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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CY-96-3195-RHW
No.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

APPLIED SOLAR ENERGY
CORPORATION, DUOTANG
CORPORATION, WELCH'S OVERALL
CLEANING COMPANY, INC.,
WESTERN WASTE INDUSTRIES, INC.,

Defendants.

SUMMONS

To: Above-entitled Defendant(s) and their Representative(s):

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

COPY

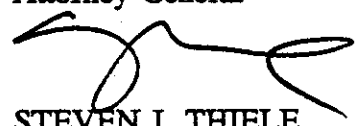
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The parties have agreed to resolve this matter by entry of a Consent Decree.

Accordingly, this Summons shall not require the filing of an answer.

Respectfully submitted 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

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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-96-3195-RHV
No.

Plaintiff,

COMPLAINT

-vs-

APPLIED SOLAR ENERGY
CORPORATION, DUOTANG
CORPORATION, WELCH'S OVERALL
CLEANING COMPANY, INC.,
WESTERN WASTE INDUSTRIES, INC.,

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

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

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

13 4. Defendant Applied Solar Energy Corporation is a California corporation ne
14 known as TECSTAR Power Systems, Inc.; Defendants Welch's Overall Cleaning
15 Company, Inc., and Duo-Tang, Inc. are Delaware corporations; Defendant Western Waste
16 is corporation of unknown origin.

17 III. FACTUAL ALLEGATIONS

18 5. The Site is a residential, commercial and industrial area covering
19 approximately six square miles in downtown Yakima and Union Gap Known as the Yakima
20 Railroad Area (YRRA) and has been designated by Ecology as a "Facility" or "Site"
21 pursuant to RCW 70.105D.020. Analysis of soil and groundwater at various locations
22 within the Site has, in varying levels, shown the presence of perchloroethylene (PCE) and
23 other Covered Substances. A Site History and Synopsis of PCE Releases is attached to the
24 Consent Decree being filed concurrently with this Complaint and contains a history and
25 statement of facts regarding the presence of PCE at the Site.
26

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

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

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

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

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

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

22 IV. FIRST CLAIM FOR RELIEF

23 12. The allegations of paragraph 1 through 11 hereby incorporated by reference
24 and made a part thereof.

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

26 107(a) - Notwithstanding any other provision or rule of law, and subject only
to the defenses set forth in subsection (b) of this section --

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

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

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

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

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

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

15 15. Pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607 (a)(4)(A),
16 as set forth in paragraph 13 above, the Defendants are liable to the State for all response
17 costs incurred by Ecology in connection with the Site. None of the defenses in Section
18 107(b) of CERCLA, 42 U.S.C. § 9607(b), are available to the Defendants.

19 **V. SECOND CLAIM FOR RELIEF**

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

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

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

25 (a) The owner or operator of the facility;

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

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(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substance at the facility, or otherwise generated hazardous waste disposed of or treated at the facility;

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

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

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

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

(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;

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- (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.

