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U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CY-96-3196- RHW  
No.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

COMPLAINT

-vs-

FAIRCHILD SEMICONDUCTOR  
CORPORATION, IT CORPORATION,  
MCKESSON CORPORATION, PHILIPS  
SEMICONDUCTORS, TOSCO  
CORPORATION, AND XEROX  
CORPORATION,

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  
district, pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the events

COPY

1 giving rise to the claims herein arose in this district and the property that is the subject of  
2 the action is situated in the district.

## 3 II. PARTIES

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

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

13 4. Defendants Fairchild Semiconductor Corporation, IT Corporation, McKesson  
14 Corporation, Philips Semiconductors, Tosco Corporation, and Xerox Corporation are  
15 Delaware corporations.

## 16 III. FACTUAL ALLEGATIONS

17 5. The Site is a residential, commercial and industrial area covering  
18 approximately six square miles in downtown Yakima and Union Gap Known as the Yakima  
19 Railroad Area (YRRA) and has been designated by Ecology as a "Facility" or "Site"  
20 pursuant to RCW 70.105D.020. Analysis of soil and groundwater at various locations  
21 within the Site has, in varying levels, shown the presence of perchloroethylene (PCE) and  
22 other Covered Substances. A Site History and Synopsis of PCE Releases is attached to the  
23 Consent Decree being filed concurrently with this Complaint as Exhibit C and contains a  
24 history and statement of facts regarding the presence of PCE at the Site.

25 6. The Site contains at least nineteen identified Source Areas which have,  
26 through their historic operations, contributed to the presence of PCE at the Site. One of

1 source areas is a carbon reprocessing business known as Cameron-Yakima, Inc., located at  
2 1414 S. First, Yakima, Washington. More than 100 PLPs, including the Defendants,  
3 shipped carbon containing PCE and/or other Covered Substances to Cameron-Yakima, Inc.  
4 Ecology estimates that the total amount of such carbon containing PCE shipped by all PLPs  
5 is 6,705,320 pounds. Ecology alleges that the Defendants shipped approximately 1,230,143  
6 pounds of carbon containing PCE to Cameron-Yakima.

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

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

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

13 10. Ecology has incurred costs to identify, eliminate or minimize the threat or  
14 potential threat posed by hazardous substances at the Site. In addition, Ecology will  
15 continue to incur costs associated with oversight and implementation of remedial action at  
16 the Site through the Yakima Railroad Area Trust Fund. Ecology's expenditures to date are  
17 not inconsistent with the National Contingency Plan, 40 C.F.R., Part 300.

18 11. Without making any admissions as to the factual or legal allegations  
19 contained in this Complaint, the Defendants have consented to entry of the Consent Decree  
20 (the "Decree") providing for Remedial Action attached to this Complaint.

#### 21 IV. FIRST CLAIM FOR RELIEF

22 12. The allegations of paragraph 1 through 16 hereby incorporated by reference  
23 and made a part thereof.

24 13. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), provides in pertinent part:  
25 107(a) - Notwithstanding any other provision or rule of law, and subject only  
26 to the defenses set forth in subsection (b) of this section --

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

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

3 (3) any person who by contract, agreement, or otherwise arranged for  
4 disposal or treatment, or arranged with a transporter for transport for  
5 disposal or treatment, of hazardous substances owned or possessed by such  
6 person, by any other party or entity, at any facility owned or operated by  
7 another party or entity and containing such hazardous substances, and

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

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

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

19 15. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607 (a)(4)(A),  
20 as set forth in paragraph 18 above, the Defendants are liable to the State for all response  
21 costs incurred by Ecology in connection with the Site. None of the defenses in Section  
22 107(b) of CERCLA, 42 U.S.C. § 9607(b), are available to the Defendants.

## 23 V. SECOND CLAIM FOR RELIEF

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

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

(1) Except as provided in subsection (3) of this section, the  
following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the  
time of disposal or release of the hazardous substance;

(c) Any person who owned or possessed a hazardous  
substance and who by contract, agreement, or otherwise

1 arranged for disposal or treatment of the hazardous  
2 substance at the facility, or arranged with a transporter  
3 for transport for disposal or treatment of the hazardous  
4 substance at the facility, or otherwise generated  
5 hazardous waste disposed of or treated at the facility;

- 6 (2) Each person who is liable under this section is strictly liable,  
7 jointly and severally, for all remedial action costs and for all  
8 natural resource damages resulting from the releases or  
9 threatened releases of hazardous substances. The attorney  
10 general, at the request of the department, may recover all costs  
11 and damages from persons liable for them.

