemeier
6 WSBA No. 12574
Attorney for Occidental Chemical Corporation

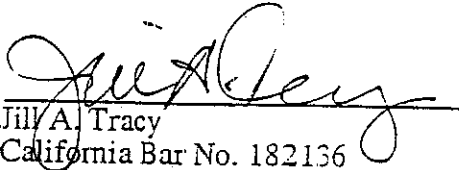
7 Date: 3 FEBRUARY 2004
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AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P.O. Box 40117
Olympia, WA 98504-0117
PHONE (360) 586-6760

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Approved as to Form and
Notice of Presentation Waived:

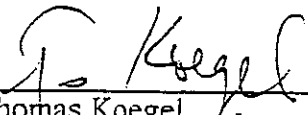
Sign: 
By: Jill A. Tracy
California Bar No. 182136
Counsel for PureGro Company

Date: 2/12/04

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Approved as to Form and
Notice of Presentation Waived:

FOLGER, LEVIN & KAHN LLP

Sign: 

By: Thomas Koegel
California Bar No. 125852
Attorneys for T H Agriculture & Nutrition, LLC

Date: February 1, 2004

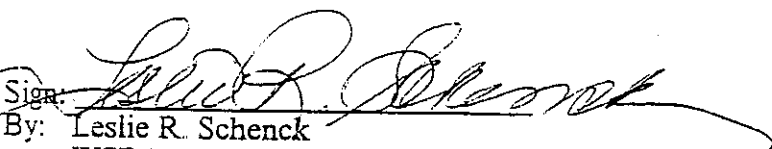
AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
P O Box 40117
Arlington, VA 22204-0117
FAX (360) 586-0760

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Approved as to Form and
Notice of Presentation Waived:

MILLS MEYERS SWARTLING

Sign: 

By: Leslie R. Schenck
WSBA No. 25955
Attorneys for Univar USA Inc.

Date: 2/9/04

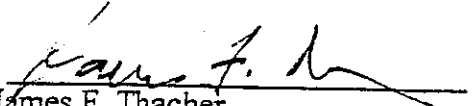
AGREED ORDER ENTERING
CONSENT DECREE

ATTORNEY GENERAL OF
WASHINGTON
Ecology Division
P.O. Box -0117
Olympia, VA 98504-0117
FAX (360) 586-6760

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Approved as to Form and
Notice of Presentation Waived:

THACHER, ALBRECT & RATCLIFF

Sign: 
By: James F. Thacher
California Bar No. 24604
Attorneys for Wilbur-Ellis Company

Date: 02/02/04

MEYER, FLUEGGE & TENNEY, P.S.

Sign: _____
By: Walter G. Meyer
WSBA No. 1099
Attorneys for Wilbur-Ellis Company

Date: _____

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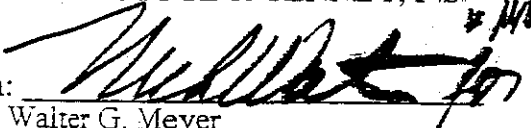
Approved as to Form and
Notice of Presentation Waived:

THACHER, ALBRECT & RATCLIFF

Sign: _____
By: James F. Thacher
California Bar No. 24604
Attorneys for Wilbur-Ellis Company

Date: _____

MEYER, FLUEGGE & TENNEY, P.S. #14293

Sign: 
By: Walter G. Meyer
WSBA No. 1099
Attorneys for Wilbur-Ellis Company

Date: 2/9/04

ORIGINAL