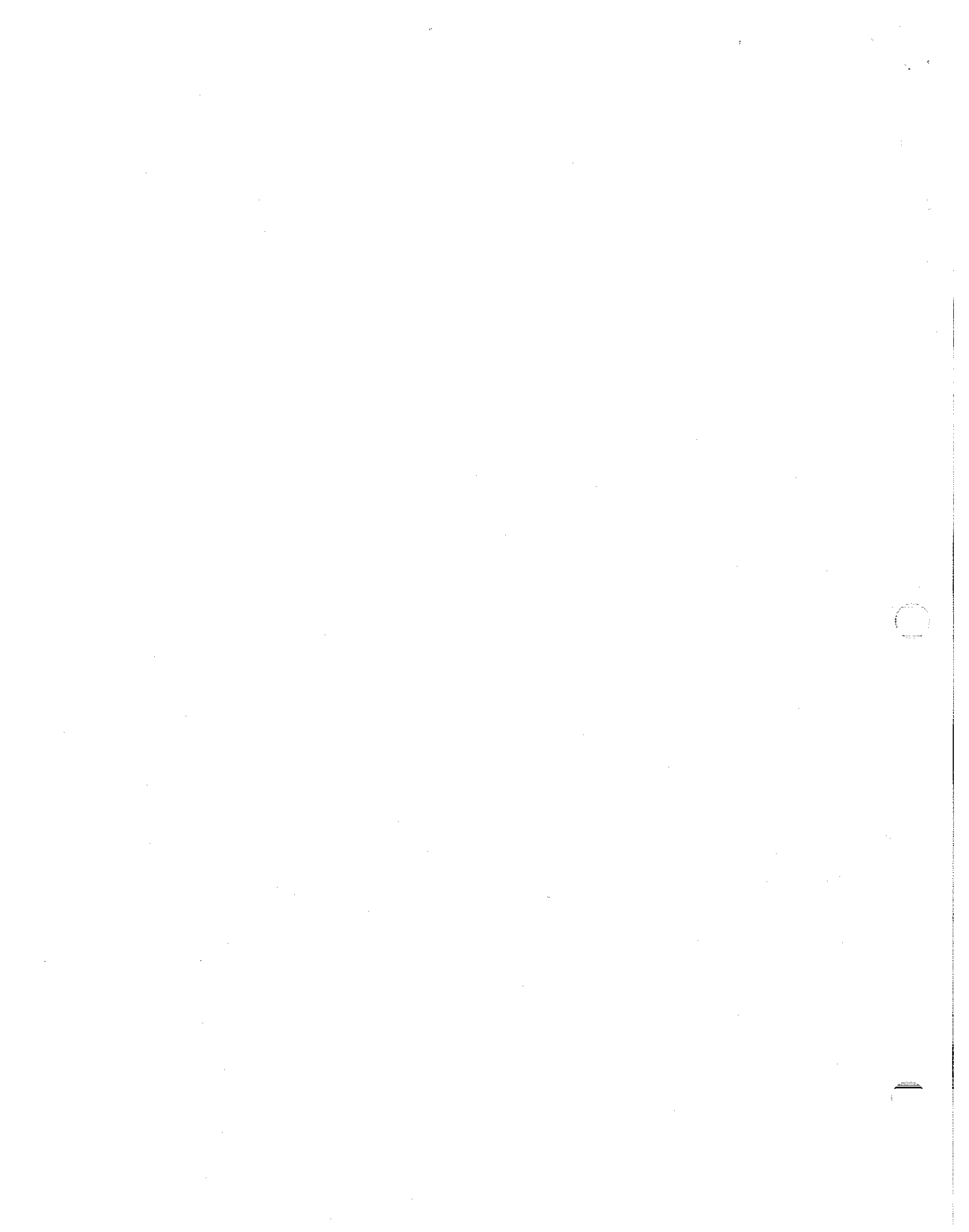
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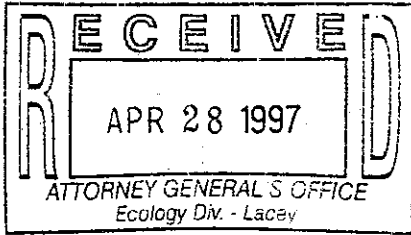
CHRISTINE O. GREGOIRE
Attorney General



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

APR 24 1997

JAMES R. LARSEN, Clerk
Deputy

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

APPLIED SOLAR ENERGY
CORPORATION
DUO-TANG, INC., WELCHES
OVERALL CLEANING COMPANY,
INC., WESTERN WASTE INDUSTRIES,
INC.,

Defendants.

No. CY-96-3195-WFN

**ORDER ENTERING
CONSENT DECREE**

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

**ORDER ENTERING
CONSENT DECREE**

ORIGINAL

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

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Presented by:

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE, WSBA #28275
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology

DATED: 4-18-97

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

BUCK & GORDON

Keith E Moxon

KEITH E. MOXON, WSBA# 15361
Attorneys for Defendant
Applied Solar Energy Corp.

DATED: 4-10-97

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

KIRKLAND & ELLIS




MARK E. GRUMMER
Attorneys for Defendant
Duo-Tang, Inc.

DATED: 4-14-97

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

**PROSKAUER, ROSE, GOETZ
& MENDELSON**

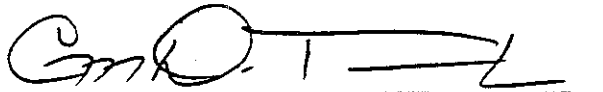

~~BARRY GROVEMAN & GREGORY J. PATTERSON~~
Attorneys for Defendant
Welches, Inc. Overall Cleaning Co., Inc.