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

- 13 (1) The department may exercise the following powers in addition  
14 to any other powers granted by law:

15 (a) Investigate, provide for investigating, or require  
16 potentially liable persons to investigate any releases or  
17 threatened releases of hazardous substances, including  
18 but not limited to inspecting, sampling, or testing to  
19 determine the nature or extent of any release or  
20 threatened release.

21 (b) Conduct, provide for conducting, or require potentially  
22 liable persons to conduct remedial actions (including  
23 investigations under (a) of this subsection) to remedy  
24 releases or threatened releases of hazardous  
25 substances. . . .

26 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:

- (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;

- 1                   (3)    Any substance that, on October 16, 1987, is a hazardous substance  
2                                   under section 101(14) of CERCLA.
- 3                   21.    RCW 70.105D.020(10) defines a release as:  
4                                   Any intentional or unintentional entry of any hazardous  
5                                   substance into the environment, including but not limited to the  
6                                   abandonment or disposal of containers of hazardous  
7                                   substances.
- 8                   22.    Hazardous substances within the meaning of RCW 70.105D.020(5) have been  
9                                   "released" into the environment, or future releases are threatened within the meaning of  
10                                  RCW 70.105D.020(10).
- 11                  23.    The YRRA is a "Facility" or "Site" with the meaning of RCW  
12                                  70.105D.020(3).
- 13                  24.    Ecology has determined that remedial action is necessary to identify,  
14                                  eliminate or mitigate any threat or potential threat to human health or the environment with  
15                                  respect to the Site and is in the public interest.
- 16                  25.    After having the opportunity to comment, Defendants received final notice of  
17                                  its potential liability pursuant to RCW 70.105D.020.
- 18                  26.    Defendants are liable persons within the terms of RCW 70.105D.040.
- 19                  27.    Defendants are liable for conducting remedial action for releases from the  
20                                  Defendants Property in accordance with the terms of the Decree.
- 21                  28.    Ecology and Defendants, pursuant to RCW 70.105D.040, have reached a  
22                                  settlement agreement.
- 23                  29.    Pursuant to RCW 70.105D.040, this voluntary settlement agreement is  
24                                  embodied in a Consent Decree, which is being filed with the Court simultaneously with the  
25                                  filing of this Complaint. It provides for appropriate remedial action related to the YRRA  
26                                  that will lead to a more expeditious cleanup at the Site.

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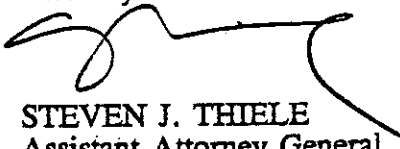
30. Without making any admissions as to the factual or legal allegations contained in this Complaint, Defendants have agreed to perform the work embodied in the proposed Decree and agrees to the entry of the Decree by the Court.

**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 19<sup>th</sup> day of December, 1996.

CHRISTINE O. GREGOIRE  
Attorney General

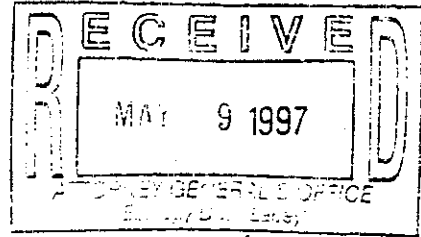


STEVEN J. THIELE  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington  
Department of Ecology  
(360) 459-6134





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

MAY 07 1997  
JAMES R. LARSEN, Clerk  
Deputy

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WFN

CY-96-3196-~~RHW~~  
No.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

FAIRCHILD SEMICONDUCTOR  
CORPORATION, IT CORPORATION,  
McKESSON CORPORATION, PHILIPS  
SEMICONDUCTOR, SIGNETICS  
COMPANY, TOSCO CORPORATION,  
and XEROX CORPORATION,

Defendants.

CONSENT DECREE

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ORIGINAL

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
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## I. INTRODUCTION

A. This Consent Decree ("Decree") is entered into by and between the Washington State Department of Ecology ("Ecology"), and Fairchild Semiconductor Corporation (including Fairchild Camera and Instrument Corporation, Schlumberger Technology Corporation, and Dowell Schlumberger, Incorporated, hereinafter "Fairchild"), IT Corporation ("IT"), McKesson Corporation ("McKesson"), Philips Semiconductors (including Philips Company, Philips Corporation, Signetics Company, Signetics Corporation, Philips Electronics North America Corporation, and North American Philips Corporation, hereinafter "Philips"), Tosco Corporation (including Tosco Refining Company, hereinafter "Tosco"), and Xerox Corporation ("Xerox") (collectively referred to hereinafter as "Settlers"). It is the mutual objective of the parties to this Decree to provide for Remedial Action at an area defined to be a "facility" by Ecology where there has been a release or threatened release of hazardous substances. The Facility, known as the Yakima Railroad Area (the Site), is located in Yakima, Washington. A Site diagram is attached hereto as Exhibit A. This Decree requires the Settlers to undertake the following Remedial Action:

