

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 20 1996

JAMES R. LARSEN, CLERK

DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

CY - 96 - 3194 - RH

Plaintiff,

COMPLAINT

-vs-

CITY OF DALLAS, CITY OF FRESNO,
CITY OF PASADENA, CITY OF
ROCHESTER, CITY OF SANTA
BARBARA, CITY OF SCOTTSDALE,
CITY OF VANCOUVER, CITY OF
LYNNWOOD, and the ASPEN
CONSOLIDATED SANITATION
DISTRICT,

Defendants.

Plaintiff, State of Washington, Department of Ecology, for cause of action, alleges
as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter and over the parties under
Section 107 of the Comprehensive Environmental Response, Compensation, and Liability
Act ("CERCLA"), 42 U.S.C. § 9607, 42 U.S.C. § 9613(b), and this Court also has 28
U.S.C. § 1331 jurisdiction over Plaintiff's state law claims brought under the Model Toxics
Control Act ("MTCA"), Chapter 70.105D RCW, and the Water Pollution Control Act,
Chapter 90.48 RCW, based on the doctrine of pendent jurisdiction. Venue is proper in this

1 district, pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the events
2 giving rise to the claims herein arose in this district and the property that is the subject of
3 the action is situated in the district.

4 II. PARTIES

5 2. Plaintiff, State of Washington, Department of Ecology ("Ecology"), is an
6 agency of the State of Washington responsible for the regulation and abatement of releases
7 or threatened releases of hazardous substances and for the regulation of surface and
8 groundwater contamination in the State.

9 3. Ecology is authorized to seek cost recovery under Section 107 of CERCLA,
10 42 U.S.C. § 9607, for all necessary costs of remedial action that are not inconsistent with
11 the National Contingency Plan. Ecology is empowered to bring any appropriate action at
12 law or in equity, including an action for injunctive relief, as may be necessary to protect
13 human health and the environment under Chapter 70.105D RCW.

14 4. Defendant City of Rochester is a Minnesota municipal corporation;
15 Defendants City of Vancouver and City of Lynnwood are Washington municipal
16 corporations; Defendants City of Pasadena, City of Fresno and City of Santa Barbara are
17 Charter Cities incorporated under the laws of the State of California; Defendant City of
18 Scottsdale is an Arizona municipal corporation; Defendant City of Dallas is a municipal
19 corporation organized under the laws of the State of Texas; Defendant Aspen Consolidated
20 Sanitation District is a Colorado quasi-municipal corporation.

21 III. FACTUAL ALLEGATIONS

22 5. The Site is a residential, commercial and industrial area covering
23 approximately six square miles in downtown Yakima and Union Gap Known as the Yakima
24 Railroad Area (YRRA) and has been designated by Ecology as a "Facility" or "Site"
25 pursuant to RCW 70.105D.020. Analysis of soil and groundwater at various locations
26 within the Site has, in varying levels, shown the presence of perchloroethylene (PCE) and

1 other Covered Substances. A Site History and Synopsis of PCE Releases is attached to the
2 Consent Decree being filed concurrently with this Complaint and contains a history and
3 statement of facts regarding the presence of PCE at the Site.

4 6. The Site contains at least nineteen identified Source Areas which have,
5 through their historic operations, contributed to the presence of PCE at the Site. One of the
6 source areas is a carbon reprocessing business known as Cameron-Yakima, Inc., located at
7 1414 S. First, Yakima, Washington. More than 100 PLPs, including the Defendants,
8 shipped carbon containing PCE and/or other Covered Substances to Cameron-Yakima, Inc.
9 Ecology estimates that the total amount of such carbon containing PCE is 6.7 million
10 pounds.

11 7. In August, 1991, the Yakima Railroad Area area of contamination was
12 defined by Ecology.

13 8. There is a continuing threat of releases of hazardous substances, pollutants
14 and contaminants at and from the Site.

15 9. The work to be performed under the Consent Decree lodged with the Court
16 at the time this Complaint is filed is consistent with CERCLA and the MTCA.

17 10. Ecology has incurred costs to identify, eliminate or minimize the release or
18 threatened release of hazardous substances at the Site. In addition, Ecology will continue to
19 incur costs associated with oversight and implementation of remedial action at the Site
20 through the Yakima Railroad Area Trust Fund. Ecology's expenditures to date are not
21 inconsistent with the National Contingency Plan, 40 C.F.R., Part 300.

22 11. Without making any admissions as to the factual or legal allegations
23 contained in this Complaint, the Defendants have consented to entry of the Consent Decree
24 (the "Decree") attached to this Complaint.

25 IV. FIRST CLAIM FOR RELIEF

26 12. The allegations of paragraph 1 through 11 hereby incorporated by reference

1 and made a part thereof.

2 13. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provides in pertinent part:

3 107(a) - Notwithstanding any other provision or rule of law, and subject only
4 to the defenses set forth in subsection (b) of this section --

5 (1) the owner and operator of a vessel or a facility,

6 (2) any person who at the time of disposal of any hazardous substance owned
7 or operated any facility at which such hazardous substances were disposed of,

8 (3) any person who by contract, agreement, or otherwise arranged for
9 disposal or treatment, or arranged with a transporter for transport for
10 disposal or treatment, of hazardous substances owned or possessed by such
11 person, by any other party or entity, at any facility owned or operated by
12 another party or entity and containing such hazardous substances, and

13 (4) any person who accepts or accepted any hazardous substances for
14 transport to disposal or treatment facilities or sites selected by such person,
15 from which there is a release, or threatened release which causes the
16 incurrence of response costs, or a hazardous substance, shall be liable for --

17 (A) all costs of removal or remedial action incurred by the United
18 States Government or a State . . . not inconsistent with the national
19 contingency plan;

20 14. Ecology incurred and will continue to incur costs in connection with activities
21 relating to the Site, including costs of investigation, cleanup, removal, and remedial action
22 at the facility. These response costs were incurred and will be incurred in a manner not
23 inconsistent with the National Contingency Plan.

24 15. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607 (a)(4)(A),
25 as set forth in paragraph 13 above, the Defendants are liable to the State for all response
26 costs incurred by Ecology in connection with the Site. None of the defenses in Section
107(b) of CERCLA, 42 U.S.C. § 9607(b), are available to the Defendants.

V. SECOND CLAIM FOR RELIEF

16. The allegations of paragraphs 1 through 15 are realleged and incorporated
herein by reference.

17. RCW 70.105D.040 provides in pertinent part:

(1) Except as provided in subsection (3) of this section, the

1 following persons are liable with respect to a facility:

- 2 (a) The owner or operator of the facility;
- 3 (b) Any person who owned or operated the facility at the
- 4 time of disposal or release of the hazardous substance;
- 5 (c) Any person who owned or possessed a hazardous
- 6 substance and who by contract, agreement, or otherwise
- 7 arranged for disposal or treatment of the hazardous
- 8 substance at the facility, or arranged with a transporter
- 9 for transport for disposal or treatment of the hazardous
- 10 substance at the facility, or otherwise generated
- 11 hazardous waste disposed of or treated at the facility;

- 12 (2) Each person who is liable under this section is strictly liable,
- 13 jointly and severally, for all remedial action costs and for all
- 14 natural resource damages resulting from the releases or
- 15 threatened releases of hazardous substances. The attorney
- 16 general, at the request of the department, may recover all costs
- 17 and damages from persons liable for them.