DATED: 4/11/97

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APPROVED FOR ENTRY AND NOTICE
OF PRESENTATION WAIVED:

**DEMETRIOU, DEL GUERCIO,
SPRINGER & MOYER**



GREGORY D. TRIMARCHE
Attorneys for Defendant
Western Waste Industries

DATED: 4-10-97

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ATTORNEY GENERAL'S OFFICE
Ecology Div. - Lacey

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF WASHINGTON

WFN

CY-96-3195-~~RHW~~
No.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

APPLIED SOLAR ENERGY
CORPORATION, DUOTANG
CORPORATION, WELCHES OVERALL
CLEANING COMPANY, INC.,
WESTERN WASTE INDUSTRIES, INC.

Defendants.

CONSENT DECREE

ORIGINAL

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


APR 24 1997

JAMES F. LARSEN, Clerk

Deputy

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DATED this 24 day of April, 1997.



JUDGE
United States District Court
Eastern District of Washington

sjlfagroup\agroup.csd

1 I. INTRODUCTION

2 A. This Consent Decree ("Decree") is entered into by and between the
3 Washington State Department of Ecology ("Ecology"), and Applied Solar Energy
4 Corporation, Duotang Corporation, Welches Overall Cleaning Company, Inc., and Western
5 Waste Industries, Inc., (collectively referred to hereinafter as "Settlors"). It is the mutual
6 objective of the parties to this Decree to fund a portion of the Remedial Action at an area
7 defined to be a "facility" by Ecology where there has been a release or threatened release
8 of hazardous substances. The facility, known as the Yakima Railroad Area (the Site), is
9 located in Yakima, Washington. A Site diagram is attached hereto as Exhibit A. This
10 Decree requires the Settlors to make a financial contribution toward remedial action at the
11 Site in an amount and for the purposes specified in Section VI of this Decree. The amount
12 of financial contribution is based on all past and future costs incurred by Ecology or any
13 other person relating to the investigation and remediation of Covered Substances at, relating
14 to, or originating from the Site or any Source Areas. Ecology has determined that all of
15 these actions are necessary to protect public health and the environment.

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

23 C. In signing this Decree, Settlors agree to its entry and agree to be
24 bound by its terms.

25 D. By entering into this Decree, the parties do not intend to discharge
26 parties not designated as Settlors herein from any liability they may have with respect to
matters alleged in the complaint. The parties retain the right to seek reimbursement, in

1 whole or in part, from any liable persons not a party to this Decree for sums expended
2 under this Decree.

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

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

10 II. JURISDICTION

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

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

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

25 D. Ecology has given notice to Settlers, as set forth in RCW
26 70.105D.020(15), of Ecology's determination that the Settlers are PLPs for the Site and
that there has been a release or threatened release of hazardous substances at the Site.

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

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

7 III. PARTIES BOUND

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

15 IV. DEFINITIONS

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

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

23 B. Parties: Refers to Ecology and Applied Solar Energy Corporation,
24 Duotang Corporation, Welches Overall Cleaning Company, Inc., and Western Waste
25 Industries, Inc., and their respective parents, subsidiaries and affiliates.

26

1 C. Settlers: Refers to Applied Solar Energy Corporation, Duotang
2 Corporation, Welches Overall Cleaning Company, Inc., and Western Waste Industries,
3 Inc., and their respective parents, subsidiaries and affiliates.

4 D. Consent Decree or Decree: Refers to this Consent Decree and each
5 of the exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent
6 Decree. The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent
7 Decree.

8 E. Covered Substances: Refers to those hazardous substances listed in
9 Exhibit E, or for which Ecology issues written notification pursuant to Section VII(A)(3)(b)
10 below, which were included in any waste shipments identified in Exhibit B or the
11 administrative record attached as Exhibit F.

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

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

16 V. STATEMENT OF FACTS

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

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

25 2. The Site contains at least eighteen identified Source Areas which
26 have, through their historic operations, contributed to the presence of PCE at the Site. C
of the source areas is a carbon reprocessing business known as Cameron-Yakima, Inc.,

1 located at 1414 S. First, Yakima, Washington. More than 100 PLPs, including the Settlers
2 who are parties to this Decree, shipped carbon containing PCE and/or other Covered
3 Substances to Cameron-Yakima, Inc. Ecology estimates that the total amount of such
4 carbon containing PCE is approximately 6.7 million pounds.