- (1) A remedial investigation (RI) of the facility known as the Yakima Railroad Area (the Site);
- (2) Connection of the approximately 66 residences in the vicinity of Ninth Avenue in Yakima listed in Exhibit B to this Decree whose owners elect to be connected to city water supplies;
- (3) A public participation plan;
- (4) A receptor analysis study for the Site;
- (5) Provision of bottled water to residents in the vicinity of Ninth Avenue in Yakima until such time as the municipal water supply connection is available;
- (6) The compilation and review of soil and groundwater data collected at the Site; and
- (7) Data reviews for purposes of identifying additional Potentially Liable Persons (PLPs) at the Site.

1 These activities are described in further detail in the Scope of Work attached hereto  
2 Exhibit B and incorporated by reference herein (the "Work"). In addition, the Settlers shall  
3 provide a financial contribution to Ecology in an amount and for the purposes specified in  
4 Section VII of this Decree. Ecology has determined that all of these actions are necessary to  
5 protect public health and the environment.

6 B. The Complaint in this action is being filed simultaneously with this Decree. An  
7 answer has not been filed, and there has not been a trial on any issue of fact or law in this  
8 case. The Settlers specifically deny each and every element of the Complaint relating to  
9 Settlers' alleged liability. However, the parties wish to resolve the issues raised by Ecology's  
10 complaint. In addition, the parties agree that settlement of these matters without litigation is  
11 reasonable and in the public interest and that entry of this Decree is the most appropriate means  
12 of resolving these matters.

13 C. In signing this Decree, Settlers agree to its entry and agree to be bound by its  
14 terms. This Decree supersedes Enforcement Order DE 95TC-C212 with respect to the Settlers  
15 only.

16 D. By entering into this Decree, the parties do not intend to discharge nonsettling  
17 parties from any liability they may have with respect to matters alleged in the complaint. The  
18 parties retain the right to seek reimbursement, in whole or in part, from any liable persons not  
19 a party to this Decree for sums expended under this Decree.

20 E. This Decree shall not be construed as proof or evidence of liability or  
21 responsibility for any releases of hazardous substances or costs for Remedial Action nor an  
22 admission of any facts and Settlers expressly deny such liability. However, the Settlers shall  
23 not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

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

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**II. JURISDICTION**

A. 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. This Court also has jurisdiction pursuant to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), under the doctrine of pendent jurisdiction. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. §9613(b), and 28 U.S.C. §1391(b), because the claims arose in this district.

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

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

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

E. Ecology has determined that the actions to be taken pursuant to this Decree are necessary to protect public health, welfare, and the environment and will lead to more expeditious cleanup of hazardous substances in compliance with the cleanup standards of RCW 70.105D.030(2)(d) and the regulations adopted pursuant thereto.

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

**III. PARTIES BOUND**

This Decree shall apply to and be binding upon the signatories to this Decree (parties), their successors and assigns. The undersigned representative of each party hereby certifies that

1 he or she is fully authorized to enter into this Decree and to execute and legally bind such party  
2 to comply with the Decree. Settlers agree to undertake all actions required by the terms and  
3 conditions of this Decree and not to contest jurisdiction regarding this Decree. No change in  
4 ownership or corporate status shall alter the responsibility of the Settlers under this Decree.  
5 Settlers shall provide a copy of this Decree to each of their agents at the Site, including all  
6 contractors and subcontractors retained to perform work required by this Decree and shall  
7 condition any contract for such work on compliance with this Decree.

#### 8 IV. DEFINITIONS

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

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

16 B. Parties: Refers to Ecology, Fairchild, IT, McKesson, Philips, Tosco, and  
17 Xerox.

18 C. Settlers: Refers to Fairchild, IT, McKesson, Philips, Tosco, and Xerox.

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

22 E. Covered Substances: Refers to any chemical, compound or element listed on  
23 Exhibit C existing as of the effective date of this Decree at the Site or any Source Area within  
24 the Site.

25 F. Remedial Action: Refers to all activities defined to be a "Response" under  
26 CERCLA or a "Remedy" or "Remedial Action" under MTCA.

1 G. Source Area: Refers to an area at which there has been a release or threatened  
2 release of PCE or other Covered Substances within or around the Site.