18 18. RCW 70.105D.030 provides in pertinent part:

- 19 (1) The department may exercise the following powers in addition
- 20 to any other powers granted by law:
- 21 (a) Investigate, provide for investigating, or require
- 22 potentially liable persons to investigate any releases or
- 23 threatened releases of hazardous substances, including
- 24 but not limited to inspecting, sampling, or testing to
- 25 determine the nature or extent of any release or
- 26 threatened release.
- (b) Conduct, provide for conducting, or require potentially
- liable persons to conduct remedial actions (including
- investigations under (a) of this subsection) to remedy
- releases or threatened releases of hazardous
- substances. . . .

19. RCW 70.105D.020(3) defines "facility" as:

- (3) "Facility" means (a) any building, structure, installation,
- equipment, pipe or pipeline (including any pipe into a sewer or
- publicly owned treatment works), well, pit, pond,
- lagoon, impoundment, ditch, landfill, storage container, motor
- vehicle, rolling stock, vessel, or aircraft, or (b) any site or
- area where a hazardous substance, other than a consumer
- product in consumer use, has been deposited, stored, disposed
- of, or placed, or otherwise come to be located.

20. RCW 70.105D.020(5) defines hazardous substances to include:

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- (1) Any hazardous or extremely hazardous waste as defined in RCW 70.105.010(5) and (6), or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;
- (2) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;
- (3) Any substance that, on October 16, 1987, is a hazardous substance under section 101(14) of CERCLA.

21. RCW 70.105D.020(10) defines a release as:

Any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

22. Hazardous substances within the meaning of RCW 70.105D.020(5) have been "released" into the environment, or future releases are threatened within the meaning of RCW 70.105D.020(10).

23. The YRRA is a "Facility" or "Site" with the meaning of RCW 70.105D.020(3).

24. Ecology has determined that remedial action is necessary to identify, eliminate or mitigate any threat or potential threat to human health or the environment with respect to the Site and is in the public interest.

25. After having the opportunity to comment, Defendants received final notice of its potential liability pursuant to RCW 70.105D.020.

26. Defendants are liable persons within the terms of RCW 70.105D.040.

27. Ecology and Defendants, pursuant to RCW 70.105D.040, have reached a settlement agreement.

28. Pursuant to RCW 70.105D.040, this voluntary settlement agreement is embodied in a Consent Decree, which is being filed with the Court simultaneously with the filing of this Complaint. It provides funding for appropriate remedial action related to the YRRA that will lead to a more expeditious cleanup at the Site.

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29. Without making any admissions as to the factual or legal allegations contained in this Complaint, Defendants have agreed to the terms of the proposed Decree and agree to the entry of the Decree by the Court.

VII. PRAYER FOR RELIEF

WHEREAS Ecology and the Defendants have voluntarily entered into the Decree, Ecology requests that the Court enter the Consent Decree and retain jurisdiction to enforce its terms.

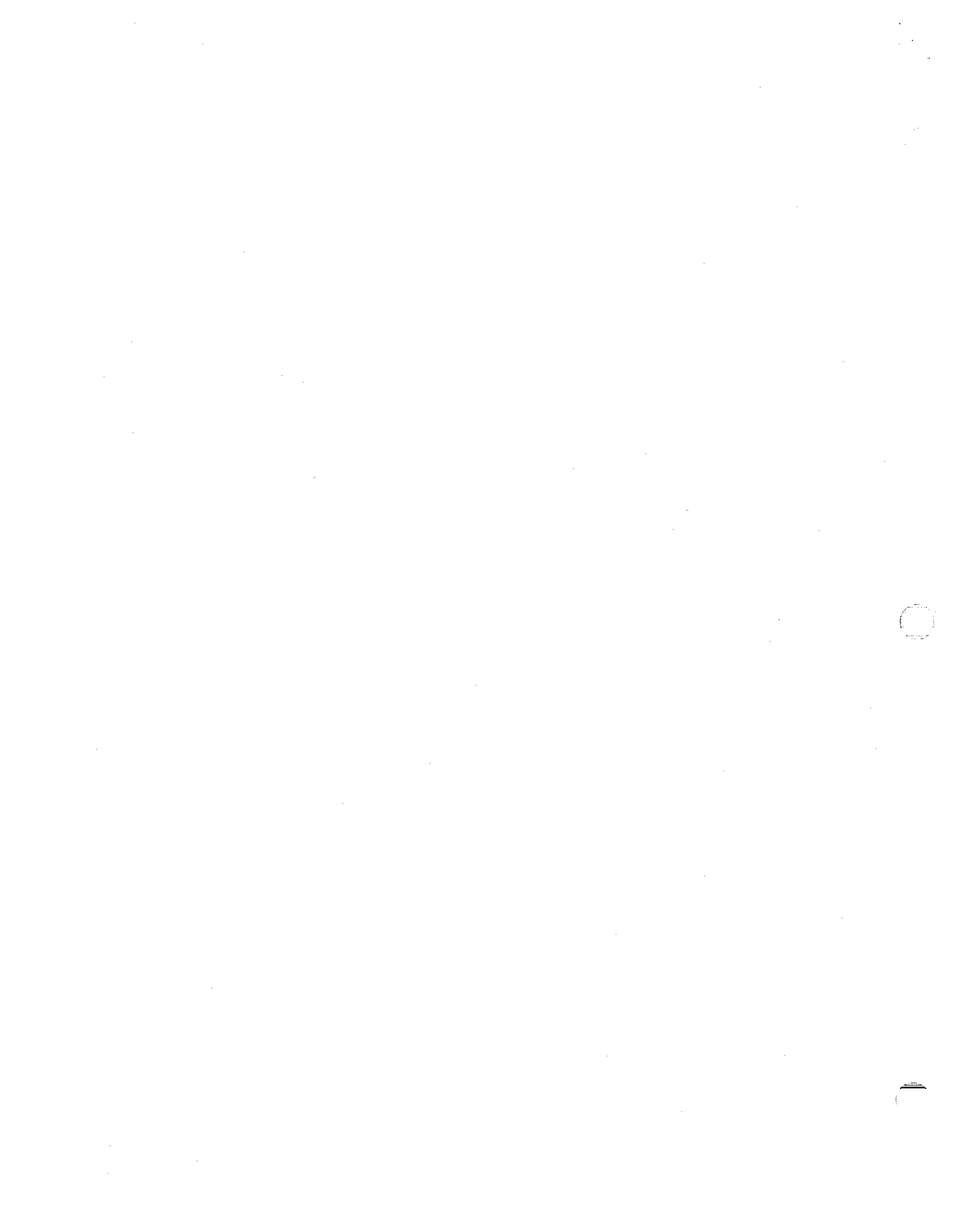
DATED this 20th day of December, 1996

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 459-6134

municlean.com



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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF DALLAS, et al.,

Defendants.

No. CY-96-3194-WFN

**STIPULATED MOTION FOR
ENTRY OF CONSENT DECREE**

1. The parties to this action, through their attorneys, hereby jointly stipulate and move for entry of the Consent Decree in the above-entitled matter. The Consent Decree has been signed by the parties to this action. Moreover, the Consent Decree has been the subject of public notice and comment and a public hearing. This motion is supported by the attached Declaration of Richard Roeder.