5 VI. TRUST FUND

6 The Settlers each agree to make a financial contribution to the Trust Fund
7 established in Exhibit D in the amounts specified in Exhibit D within ninety (90) days of
8 the entry of this Decree. Such payments are derived by multiplying the number of pounds
9 of carbon which Ecology had documented that each Settlor sent to the Site, and for which
10 Ecology found credible evidence of PCE content, times a cash settlement of \$2.31. The
11 Trust Fund is established by the trust agreement, which is attached hereto as Exhibit D and
12 is hereby incorporated by reference. Each Settlor shall be responsible for payment of the
13 amount set forth for it in Exhibit D, and not for any amount owed by any other Settlor.

14 The Trust Fund shall be used by Ecology for the exclusive purposes of
15 financing past and future Remedial Actions in and around the Site. Each Settlor's financial
16 contribution expressly and specifically includes, but is not limited to the Settlor's share of
17 the following past and future costs: (i) costs of grants provided to the cities of Yakima and
18 Union Gap, Washington for the purposes of municipal water system installation and
19 upgrades; and (ii) costs of work performed by Ecology or its contractors for, or on, the
20 Site under Ch. 70.1050 RCW both prior to and subsequent to the issuance of this Decree
21 for investigations, remedial actions, and Decree preparation, negotiations, oversight and
22 administration of this Decree. Ecology costs include costs of direct activities and support
23 costs of direct activities as defined in WAC 173-340-550(2). The Settlor's financial
24 contribution and any other funds derived from a settling PLP shall be held in the Trust
25 Fund pursuant to the terms of Exhibit D. Ecology shall be designated as having the power
26 of appointment under the Trust.

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VII. CONTRIBUTION PROTECTION

With regard to claims for contribution against any Defendant for matters addressed in this Consent Decree, the parties hereto agree that each Settlor is entitled to contribution protection from any actions or claims pursuant to MTCA, RCW 70.105D.080, CERCLA § 107 or 113, or any other federal or state claim seeking, under other theories, substantially similar relief, to the fullest extent allowed by MTCA, RCW 70.105D.040 and CERCLA § 113(f)(2). The contribution protection conferred in this section shall not be frustrated by the use of non-CERCLA or non-MTCA theories to seek relief in the nature of contribution or indemnification. For the purpose of this section, "matters addressed" shall include:

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

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

VIII. 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 Defendant for the release or threatened release of Covered Substances at the Site.

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
2 parties, that any of the following circumstances exist, Ecology may exercise its full legal
3 authority to address releases of hazardous substances at the Site, notwithstanding the
4 Covenant Not to Sue set forth above:

5 1. In the event a Settlor fails to make a payment to the Trust Fund
6 pursuant to Section VI and such failure is not cured within thirty (30)
7 days of receipt by the Settlor of notice of nonpayment. This reopener
8 shall apply only to the Settlor failing to make the payment;

9 2. In the event new information becomes available regarding factors
10 previously unknown to Ecology and Ecology determines, in light of
11 this information, that remedial action is necessary to address a
12 previously unknown threat to human health or the environment at the
13 Site, and Settlers, after notice, fail to take the necessary action within
14 a reasonable time provided by Ecology in the notice. If such new
15 information becomes available with respect to a specific Settlor,
16 Ecology may make its determination and issue such notice with
17 respect to that Settlor only. For purposes of this Decree, "factors
18 previously unknown to Ecology," with the exception of subsection 3
19 below, shall mean contamination unknown or undocumented in the
20 Waste Shipment Profiles (Exhibit B) or the administrative record
21 (Exhibit F) at the time of this Decree from hazardous substances other
22 than Covered Substances. "Factors previously unknown to Ecology"
23 shall not include any new information related to the presence of,
24 extent of, or impacts from Covered Substances at the Site, provided
25 that Ecology shall be able to seek additional funds from certain
26 Settlers, pursuant to the terms of subsection 3(a) below, if new
 information, not contained in the administrative record, establishes,

1 consistent with the standard provided in RCW Section 70.105D.060
2 that the amount of carbon containing PCE contributed by all of the
3 Settlers to this Consent Decree exceeds by more than ten (10) percent
4 the amount of carbon containing PCE reflected for all Settlers in
5 Exhibit B. For purposes of this paragraph, the administrative record
6 shall mean the documents in Ecology's possession as of October 30,
7 1996, pertaining to this case, including, but not limited to, the records
8 referenced in Exhibits B and F. "Previously unknown threats to
9 human health or the environment" shall not include any threat to any
10 beneficial uses of water (including the use of water for agricultural or
11 drinking water purposes) from Covered Substances in or around the
12 Site.