3 V. STATEMENT OF FACTS

4 Ecology makes the following findings of fact without any express or implied admissions  
5 by Settlers.

6 1. The Site is a residential, commercial and industrial area covering approximately  
7 six square miles in downtown Yakima and Union Gap. Analysis of soil and groundwater at  
8 various locations within the Site has, in varying levels, shown the presence of  
9 perchloroethylene (PCE) and other Covered Substances. A Site History and Synopsis of PCE  
10 Releases, attached to this Consent Decree as Exhibit D, contains a history and statement of  
11 facts regarding the presence of PCE at the Site.

12 2. The Site contains at least nineteen identified Source Areas which have, through  
13 their historic operations, contributed to the presence of PCE at the Site. More than 100 PLPs,  
14 including the Settlers who are parties to this Decree, shipped carbon containing PCE and/or  
15 other hazardous substances to one of those Source Areas, Cameron-Yakima, Inc. The  
16 estimated amount of such carbon is in excess of 18 million pounds. The estimated amount of  
17 carbon containing hazardous substances shipped by the Settlers to the Cameron-Yakima facility  
18 is approximately 1.5 million pounds.

19 3. In the future, a feasibility study followed by a cleanup action plan or CAP will  
20 be issued for the Site, pursuant to MTCA. The CAP will describe the final remedy selected  
21 for the Site by Ecology. The feasibility study and selected remedy may be implemented  
22 pursuant to one or more separate Consent Decree(s). This Decree is separate from and in no  
23 way dependant upon such future Decree(s) or their performance.

24 VI. WORK TO BE PERFORMED

25 This Decree contains a program designed to protect public health, welfare and the  
26 environment from the known release, or threatened release, of Covered Substances at, on, or

1 from the Site.

2 1. Settlor's agree to perform the work specified in the Scope of Work attached as  
3 Exhibit B and incorporated herein by reference.

4 2. The parties agree that Settlor's shall not perform any Remedial Action outside  
5 the scope of this Decree unless the parties agree in writing to amend the scope of work to  
6 cover these actions. All work conducted under this Decree shall be done in accordance with  
7 MTCA unless otherwise provided herein.

8 3. Ecology and the Settlor's agree that the work set forth in the Scope of Work  
9 attached as Exhibit B is consistent with the National Contingency Plan ("NCP"), 40 C.F.R.  
10 Part 300, in effect on the date of this Decree and that amounts paid by the Settlor's to perform  
11 the Scope of Work are necessary costs of response. In the event amendments to the NCP are  
12 promulgated after the date of this Decree which materially affect the rights of any party, the  
13 parties agree to negotiate in good faith a written amendment to this Decree to provide for such  
14 changes.

15 **VII. TRUST FUND**

16 The Settlor's agree to make, on or before the date fourteen days after the Consent  
17 Decree is entered by the Court, a financial contribution in the amount of \$150,000 to the trust  
18 (hereinafter "Trust Fund") established in the trust agreement, which is attached hereto as  
19 Exhibit F and is hereby incorporated by reference. The Trust Fund shall be for the exclusive  
20 purposes of financing past and future Remedial Activities in and around the Site. The Settlor's  
21 financial contribution expressly and specifically includes, but is not limited to the Settlor's  
22 share of the following past and future costs: (i) costs of grants provided to the cities of  
23 Yakima and Union Gap, Washington for the purposes of municipal water system installation  
24 and upgrades; and (ii) costs of work performed by Ecology or its contractors for, or on, the  
25 Site under Ch. 70.105D RCW both prior to and subsequent to the issuance of this Decree for  
26 investigations, remedial actions, and Decree preparation, negotiations, oversight and



1 administration of this Decree. Ecology costs include costs of direct activities and support costs  
2 of direct activities as defined in WAC 173-340-550(2). The Settlor's financial contribution and  
3 any other funds derived from a settling PLP shall be held in the Trust Fund pursuant to the  
4 terms of Exhibit F. Ecology shall be designated as having the power of appointment under the  
5 trust.

6 **VIII. DESIGNATED PROJECT COORDINATORS**

7 The project coordinator for Ecology is:

8 Rick Roeder  
9 Dept. Of Ecology, Central Regional Office  
10 15 West Yakima Ave., Suite 200  
11 Yakima, WA 98902-3401  
12 (509) 454-7837

13 The project coordinator for Settlers is:

14 Mark Valentine  
15 De Maximis, Inc.  
16 1516 Second Ave., Suite 300  
17 Seattle, WA 98101  
18 (206) 682-1966

19 Each project coordinator shall be responsible for overseeing the implementation of this  
20 Decree. The Ecology project coordinator will be Ecology's designated representative at the  
21 Site. To the maximum extent possible, communications between Ecology and the Settlers and  
22 all documents, including reports, approvals, and other correspondence concerning the activities  
23 performed pursuant to the terms and conditions of this Decree, shall be directed through the  
24 project coordinators. The project coordinators may designate, in writing, working level staff  
25 contacts for all or portions of the implementation of the remedial work required by this Decree.  
26 The project coordinators may agree to minor modifications to the work to be performed  
without formal amendments to this Decree. Minor modifications will be documented in writing  
by Ecology or the Settlers.