2. All parties request immediate consideration of this motion.

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CHRISTINE O. GREGOIRE
Attorney General

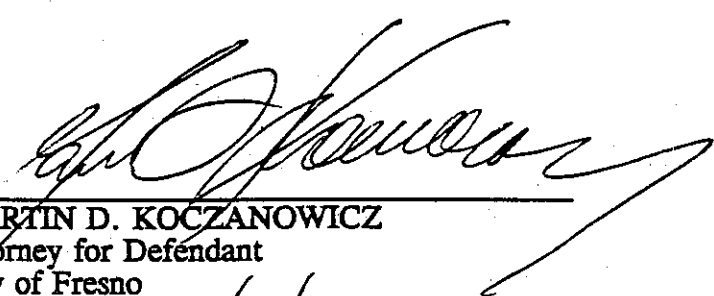


STEVEN J. THIELE
WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology

DATED: 4-18-97

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MARTIN D. KOCZANOWICZ
Attorney for Defendant
City of Fresno

DATED: 4/11/97

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STEVEN B. BENNETT
Attorney for Defendant
City of Scottsdale

DATED: April 14, 1997

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Ronald D. Stutes

RONALD D. STUTES
Attorney for Defendant
City of Dallas

DATED: 10 April 1997

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Scott D. Rasmussen

SCOTT D. RASMUSSEN
Attorney for Defendant
City of Pasadena

DATED: *April 14, 1997*

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Daniel J. Wallace

DANIEL J. WALLACE
Attorney for Defendant
City of Santa Barbara

DATED: *April 17, 1997*

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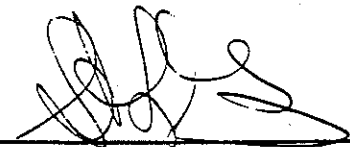


MICHAEL R. KARBER, WSBA# 24044
Attorney for Defendant
City of Vancouver

DATED: 4/16/97

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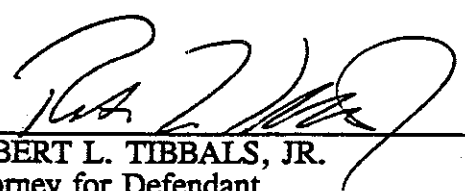


STEVEN L. GROSS, WSBA# 24658
Attorney for Defendant
City of Lynnwood

DATED: April 12, 1997

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ROBERT L. TIBBALS, JR.
Attorney for Defendant
Aspen Consolidated Sanitation
District

DATED: April 14, 1997

1 GRAY, PLANT, MOOTY, MOOTY
2 & BENNETT, P.A.

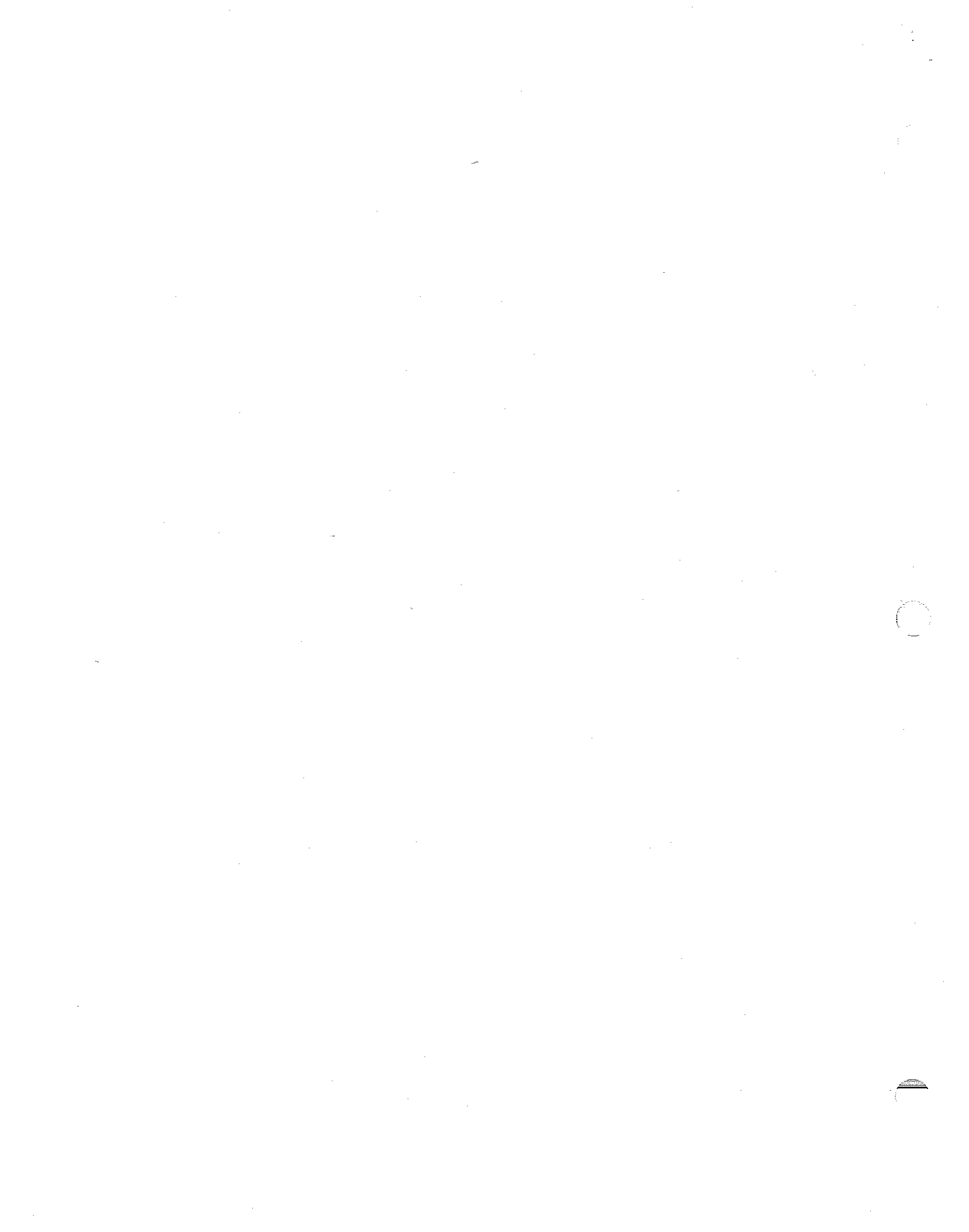
3 *Nancy Q. Burke*

4 NANCY Q. BURKE, No. 161044
5 Attorneys for Defendant
6 City of Rochester

7 DATED: *April 16, 1997*

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APR 28 1997
ATTORNEY GENERAL'S OFFICE
Ecology Div. - Lacey

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 24 1997
JAMES F. LARSEN, Clerk
Deputy

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF DALLAS, et al.,

Defendants.

No. CY-96-3194-WFN

**ORDER ENTERING
CONSENT DECREE**

RECEIVED
MAY 1 1997
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Having reviewed the Consent Decree signed by the parties to this matter, the Stipulated Motion for Entry of the Consent Decree, the Declaration of Richard Roeder, and the file herein, it is hereby

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

DATED this 24 day of April, 1997.