13 3. (a) Each Settlor(s) responsible for the additional shipments
14 of carbon containing PCE described in Section VIII(A)(2) shall make
15 a further financial contribution to the Trust Fund in the amount of
16 \$2.31 for every additional pound of PCE-containing carbon which
17 exceeds the ten (10) percent threshold. Where two or more Settlers
18 are responsible for the additional shipments referenced herein, they
19 shall make, on a pro rata basis, the payment referenced in the
20 preceding sentence.

21 (b) If new information becomes available regarding additional
22 hazardous substances contained in the carbon shipped by a Settlor to
23 the Site and Ecology determines that the newly disclosed substances
24 are; 1) not substances which are of a class which would be identified
25 by previous RCRA Appendix IX laboratory analysis at the Site and;
26 2) would not be addressed by the remediation plan being implemented
at the Site. Substances which Ecology determines meet either part of

1 the test above shall be considered Covered Substances following
2 written notification of such by Ecology. A Settlor's liability under
3 this reopener shall be limited to joint and several liability for the
4 additional response costs arising from the additional hazardous
5 substance or substances.

6 B. Effect of Reopener: If a Settlor makes the payment specified in
7 Section VII (A)(2)(a), the Settlor's liability to Ecology for such additional carbon shipments
8 shall be extinguished and such shipments shall be fully covered by Section VII
9 (Contribution Protection) and Section VIII (Covenant Not To Sue) of this Decree. If a
10 Settlor declines to make a payment pursuant to Section VIII(A)(3)(a), then the reopener
11 shall be triggered, subject to any invocation by the Settlor of the provisions of Section X
12 (Resolution of Disputes).

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

- 15 1. Criminal liability;
- 16 2. Liability for damages to natural resources;
- 17 3. Any Ecology action against PLPs not a party to this Decree.

18 IX. RETENTION OF RECORDS

19 Settlers shall preserve for ten (10) years from the date of this Decree all
20 records, reports, documents, and underlying data in its possession relevant to this Decree
21 Upon request of Ecology, Settlers shall make all non-archived records available to Ecology
22 and allow access for review. All archived records shall be made available to Ecology
23 within a reasonable period of time.

24 X. RESOLUTION OF DISPUTES

25 A. In the event a dispute arises under this Consent Decree, the parties
26 shall utilize the dispute resolution procedure set forth below.

1 (1) Ecology shall give written notice of any decision to invoke the dispute
2 resolution procedure to the Settlers. Settlers shall give written notice of any decision to
3 invoke the dispute resolution procedure to Ecology's project coordinator, Rick Roeder, at
4 Washington Department of Ecology, 15 West Yakima Avenue, Suite 200, Yakima,
5 Washington 98902. Either party may change the designated recipient of the written notice
6 by providing written notification to the other party at least ten (10) days prior to the
7 change.

8 (2) The Settlers and the project coordinator shall then confer in an effort
9 to resolve the dispute. If the parties cannot resolve the dispute within fourteen (14) days,
10 Ecology's project coordinator shall issue a written decision.

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

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

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

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

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

9 XI. AMENDMENT OF CONSENT DECREE

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

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

21 B. Ecology may, at any time subsequent to the entry of this Decree,
22 unilaterally move the Court to amend Exhibit E of the Decree in order to add additional
23 Covered Substances.

24 XII. DURATION OF DECREE

25 This Decree shall remain in effect until the Settlers have received written
26 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

1 Protection), Section VIII (Covenant Not to Sue), and other such continuing rights of
2 Settlers under this Decree.

3 **XIII. CLAIMS AGAINST THE STATE**

4 Settlers hereby agree that they will not seek to recover any costs accrued in
5 implementing the Remedial Action required by this Decree from the State of Washington or
6 any of its agencies; and further, that the Settlers will make no claim against the State
7 Toxics Control Account or any Local Toxics Control Account for any costs incurred in
8 implementing this Decree. Except as provided above, however, Settlers expressly reserve
9 their right to seek to recover any costs incurred in implementing this Decree from any other
10 PLP.