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

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IX. PERFORMANCE

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

X. CONTRIBUTION PROTECTION

With regard to claims for contribution against any Settlor for matters addressed in this Consent Decree, the parties hereto agree that each Settlor is entitled to such protection from contribution actions or claims as is provided by MTCA, RCW 70.105D.040, by CERCLA §113(f)(2), 42 U.S.C. §9613(f)(2), or as otherwise provided by law. For the purposes of this section, "matters addressed" shall mean all past and future aspects of the investigation and remediation (including agency oversight costs) of the Site and any Source Areas, whether performed by Ecology or other parties.

XI. COVENANT NOT TO SUE

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

This covenant not to sue is strictly limited in its application to the Site and related Source areas and to Covered Substances found in or moving from the Site. This covenant is not applicable to any other hazardous substance or area, and the State retains all of its authority relative to such substances and areas.

1           A.    Reopeners: If the Court determines, upon petition from any of the parties, that  
2 any of the following circumstances exist, Ecology may exercise its full legal authority to  
3 address releases of hazardous substances at the Site, notwithstanding the Covenant Not to Sue  
4 set forth above:

5           1.    In the event a Settlor fails to comply with the terms and conditions of this  
6 Consent Decree, including all exhibits, and, after written notice of noncompliance, fails to  
7 come into compliance within a reasonable time provided by Ecology in the notice of  
8 noncompliance;


9           2.    In the event new information becomes available regarding factors previously  
10 unknown to Ecology and Ecology determines, in light of this information, that remedial action  
11 is necessary to address a previously unknown threat to human health or the environment at the  
12 Site, and Settlers, after notice, fail to take the necessary action within a reasonable time  
13 provided by Ecology in the notice. If such new information becomes available with respect  
14 to a specific Settlor, Ecology may make its determination and issue such notice with respect  
15 to that Settlor only.

16           a.    For purposes of this Decree, "factors previously unknown to Ecology"  
17 shall mean contamination unknown or undocumented at the time of this Decree from  
18 hazardous substances other than Covered Substances. "Factors previously unknown to  
19 Ecology" shall not include any new information related to the presence of, extent of,  
20 or impacts from Covered Substances at the Site.

21           b.    (i) "Factors previously unknown to Ecology" may include new  
22 information not contained in the administrative record that establishes, consistent with  
23 the standard provided in RCW Section 70.105D.060, that the amount of carbon  
24 containing PCE contributed by all of the Settlers exceeds by more than ten percent the  
25 amount of carbon containing PCE reflected for all of the Settlers in the administrative  
26 record.

1 For purposes of this paragraph, the administrative record shall mean the  
2 documents in Ecology's possession as of October 31, 1996, pertaining to this case,  
3 including but not limited to the records and analyses referenced in Exhibit G.

4 (ii) This reopener shall apply only to the Settlor or Settlers regarding whom such  
5 new information is available. In lieu of reopening the Decree, such Settlor or Settlers  
6 may elect to make a further financial contribution to the trust fund in the amount of  
7 \$1.99 for every additional pound of PCE-containing carbon that exceeds the ten percent  
8 threshold. Where new information establishes that more than one Settlor has exceeded  
9 the ten percent threshold referred to above, the Settlers causing the excess shall share,  
10 on a pro-rata basis, the further financial contribution referred to in the proceeding  
11 sentence.

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

22 B. Effect of Reopener: If a Settlor makes the payment specified in Paragraph A.2.b  
23 above, the Settlor's liability to Ecology for such additional carbon shipments shall be  
24 extinguished and such shipments shall be fully covered by Section X (Contribution Protection)  
25 and Section XI (Covenant Not To Sue) of this Decree. If a Settlor declines to make a payment  
26 pursuant to Paragraph A.2.b(ii) above, Sections X and XI shall not apply to the portion of the

1 Settlor's shipment that exceeds the amount reflected in the administrative record, subject to the  
2 dispute resolution provisions contained in Section XV below.