UNITED STATES DISTRICT
COURT JUDGE

ORIGINAL

**ORDER ENTERING
CONSENT DECREE**

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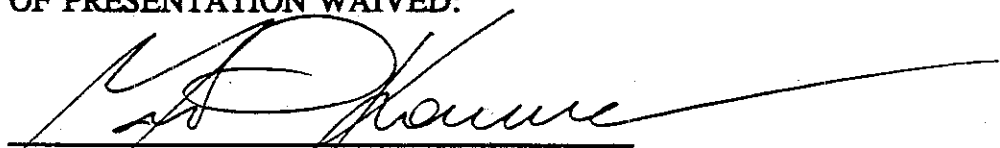
CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE, WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology

DATED: 4-18-97

1 APPROVED FOR ENTRY AND NOTICE
2 OF PRESENTATION WAIVED:

3 
4 MARTIN D. KOCZANOWICZ
5 Attorney for Defendant
6 City of Fresno

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26 DATED: 4/11/97

1 APPROVED FOR ENTRY AND NOTICE
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5 STEVEN B. BENNETT
6 Attorney for Defendant
7 City of Scottsdale

8 DATED: April 14, 1997
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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:



RONALD D. STUTES
Attorney for Defendant
City of Dallas

DATED: 10 April 1997

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

Scott D. Rasmussen
SCOTT D. RASMUSSEN
Attorney for Defendant
City of Pasadena

DATED: *April 14, 1997*

1 APPROVED FOR ENTRY AND NOTICE
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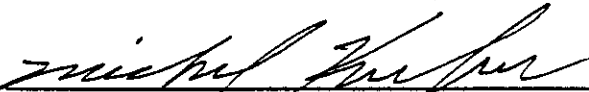
3 *Daniel Wallace*

4 DANIEL J. WALLACE
5 Attorney for Defendant
6 City of Santa Barbara

7 DATED: *April 17, 1997*

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1 APPROVED FOR ENTRY AND NOTICE
2 OF PRESENTATION WAIVED:

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4 MICHAEL R. KARBBER, WSBA# 24044
5 Attorney for Defendant
6 City of Vancouver

7 DATED: 4/16/97

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:



STEVEN L. GROSS, WSBA# 24658
Attorney for Defendant
City of Lynnwood

DATED: April 12, 1997

1 APPROVED FOR ENTRY AND NOTICE
2 OF PRESENTATION WAIVED:

3 

4 ROBERT L. TIBBALS, JR.
5 Attorney for Defendant
6 Aspen Consolidated Sanitation
7 District

8 DATED: Apr 14, 1997

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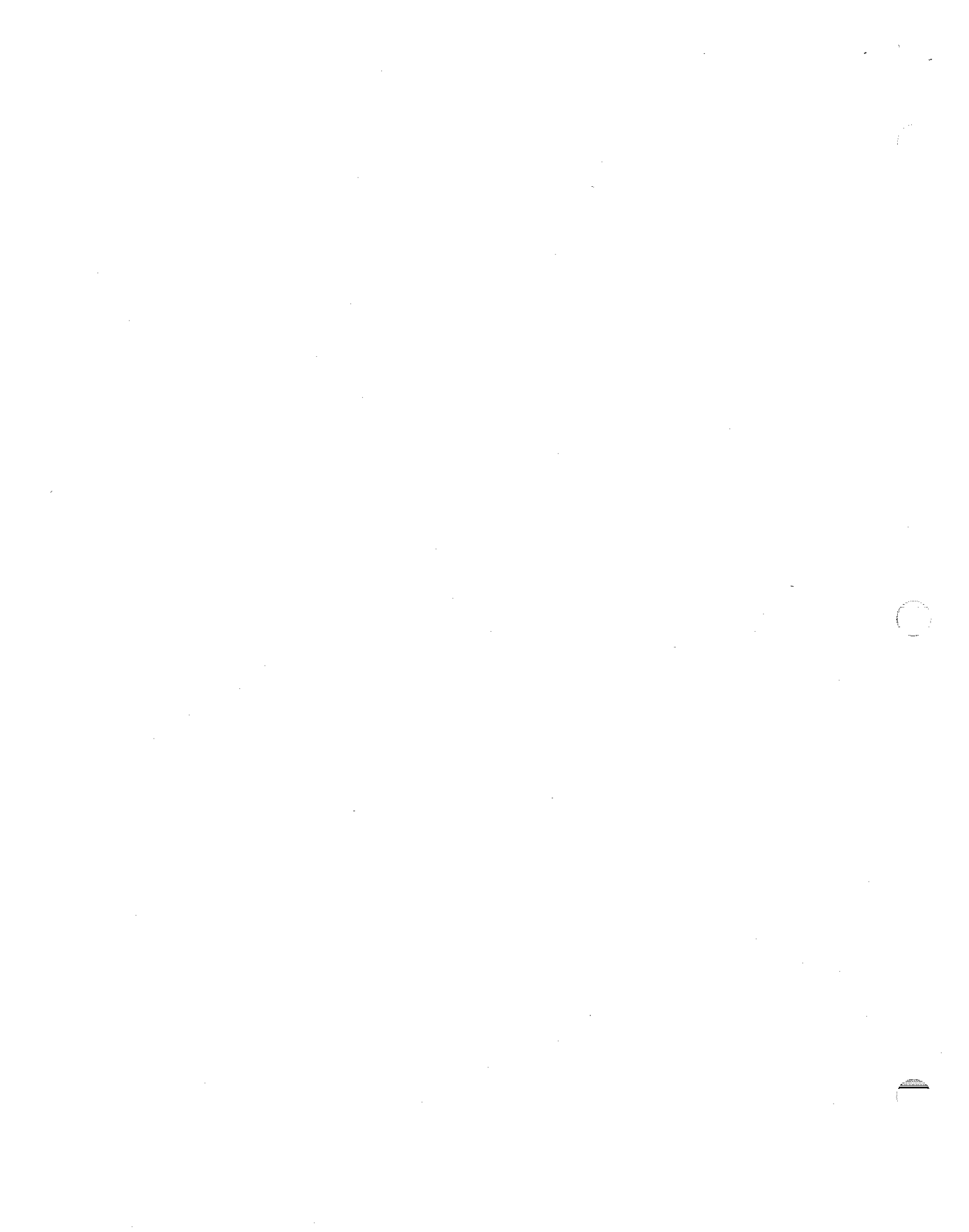
**GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.**

Nancy Q. Burke

NANCY Q. BURKE, No. 161044
Attorneys for Defendant
City of Rochester

DATED: *April 16, 1997*

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ATTORNEY GENERAL'S OFFICE
Ecology Div. - Lacey

The Honorable _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

CY-96-3194-~~RHW~~ WFN

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF DALLAS, CITY OF FRESNO,
CITY OF PASADENA, CITY OF
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CONSOLIDATED SANITATION
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CONSENT DECREE

ORIGINAL

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 24 1997

JAMES H. LARSEN, Clerk

Deputy

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DATED this 24 day of April, ¹⁹⁹⁷~~1996~~.

L. O. Pinter
JUDGE
U.S. District Court
Eastern District of Washington

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The Honorable
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 20 1996

JAMES R. LARSEN, CLERK
DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON, **CY - 96 No. 3194 - RHW**
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF DALLAS, CITY OF FRESNO,
CITY OF PASADENA, CITY OF
ROCHESTER, CITY OF SANTA
BARBARA, CITY OF SCOTTSDALE,
CITY OF VANCOUVER, CITY OF
LYNNWOOD, and the ASPEN
CONSOLIDATED SANITATION
DISTRICT,

Defendants.

CONSENT DECREE

ORIGINAL

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1 I. INTRODUCTION

2 A. This Consent Decree ("Decree") is entered into by and between the Washington
3 State Department of Ecology ("Ecology"); and the Cities of Dallas, Texas ("Dallas"); Fresno,
4 California ("Fresno"); Pasadena, California ("Pasadena"); Rochester, Minnesota ("Rochester");
5 Santa Barbara, California ("Santa Barbara"); Scottsdale, Arizona ("Scottsdale"); Vancouver,
6 Washington ("Vancouver"); Lynnwood, Washington ("Lynnwood"); and the Aspen, Colorado
7 Consolidated Sanitation District ("Aspen") (collectively referred to hereinafter as
8 "Defendants"). It is the mutual objective of the parties to this Decree to provide for remedial
9 action at an area defined to be a "facility" by Ecology where there has been a release or
10 threatened release of hazardous substances. The facility, known as the Yakima Railroad Area
11 (the "Site"), is located in Yakima, Washington. A site diagram is attached hereto as
12 Exhibit A. This Decree requires the Defendants to make a financial contribution toward
13 remedial action at the Site in an amount and for the purposes specified in Section VI of this
14 Decree. Ecology has determined that all of these actions are necessary to protect public health
15 and the environment.

16 B. The Complaint in this action is being filed simultaneously with this Decree. An
17 answer has not been filed, and there has not been a trial on any issue of fact or law in this
18 case. The Defendants neither admit nor deny the allegations in the Complaint. However, the
19 parties wish to resolve the issues raised by Ecology's Complaint. In addition, the parties agree
20 that settlement of these matters without litigation is reasonable and in the public interest and
21 that entry of this Decree is the most appropriate means of resolving these matters.

22 C. In signing this Decree, Defendants and Ecology agree to its entry and agree to
23 be bound by its terms.

24 D. By entering into this Decree, the parties do not intend to discharge nonsettling
25 parties from any liability they may have with respect to matters alleged in the Complaint. The
26 parties retain the right to seek reimbursement, in whole or in part, from any liable persons not

1 a party to this Decree for sums expended under this Decree.

2 E. This Decree shall not be construed as proof or evidence of liability or
3 responsibility for any releases of hazardous substances or costs for remedial action, nor an
4 admission of any facts, and Defendants expressly deny such liability. However, the Defendants
5 shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

6 F. The Court is fully advised of the reasons for entry of this Decree, and good
7 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
8 FOLLOWS:

9 II. JURISDICTION

10 A. This Court has jurisdiction over the subject matter and over the parties under
11 Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act
12 (CERCLA), 42 U.S.C. § 9607. This Court also has jurisdiction pursuant to chapter 70.105D
13 RCW, the Model Toxics Control Act (MTCA), under the doctrine of pendent jurisdiction.
14 Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b),
15 and 28 U.S.C. § 1391(b), because the claims arose in this district.

16 B. Authority is conferred upon the Washington State Attorney General by RCW
17 70.105D.040(4)(a) to agree to a settlement with any potentially liable person ("PLP") if, after
18 public notice and hearing, Ecology finds the proposed settlement would lead to a more
19 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
20 settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

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

26 E. Ecology has determined that the actions to be taken pursuant to this Decree

1 necessary to protect public health, welfare, and the environment and will lead to a more
2 expeditious cleanup of hazardous substances in compliance with the cleanup standards of RCW
3 70.105D.030(2)(d) and the regulations adopted pursuant thereto.

4 F. Defendants have agreed to undertake the actions specified in this Decree and
5 consent to the entry of this Decree under the MTCA and CERCLA.

6 III. PARTIES BOUND

7 This Decree shall apply to and be binding upon the signatories to this Decree (parties),
8 their successors and assigns. The undersigned representative of each party hereby certifies that
9 he or she is fully authorized to enter into this Decree and to execute and legally bind such party
10 to comply with the Decree. Defendants agree to undertake all actions required by the terms
11 and conditions of this Decree and not to contest jurisdiction regarding this Decree. No change
12 in ownership or corporate status shall alter the responsibility of the Defendants under this
13 Decree.

14 IV. DEFINITIONS

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

17 A. Site: As defined by Ecology and for purposes of this Decree, the Site, also
18 referred to as the Yakima Railroad Area, refers to an area in which there have been releases
19 and/or threatened releases of PCE and/or other Covered Substances (as defined in Section IV.E
20 below) in Yakima, and Union Gap, Washington. For reference purposes, the Site is generally
21 described in Exhibit A to this Decree, which is a site diagram.

22 B. Parties: Refers to Ecology; the Cities of Dallas, Fresno, Pasadena, Rochester,
23 Santa Barbara, Scottsdale, Vancouver, Lynnwood; and the Aspen Consolidated Sanitation
24 District.

25 C. Defendants: Refers to the Cities of Dallas, Fresno, Pasadena, Rochester, Santa
26 Barbara, Scottsdale, Vancouver, Lynnwood; and the Aspen Consolidated Sanitation District.

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

4 E. Covered Substances: Refers to all hazardous substances listed in Exhibit E, or
5 for which Ecology issues written notification pursuant to Section VIII(A)(3)(b) below, which
6 were included in any waste shipments identified in Exhibit B or the administrative record as
7 referenced in the attached Exhibit F.

8 F. Remedial Action: Refers to all activities defined to be a "response" under
9 CERCLA or a "remedy" or "remedial action" under MTCA.

10 G. Source Area: Refers to an area at which there has been a release or threatened
11 release of PCE or other Covered Substances.

12 V. STATEMENT OF FACTS

13 Ecology makes the following findings of fact without any express or implied admission
14 by Defendants.

15 1. The Site is a residential, commercial and industrial area covering approximately
16 six square miles in Yakima and Union Gap. Analysis of soil and groundwater at various
17 locations within the Site has, in varying levels, shown the presence of perchloroethylene (PCE)
18 and other Covered Substances. A Site History and Synopsis of PCE Releases, attached to this
19 Consent Decree as Exhibit C, contains a history and statement of facts regarding the presence
20 of PCE at the Site.

21 2. The Site contains at least 19 identified Source Areas which have, through their
22 historic operations, contributed to the presence of PCE at the Site. One of the Source Areas
23 is a carbon reprocessing business known as Cameron-Yakima, Inc., located at 1414 S. First,
24 Yakima, Washington. More than 100 PLPs, including the Defendants who are parties to this
25 Decree, shipped carbon containing PCE and/or other Covered Substances to Cameron-Yakima,
26 Inc. Ecology estimates the total amount of such carbon containing PCE is approximately

1 million pounds.

2 VI. TRUST FUND

3 The Defendants agree to make a financial contribution of \$525,848.40 to the Trust Fund
4 established in Exhibit D, in the amounts specified in Exhibit D within ninety (90) days of the
5 entry of this Decree. Such payments are derived by multiplying the number of pounds of
6 carbon which Ecology has documented that each Defendant sent to the Site, and for which
7 Ecology found credible evidence of PCE content, times a cash settlement amount of \$2.31.
8 The Trust Fund is established by the trust agreement, which is attached hereto as Appendix D
9 and is hereby incorporated by reference. Each Defendant shall be responsible for payment of
10 the amount set forth in its own Waste Shipment Profile in Appendix B, and not for any amount
11 owed by any other Defendant. The Trust Fund shall be for the exclusive purposes of financing
12 past and future remedial activities in and around the Site. The Defendants' financial
13 contribution expressly and specifically includes, but is not limited to, the Defendants' share of
14 the following past and future costs: (i) costs of grants provided to the cities of Yakima and
15 Union Gap, Washington for the purposes of municipal water system installation and upgrades;
16 and (ii) costs of work performed by Ecology or its contractors for, or on, the Site under
17 ch. 70.105D RCW, both prior to and subsequent to the issuance of this Decree for
18 investigations, remedial actions, and Decree preparation, negotiations, oversight and
19 administration of this Decree. Ecology costs include costs of direct activities and support costs
20 of direct activities as defined in WAC 173-340-550(2). The Defendants' financial contribution
21 and any other funds derived from a settling PLP shall be held in the Trust Fund pursuant to
22 the terms of Appendix D. Ecology shall be designated as having the power of appointment
23 under the trust.