3 "Previously unknown threats to human health or the environment" shall not include any  
4 threat to any beneficial uses of water (including the use of water for agricultural or drinking  
5 water purposes) from Covered Substances in or around the Site.

6 C. Applicability: The Covenant Not to Sue set forth above shall have no  
7 applicability whatsoever to:

- 8 1. Criminal liability;
- 9 2. Liability for damages to natural resources; and
- 10 3. Any Ecology action against potentially liable parties not a party to this Decree.

#### 11 XII. SAMPLING DATA REPORTING AND AVAILABILITY

12 With respect to the implementation of this Decree, Settlers shall make the results of all  
13 sampling, laboratory reports, and/or test results generated by them, or on their behalf available  
14 to Ecology and shall submit these results in accordance with section XIII of this Decree.

15 In accordance with WAC 173-340-840(5), ground water sampling data shall be  
16 submitted according to Exhibit E: GROUND WATER SAMPLING DATA SUBMITTAL  
17 REQUIREMENTS. These submittals shall be provided to Ecology in accordance with Section  
18 XIII of this Decree. No data shall be submitted to Ecology under this Decree until the  
19 designated laboratory used by Settlers has completed the Quality Assurance/Quality Control  
20 (QA/QC) program on the data, provided, however, that such raw data shall be available to  
21 Ecology upon request after QA/QC review has been performed.

22 If requested by Ecology, Settlers shall allow split or duplicate samples to be taken by  
23 Ecology and/or its authorized representatives of any samples collected by Settlers pursuant to  
24 the implementation of this Decree. Settlers shall notify Ecology fourteen (14) days in advance  
25 of any sample collection or work activity at the Site. Ecology shall, upon request, allow split  
26 or duplicate samples to be taken by Settlers or their authorized representatives of any samples

1 collected by Ecology pursuant to the implementation of this Decree provided it does  
2 interfere with the Department's sampling. Ecology shall endeavor to notify Settlers prior to  
3 any sample collection activity.

#### 4 XIII. PROGRESS REPORTS

5 Settlers shall submit to Ecology written monthly progress reports which describe the  
6 actions taken during the previous month to implement the requirements of this Decree. The  
7 report shall include the following:

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

19 All progress reports shall be submitted by the last day of the month in which they are  
20 due after the effective date of this Decree. Unless otherwise specified, progress reports and  
21 any other documents submitted pursuant to this Decree shall be sent by certified mail, return  
22 receipt requested, to Ecology's project coordinator.

#### 23 XIV. RETENTION OF RECORDS

24 Settlers shall preserve, during the pendency of this Decree and for ten (10) years from  
25 the date this Decree is no longer in effect as provided in Section XXIV, all records, reports,  
26 documents, and underlying data in its possession relevant to the implementation of this Decree

1 and shall insert in contracts with project contractors and subcontractors a similar record  
2 retention requirement. Upon request of Ecology, Settlers shall make all non-archived records  
3 available to Ecology and allow access for review. All archived records shall be made available  
4 to Ecology within a reasonable period of time.

5 **XV. RESOLUTION OF DISPUTES**

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

9 (1) Upon receipt of the Ecology project coordinator's decision, the Settlers have  
10 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the  
11 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) Settlers may then request Ecology management review of the decision. This  
16 request shall be submitted in writing to the Central Regional Office Toxics Cleanup Section  
17 Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

18 (4) Ecology's Central Regional Office Toxics Cleanup Section Manager shall  
19 conduct a review of the dispute and shall issue a written decision regarding the dispute within  
20 thirty (30) days of the Settlers' request for review. The Central Regional Office Toxics  
21 Cleanup Section Manager's decision shall be Ecology's final decision on the disputed matter.

22 B. If Ecology's final written decision is unacceptable to Settlers, Settlers have the  
23 right to submit the dispute to the Court for resolution. The parties agree that one judge should  
24 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this  
25 Decree.

26 C. The parties agree to only utilize the dispute resolution process in good faith and

1 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
2 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
3 the other party may seek sanctions.

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

#### 8 XVI. AMENDMENT OF CONSENT DECREE

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

13 Settlers shall submit any request for an amendment to Ecology for approval. Ecology  
14 shall indicate its approval or disapproval in a timely manner after the request for amendment  
15 is received. If the amendment to the Decree is determined by Ecology to be substantial,  
16 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval  
17 shall be stated in writing. If Ecology does not agree to any proposed amendment, the  
18 disagreement may be addressed through the dispute resolution procedures described in Section  
19 XIV of this Decree.