24 VII. CONTRIBUTION PROTECTION

25 With regard to claims for contribution against any Defendant for matters addressed in
26 this Consent Decree, the parties hereto agree that each Defendant is entitled to such protection

1 from contribution actions or claims as is provided by MTCA, RCW 70.105D.040,
2 CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), or as otherwise provided by law. The
3 contribution protection conferred in this section shall not be frustrated by the use o/f non-
4 CERCLA or non-MTCA theories to seek relief in the nature of contribution or indemnification.
5 For the purpose of this section, "matters addressed" shall include:

6 (i) all past and future investigation and remediation measures,
7 whether performed by Ecology or any other person, and

8 (ii) all past and future costs incurred by Ecology or any other
9 person, with respect to Covered Substances at, related to, or
10 originating from the Site and any Source Areas, including
11 without limitation any such measures performed and any such
12 costs incurred by any person under any consent decree or
13 enforcement order entered before or after this consent decree.

11 VIII. COVENANT NOT TO SUE

12 In consideration of Defendants' compliance with the terms and conditions of this
13 Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all
14 administrative, legal, and equitable remedies and enforcement actions available to the State
15 against each Defendant for the release or threatened release of Covered Substances.

16 This Covenant Not to Sue is strictly limited in its application to the Site and related
17 Source Areas and to Covered Substances. This covenant is not applicable to any other
18 hazardous substance or area, and the state retains all of its authority relative to such substances
19 and areas.

20 A. Reopeners: If the Court determines, upon petition from any of the parties, that
21 any of the following circumstances exist, Ecology may, subject to the limitations set forth in
22 this Section VIII(A), exercise its legal authority to address releases of hazardous substances at
23 the Site, notwithstanding the Covenant Not to Sue set forth above:

24 1. In the event a Defendant fails to make a payment to the Trust Fund
25 pursuant to Section VI and such failure is not cured within thirty (30) days of receipt
26 by Defendant of notice of nonpayment. This reopener shall apply only to the Defen

1 failing to make the payment;

2 2. In the event that new information becomes available regarding factors
3 previously unknown to Ecology and Ecology determines, in light of this information,
4 that remedial action is necessary to address a previously unknown threat to human
5 health or the environment at the Site, and Defendants, after notice, fail to take the
6 necessary action within a reasonable time provided by Ecology in the notice. If such
7 new information concerns substances sent to the Site by fewer than all Defendants,
8 Ecology shall make its determination and issue such notice with respect to such
9 Defendant(s) only, and the reopener shall apply only to such Defendants. For purposes
10 of this Decree, "factors previously unknown to Ecology," with the exception of
11 subsection 3 below, shall mean contamination unknown or undocumented in the Waste
12 Profiles (Exhibit B) or the administrative record (referenced at Exhibit F) at the time
13 of entry of this Decree from hazardous substances other than Covered Substances.
14 "Factors previously unknown to Ecology" shall not include any new information related
15 to the presence of, extent of, or impacts from Covered Substances at the Site, provided
16 that Ecology shall be able to seek additional funds from certain Defendants, pursuant
17 to the terms of subsection 3(a) below, if new information, not contained in the
18 administrative record, establishes, consistent with the standard provided in RCW
19 Section 70.105D.060, that the amount of carbon containing PCE contributed by all of
20 the Defendants to this Consent Decree exceeds by more than ten (10) percent the
21 amount of carbon containing PCE reflected for all Defendants in Exhibit B. For
22 purposes of this paragraph, the administrative record shall mean the documents in
23 Ecology's possession as of October 30, 1996, pertaining to this case, including, but not
24 limited to, the records referenced in Exhibits B and F. "Previously unknown threats
25 to human health or the environment" shall not include any threat to any beneficial uses
26 of water (including the use of water for agricultural or drinking water purposes) from

1 Covered Substances in or around the Site;

2 3. (a) Each Defendant(s) responsible for the additional shipments of
3 carbon containing PCE described in Section VIII(A)(2) shall make a further financial
4 contribution to the Trust Fund in the amount of \$2.48 for every additional pound of
5 PCE-containing carbon which exceeds the ten (10) percent threshold. Where two or
6 more Defendants are responsible for the additional shipments referenced herein, they
7 shall make, on a pro rata basis, the payment referenced in the preceding sentence.

8 (b) If new information becomes available regarding additional
9 hazardous substances contained in the carbon shipped by a Defendant to the Site and
10 Ecology determines that the newly disclosed substances: 1) are not of a class which
11 would be identified by previous RCRA Appendix IX laboratory analysis at the Site and;
12 2) would not be addressed by the remediation plan being implemented at the Site.
13 Substances which Ecology determines do not meet the above criteria shall be considered
14 Covered Substances following written notification of such by Ecology. A Defendant's
15 liability under this reopener shall be limited to joint and several liability for the
16 additional response costs arising from the additional hazardous substance or substances.

17 B. Effect of Reopener: If a Defendant makes the payment specified in
18 Section VIII (A)(3)(a), the Defendant's liability to Ecology for such additional carbon
19 shipments shall be extinguished and such shipments shall be fully covered by Section
20 VII (Contribution Protection) and Section VIII (Covenant Not To Sue) of this Decree.
21 If a Defendant declines to make a payment pursuant to Section VIII (A) (3)(a), then the
22 reopener shall be triggered as to that Defendant, subject to any invocation by the
23 Defendant of the provisions of Section X (Resolution of Disputes).

24 A. Applicability: The Covenant Not to Sue set forth above shall have no
25 applicability whatsoever to:

26 1. Criminal liability;

1 2. Liability for damages to natural resources;

2 3. Any Ecology action against potentially liable parties not a party to this Decree.

3 IX. RETENTION OF RECORDS

4 Defendants shall preserve for ten (10) years from the date of this Decree all records,
5 reports, documents, and underlying data in its possession relevant to the implementation of this
6 Decree. Upon request of Ecology, Defendants shall make all non-archived records available
7 to Ecology and allow access for review. All archived records shall be made available to
8 Ecology within a reasonable period of time.

9 X. RESOLUTION OF DISPUTES

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

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

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

19 (3) Defendants may then request Ecology management review of the decision. This
20 request shall be submitted in writing to the Central Regional Office Toxics Cleanup Section
21 Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

22 (4) Ecology's Central Regional Office Toxics Cleanup Section Manager shall
23 conduct a review of the dispute and shall issue a written decision regarding the dispute within
24 thirty (30) days of the Defendants' request for review. The Central Regional Office Toxics
25 Cleanup Section Manager's decision shall be Ecology's final decision on the disputed matter.

26 B. If Ecology's final written decision is unacceptable to Defendants, Defendants

1 have the right to submit the dispute to the Court for resolution. The parties agree that
2 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
3 arising under this Decree. In the event Defendants present an issue to the Court for review,
4 the Court shall review the action or decision of Ecology on the basis of whether such action
5 or decision was arbitrary and capricious and render a decision based on such standard of
6 review.