#### 20 XVII. EXTENSION OF SCHEDULE

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

26 An extension shall only be granted for such period of time as Ecology determines is



1 reasonable under the circumstances. A requested extension shall not be effective until  
2 approved by Ecology or the Court. Ecology shall act upon any written request for extension  
3 in a timely fashion and shall not unreasonably withhold its approval of such extension. It shall  
4 not be necessary to formally amend this Decree pursuant to Section XVI when a schedule  
5 extension is granted.

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

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

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

15 (3) Endangerment as described in Section XVIII.

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

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

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

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

24 (3) Endangerment as described in Section XVIII.

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

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XVIII. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Settlers to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Settlers with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Settlers determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Site or in the surrounding area or to the environment, Settlers may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Settlers should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Settlers shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the Settlers' determination, it may order Settlers to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Settlers' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XVII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to this section shall be resolved through the dispute resolution procedures in Section XV.

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XIX. INDEMNIFICATION

Settlors agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of negligent, reckless or intentional acts or omissions of Settlers, their officers, employees, agents, or contractors in entering into and implementing this Decree. However, the Settlers shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent, reckless or intentional acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Decree.

Ecology agrees to indemnify and hold Settlers, their officers, employees, agents, or contractors harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of negligent, reckless or intentional acts or omissions of Ecology, its employees, agents, or contractors in entering into and implementing this Decree. However, Ecology shall not indemnify Settlers nor save nor hold its officers, employees, agents, or contractors harmless from any claims or causes of action arising out of the negligent, reckless or intentional acts or omissions of the Settlers, or the officers, agents, or contractors of the Settlers in implementing the activities pursuant to this Decree.

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XX. COMPLIANCE WITH APPLICABLE LAWS

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

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the Remedial Action under this Decree that are

1 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the  
2 Scope of Work and Schedule, and are binding and enforceable requirements of the Decree.

3 Settlers have a continuing obligation to determine whether additional permits or  
4 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
5 action under this Decree. In the event either Settlers or Ecology determines that additional  
6 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
7 remedial action under this Decree, they shall promptly notify the other party of this  
8 determination. Ecology shall determine whether Ecology or Settlers shall be responsible to  
9 contact the appropriate state and/or local agencies. If Ecology so requires, Settlers shall  
10 promptly consult with the appropriate state and/or local agencies and provide Ecology with  
11 written documentation from those agencies of the substantive requirements those agencies  
12 believe are applicable to the remedial action. Ecology shall make a determination on and  
13 inform Settlers in writing as to the additional substantive requirements that must be met by  
14 Settlers and on how Settlers must meet those requirements. If Settlers disagree with Ecology's  
15 determination, such disagreement shall be resolved through the dispute resolution procedures  
16 in Section XIV. If Settlers do not disagree with Ecology's determination, the additional  
17 requirements shall be enforceable requirements of this Decree upon receipt of Ecology's  
18 written determination. Settlers shall not begin or continue the remedial action potentially  
19 subject to the additional requirements until Ecology makes its determination.

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

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

1 70.105D.090(1), including any requirements to obtain permits.

2 **XXI. IMPLEMENTATION OF THE WORK**

3 If Ecology determines that Settlor have failed without good cause to implement and  
4 complete the Work as defined in section VI of this Decree, Ecology may, after notice to  
5 Settlor, perform any or all portions of the Work that remain incomplete. Settlor may, within  
6 a reasonable time of receiving such notice from Ecology, perform the portions of the work that  
7 remain incomplete. If Ecology performs all or portions of the Work because of the Settlor's  
8 failure to comply with their obligations under this Decree, Settlor shall reimburse Ecology for  
9 the reasonable costs of doing such work, provided that Settlor are not obligated under this  
10 section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope  
11 of this Decree. Any disagreements pursuant to this section shall be resolved through the  
12 dispute resolution procedures in Section XV.

13 **XXII. PUBLIC PARTICIPATION**

14 Settlor and Ecology shall cooperate with each other in performing the following public  
15 participation activities:

16 A. Prepare drafts of public notices and fact sheets at important stages of the  
17 Remedial Action, such as the submission of work plans, Remedial Investigation reports and  
18 engineering design reports. Ecology will finalize (including editing if necessary) and distribute  
19 such fact sheets and prepare and distribute public notices of Ecology's presentations and  
20 meetings;

21 B. Each party shall notify the other party's project coordinator at least one full  
22 business day prior to the preparation and release of all press releases and fact sheets, and at  
23 least one week before major meetings with the interested public and local governments.