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

11 Implementation of these dispute resolution procedures shall not provide a basis for delay
12 of any activities required in this Decree (except in the case of a dispute between the Parties
13 under Section X of this Decree), unless Ecology agrees in writing to a schedule extension or
14 the Court so orders.

15 XI. AMENDMENT OF CONSENT DECREE

16 This Decree may only be amended by a written stipulation among the parties to this
17 Decree that is entered by the Court or by order of the Court. Such amendment shall become
18 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld
19 by any party to the Decree.

20 Defendants shall submit any request for an amendment to Ecology for approval.
21 Ecology shall indicate its approval or disapproval in a timely manner after the request for
22 amendment is received. If the amendment to the Decree is determined by Ecology to be
23 substantial, Ecology will provide public notice and opportunity for comment. Reasons for the
24 disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment,
25 the disagreement may be addressed through the dispute resolution procedures described in
26 Section X of this Decree.

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XII. DURATION OF DECREE

This Decree shall remain in effect until the Defendants have received written notification from Ecology that the requirements of the Decree have been satisfied. The termination of this Decree shall not alter the provisions of Section VII (Contribution Protection), Section VIII (Covenant Not to Sue), and other such continuing rights of Defendants under this Decree.

XIII. CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the state of Washington or any of its agencies; and further, that the Defendants will make no claim against the State Toxics Control Account or any local toxics control account for any costs incurred in implementing this Decree. Except as provided above, however, Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person.

XIV. EFFECTIVE DATE

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

XV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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 will lead to a more expeditious cleanup of Covered Substances at the Site.

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

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WASHINGTON STATE
DEPT. OF ECOLOGY

Mary E. Burg

MARY E. BURG
Program Manager
Toxics Cleanup Program
DATED: 12-20-96

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE
Assistant Attorney General

DATED: 12-20-96

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CITY OF DALLAS, TEXAS

Sam A. Lindsay

SAM A. LINDSAY
City Attorney

Date 12/13/96

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CITY OF FRESNO, CALIFORNIA

By Michael A. Bierman
MICHAEL A. BIERMAN
City Manager

Date 12.10.96


APPROVED AS TO FORM:

HILDA CANTU MONTROY
City Attorney


By Martin D. Koczanowicz
Martin D. Koczanowicz
Deputy City Attorney

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CITY OF PASADENA, CALIFORNIA

By 
City Manager or his designee
Date 12-10-96

APPROVED AS TO FORM:


SCOTT D. RASMUSSEN
Assistant General Counsel
Date 12/10/96

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CITY OF ROCHESTER, MINNESOTA


CHUCK CANFIELD
Mayor

Date DECEMBER 12, 1996


JUDY SCHERR
City Clerk

Date DECEMBER 12, 1996

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CITY OF SANTA BARBARA, CA,
municipal corporation

CITY OF SANTA BARBARA, CA, a
municipal corporation

By Sandra E. Tripp-Jones
SANDRA E. TRIPP-JONES
City Administrator and
Executive Director of
City of Santa Barbara
Redevelopment Agency

By Harriet Miller
MAYOR HARRIET MILLER

Date 12/12/96

Date Dec. 12, 1996

APPROVED AS TO FORM:

DANIEL J. WALLACE, City Attorney

ATTEST:

By Janet McGinnis
Janet K. McGinnis
Assistant City Attorney
Attorneys for City of Santa Barbara
and Santa Barbara Redevelopment Agency

By Lily Rossi, Chief
Deputy City Clerk #18, 608

Date December 12, 1996

Date 4 December 1996

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CITY OF SCOTTSDALE, ARIZONA,
a municipal corporation

By *Sam K Campana*
SAM KATHERYN CAMPANA
Mayor

Date 12-02-96

ATTEST:

Sonia Robertson
SONIA ROBERTSON
City Clerk

Date 12-02-96

APPROVED AS TO FORM:

Fredda J. Bisman
FREDDA J. BISMAN
City Attorney

Date 12/2/96

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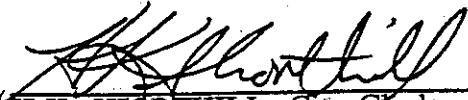
CITY OF VANCOUVER, WASHINGTON



ROYCE E. POLLARD
Mayor

Date 12/4/96

ATTEST:



H.K. SHORTHILL, City Clerk

~~By: Judy Hoggatt~~

Date 12/4/96

APPROVED AS TO FORM:



TED H. GATHE
City Attorney

Date 12-03-96

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CITY OF LYNNWOOD, WASHINGTON

By *Tina Roberts*
Printed Name: TINA ROBERTS
Title: Mayor
Date December 3, 1996

APPROVED AS TO FORM:

[Signature]
JOHN P. WATTS ~~SEVEN L. GARDNER~~
Lynnwood City Attorney
Date December 2, 1996

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ASPEN CONSOLIDATED SANITATION DISTRICT, County of Pitkin, State of Colorado

ATTEST:

By *Sy Kelly*

Name: *Sy Kelly*
Chairman

Date *12/3/96*

By: Louis Popish

Name: *Louis Popish*
Secretary/Assistant Secretary

Date *12/3/96*

[SEAL]

APPROVED AS TO FORM:

By: *Bruce Mowbray*
District Manager

Date *12-3-96*

APPROVED AS TO FORM:

By: *Robt L. [Signature]*
Attorney for District

Date *November 27, 1996*

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DATED this ____ day of _____, 1996.

JUDGE
U.S. District Court
Eastern District of Washington

fl...Municipities.Csd

YAKIMA RAILROAD AREA CONSENT DECREES RESPONSIVENESS SUMMARY

The Washington State Department of Ecology lodged four consent decrees in the Federal District Court for the Eastern District of Washington on December 20, 1996. The consent decrees propose to settle the state's claims under the Model Toxics Control Act (MTCA), a state law, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a federal law, with approximately 96 Potentially Liable Persons (PLPs) regarding the Yakima Railroad Area (YRRA) cleanup site. Written comments from the public and interested parties were solicited, and a public hearing was held to receive oral and written comment on January 8, 1997 in Yakima. The only comment received during the comment process was submitted by Douglas S. Little, attorney for U-Haul of Inland Northwest. U-Haul is also a PLP for the YRRA.

Listed below are the comments received by U-Haul (*italics*) and Ecology's response.

COMMENT 1

There is no basis for filing the Consent Decrees in federal district court. To the best of our knowledge, Ecology's handling of the Yakima Railroad Area matter has proceeded solely under MTCA without resort to any CERCLA authority process.

The State of Washington may settle claims it may have against settling parties under both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Model Toxics Control Act (MTCA). Taking actions pursuant to MTCA does not divest the State of authority to pursue and resolve its CERCLA claims. Since the parties are settling a federal claim (the CERCLA claim), the federal district court has exclusive jurisdiction. The court has pendent jurisdiction to settle the related state claim (the MTCA claim).

COMMENT 2

There has been no demonstration that the work to be performed under the RI Consent Decree will be consistent with CERCLA.

The work plan developed to implement the Statement of Work contained in the RI Consent Decree will be reviewed and approved by the Department prior to implementation by the potentially liability parties ("PLPs"). This review process will enable the Department to ensure that the work will be consistent with CERCLA. Also see COMMENT 3, below.

COMMENT 3

There has been no demonstration that Ecology's expenditures with regard to the Yakima Railroad Area "were incurred and will be incurred in a manner not inconsistent with the National Contingency Plan," as asserted in the complaints attached to the Consent Decrees. In addition, it is impossible to represent now whether a future expenditure will be consistent with the NCP.

To date the Department has been involved in the review of data submitted by those PLPs acting under Enforcement Orders as well as in negotiating the four Consent Decrees at the Site. These actions are consistent with both CERCLA and the NCP. Similarly, Ecology will have oversight for future expenditures sufficient to ensure that those expenditures are not inconsistent with the NCP.

COMMENT 4

There has been no demonstration that "nineteen identified Source Areas... have... contributed to the presence of PCE at the [Yakima Railroad Area] Site." This statement should be limited only to the Cameron-Yakima property with which the defendants in the four Consent Decrees are involved. These defendants have had no involvement with regard to any other alleged Source Area within the Yakima Railroad Area; comments as to those other properties are beyond the scope of the Consent Decree.

The YRRA is an area of approximately 6 square miles of perc contaminated groundwater. Within the area there are 19 known subfacilities or source areas. A site becomes part of the YRRA when PCE is found to be present in soils, an indication of a source. All nineteen subfacilities or Source Areas have PCE present in both soil and groundwater. Under RCW 70.105D.010(5) each of the responsible persons associated with these subfacilities is liable jointly and severally. The parties to the four decrees being proposed all shipped waste to Cameron Yakima, Inc. The CYI facility has contributed to groundwater contamination within the YRRA as evidenced by soil and groundwater contamination.

Because the Site History is an important part of the background information necessary to review the Consent Decrees it should be as complete as possible. Thus, it is appropriate to include this information within the Consent Decree. Moreover, the information regarding the Source Areas at the Site constitute a factual finding by the Department of Ecology.

COMMENT 5

The contribution protection under the four proposed Consent Decrees, is overly broad. A Remedial Investigation has not even been performed for the Yakima Railroad Area. Thus, it is premature to reach settlements relieving parties from liability for future remediation decisions.

Ecology's entry of consent decrees at this time is not premature. MTCA provides that Ecology may settle with a PLP when that settlement will lead to a more expeditious cleanup of the hazardous substances at the Site. The four consent decrees proposed for entry by Ecology provide for the remedial investigation of, and substantial funds toward remediation of, over six square miles of contaminated groundwater. Thus, these decrees will lead to a more expeditious cleanup of the Site.

COMMENT 6

There is no demonstration that the amounts used to compute the cash-out settlements are fair and reasonable. No information has been provided to explain, let alone justify, the total estimated remediation costs, the allocation to those involved at the Cameron-Yakima property, or the allocation amongst PLPs at the property.

Attachment A shows a line item estimate of anticipated remedial action costs for the YRRA. The estimate identifies the completion of a remedial investigation and feasibility study with the implementation of cleanup action. The cleanup action estimate consists of either the connection of about 1000 additional homes and businesses to a municipal water supply or the construction of new wells for these businesses, the 1200 plus homes already connected to a new water supply, the protection and or replacement of Union Gap Municipal Wells, and the implementation of institutional controls to protect the aquifer and control consumption. This estimate is \$23,649,669. This estimate was then allocated amongst the subfacilities by looking at soil contamination levels at each subfacility as of February 1996. A percentage of contribution for each subfacility was then developed. (See Attachment B). Note that this allocation was based on facilities in existence as of February 1996. Numbers were not included for subfacilities which had already settled via earlier settlements.

The percentage contribution identified that the Cameron-Yakima, Inc., subfacility is responsible for approximately 94% of the \$23,649,669 area-wide costs or \$22,215,516. This amount was allocated to CYI generator PLPs based on the pounds of carbon shipped to the

CYI facility; approximately 6.7 million pounds. This generated a baseline value of \$3.35 per pound of carbon shipped to the CYI subfacility.

The settlement terms of the consent decrees reflect the cooperative effort and substantial resources devoted toward remediating the contamination at the Site by the settling PLPs. Further, the decree providing for a Remedial Investigation recognizes the significant savings involved in having the PLPs carry out field work rather than having Ecology undertake the same task. The RI decree represents, when the combined value of the work and \$150,000 trust fund contribution are considered, a settlement to those PLPs of approximately \$1.99 per pound of carbon shipped to CYI. The other decrees settle for \$2.11 and \$2.35 per pound.

COMMENT 7

In the RI Consent Decree, the scope of contribution protection and the scope of the covenant not to sue are unjustifiably broad. The defendants to the RI Consent Decree are obligated to perform certain remedial investigation activities but not to participate in any feasibility study for the Yakima Railroad Area. The scope of the contribution protection and the covenant not to sue should be consonant with the activities being handled under the Consent Decree.

The scope of the covenant not to sue is commensurate with the scope of settlement embodied in the RI consent decree. The decree provides that the PLPs shall carry out the Remedial Investigation of the Site, and also contribute \$150,000.00 to the Yakima Railroad Area Trust Fund. The Trust Fund is being created by the four decrees and has, as its stated purpose, the funding of the remedial action necessary at the Site. Because the RI decree provides for payment into the Trust Fund, the intended scope of the settlement is for the remedial action necessary at the Site.

Regarding the scope of the Contribution Protection in the RI Consent Decree, CERCLA Section 113(f) (2) provides that a party who has resolved its liability with the United States or a State in a Consent Decree "shall not be liable for claims of contribution regarding the matters addressed in the settlement." MTCA, also provides that a party which has resolved its liability with the State "shall not be liable for claims for contribution regarding matters addressed in the settlement." RCW 70.105D0.040(4)(d). Because the parties have resolved their future liability under the terms of the Consent Decrees (i.e., the scope of the matters addressed includes future response costs), both MTCA and CERCLA provide that such parties are entitled to contribution protection for those same matters.

COMMENT 8

The defendants in the four Consent Decrees should not be relieved from responsibility for source removal and cleanup at the Cameron-Yakima site. For example, if Cameron-Yakima is financially unable to perform and complete remedial activities at the site, the defendants and other potentially liable parties at the site should be liable. In addition, any other liability properly allocable to Cameron-Yakima should also be assessable against the defendants and other potentially liable parties at the Cameron-Yakima site.

The Settlers are entitled to protections available to settling parties under MTCA and CERCLA. It is in both the State's and the Settlor's interest to encourage early settlement and early cleanups at the Site. The Department does not contend that every PLP at the Site has settled its liability. As future response actions are identified, or future response costs incurred, by the Department, such work or costs will be allocated to those PLPs not participating in the current settlements. The State does not intend to foreclose the possibility of early settlements and cleanup at the Site simply because there is a possibility that one PLP may not be in a position to fund continuing remedial activities.

COMMENT 9

The proposed activities under the RI Consent Decree include sampling of downgradient wells at several alleged Source Areas within the Yakima Railroad Area, including the U-Haul/Yakima Valley Spray Site. If such monitoring is conducted, it should also include contemporaneous sampling of an upgradient well at the site, if such exists.

The purpose of the sampling of downgradient wells at all YRRA facilities is to begin generating an area-wide understanding of groundwater contamination levels. The contractor working under the RI Consent Decrees will be sampling one well at each facility. Ecology will be working with each subfacility to coordinate all subfacility groundwater sampling to occur on the same schedule as the area-wide sampling.