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

1 D. In cooperation with Ecology, arrange and/or continue information repository  
2 to be located at Yakima Valley Library, 102 N. 3rd Street, Yakima, Washington, Seattle  
3 Public Library, Main Branch, 1000 4th Avenue, Seattle, Washington, and Ecology's Central  
4 Regional Office at 15 West Yakima Avenue, Suite 200, Yakima, Washington 98902-3401. At  
5 a minimum, copies of all public notices, fact sheets, and press releases; all quality assured  
6 sampling data generated pursuant to this decree; remedial actions plans, supplemental remedial  
7 planning documents, and all other similar documents relating to performance of the Remedial  
8 Action required by this Decree shall be promptly placed in these repositories.

9 E. The Settlers' obligations under this Section XXII shall be satisfied by their public  
10 participation activities performed prior to their submittal of the final RI and thereafter shall be  
11 satisfied by activities performed by Ecology with funds from the financial contribution provided  
12 under Section VII of this Decree or any other funds that may be available to Ecology at that  
13 time.

14 XXIII. DURATION OF DECREE

15 This Decree shall remain in effect until the Settlers have received written notification  
16 from Ecology that the requirements of the Decree have been satisfied. Ecology shall provide  
17 such written notification or notice of any deficiencies in the Work to the Settlers within 180  
18 days of receipt of the Settlers' written notice to Ecology of completion of the Work. Within  
19 60 days of receipt of the Settlers' written notice that they believe completion of work necessary  
20 to correct any noted deficiencies has been accomplished, Ecology shall provide written  
21 notification that the requirements of the Decree have been satisfied or notice of any deficiencies  
22 which still remain. The termination of this Decree shall not alter the provisions of Section X  
23 (Contribution Protection), Section XI (Covenant Not to Sue), Section XIX (Indemnification),  
24 and other such continuing rights of Settlers under this Decree.

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XXIV. CLAIMS AGAINST THE STATE

Settlors 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 Settlers 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, Settlers expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person.

XXV. EFFECTIVE DATE

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

XXVI. 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.

XXVII. ENTIRE AGREEMENT

This Decree and Exhibits A through H, which are expressly incorporated by reference, constitute the entire agreement among the parties and supersede any prior negotiations or agreements relating to the subject matter of this Decree, whether oral or written.

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WASHINGTON STATE  
DEPT. OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

Mary E. Burg  
MARYE. BURG  
Program Manager  
Toxics Cleanup Program  
DATED: \_\_\_\_\_

Steven J. Thiele  
STEVEN J. THIELE  
Assistant Attorney General  
DATED: 12-19-96



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FAIRCHILD SEMICONDUCTOR CORPORATION  
SCHLUMBERGER TECHNOLOGY CORPORATION  
DOWELL SCHLUMBERGER, INCORPORATED

By   
BRIAN W. CURTIS, II  
Senior Environmental Counsel

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**IT CORPORATION**

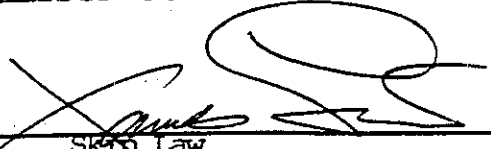
By 

its **JAMES M. REDWINE**  
**SF. CORPORATE COUNSEL**  
**AND ASSISTANT SECRETARY**

Dated \_\_\_\_\_

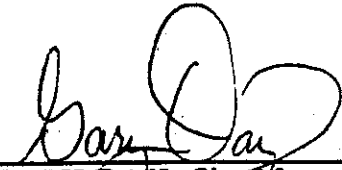
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**McKESSON CORPORATION**

By   
Skip Law  
its V.P. Corporate Real Estate  
Dated December 13, 1996

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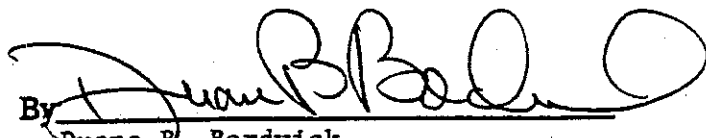
PHILIPS SEMICONDUCTORS (INCLUDING PHILIPS COMPANY, PHILIPS CORPORATION, SIGNETICS COMPANY, SIGNETICS CORPORATION, PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, AND NORTH AMERICAN PHILIPS CORP.)

By   
GARY DAY, Site Manager  
Philips Semiconductors

Dated November 22, 1996

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TOSCO CORPORATION

By 

Duane P. Bordvick  
its Vice President, Environmental and  
External Affairs

Dated December 14, 1996

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XEROX CORPORATION

By James C. Mackenzie  
JAMES MACKENZIE  
Director of Environment, Health and Safety

Dated December 3, 1996

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DATED this 5 day of May, 1996.

  
UNITED STATES  
DISTRICT COURT JUDGE

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# 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.