11 **XIV. EFFECTIVE DATE**

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

13 **XV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

14 This Decree has been the subject of public notice and comment under RCW
15 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will
16 lead to a more expeditious cleanup of Covered Substances at the Site.

17 If the Court withholds or withdraws its consent to this Decree, it shall be null
18 and void at the option of any party and the accompanying Complaint shall be dismissed
19 without costs and without prejudice. In such an event, no party shall be bound by the
20 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: 12-19-96

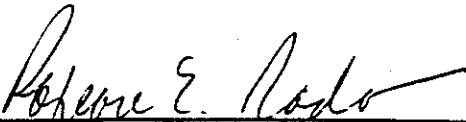
CHRISTINE O. GREGOIRE
Attorney General



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

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WELCH'S OVERALL CLEANING COMPANY, INC.



ROJEAN E. RADA, Esq.
for WELCH'S OVERALL CLEANING
CO., INC., a Delaware corporation,



BERNARD BERRY, Esq.
for ACTIVE INDUSTRIAL UNIFORM
CO., INC., a New York corporation,
AMERICAN LINEN SUPPLY CO., a
Delaware corporation, AMERICAN LINEN SUPPLY
CO., a Georgia corporation, AMERICAN
LINEN SUPPLY CO., INC., a New Jersey
corporation, COVERALL SERVICE &
SUPPLY, INC., a New York corporation,
MECHANICS LAUNDRY CO., INC., a New
York corporation, SUN BELT LINENS,
INC., a Texas corporation, WHITE
ROSE, INC., a Tennessee corporation

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WESTERN WASTE INDUSTRIES



Leslie Bittenson
Executive Vice President & C.O.O.

Dated: 12-12-96

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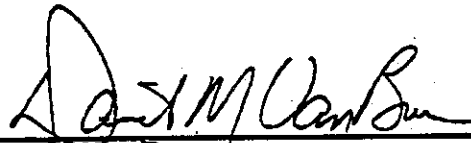
DUO-TANG, INC.

By: *B. Thomas Bessey*
B. Thomas Bessey
President and Chief Executive Officer

Dated: 11/20/96

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APPLIED SOLAR ENERGY CORPORATION



David Van Buren
President and CEO
TECSTAR Power Systems, Inc.
formerly known as Applied Solar Energy Corporation

CONSENT DECREE

-17-

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DATED this ____ day of _____, 199__.

JUDGE
United States District Court
Eastern District of Washington

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

APPLIED SOLAR ENERGY
CORPORATION, DUO-TANG, INC.,
WELCHES OVERALL CLEANING
COMPANY, INC., WESTERN WASTE
INDUSTRIES, INC.,

Defendants.

No. CY-96-3195-WFN

**DECLARATION OF
RICHARD ROEDER**

I, Richard Roeder, being first duly sworn on oath, depose and say:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.
2. I am an Environmental Specialist and am the Site Manager for the Washington State Department of Ecology for the Site in Yakima, Washington referred to as the Yakima Railroad Area.
3. On behalf of Ecology, I took part in the negotiations that led to the Consent Decree that is being presented to the court.

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4. The Consent Decree was the subject of public notice and public comment required by RCW 70.105D.040(4)(a). Ecology also conducted a public hearing as required by WAC 173-340-600(9)(d).

5. Ecology received no oral comment and nine written comments during the public comment period on the substance of the Consent Decree.

6. As the Site Manager, I reviewed all of the public comments and drafted the Responsiveness Summary issued by Ecology which is attached hereto as Exhibit A.

7. No changes to the Consent Decree were made as a result of the comments received.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED this 14 day of April, 1997.



RICHARD ROEDER
Site Manager
State of Washington
Department of Ecology

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

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,**

Plaintiff,

v.

**FAIRCHILD SEMICONDUCTOR
CORPORATION, et al.,**

Defendants.

No. CY-96-3195-WFN

**DECLARATION OF
RICHARD ROEDER**

I, Richard Roeder, being first duly sworn on oath, depose and say:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am an Environmental Specialist and am the Site Manager for the Washington State Department of Ecology for the Site in Yakima, Washington referred to as the Yakima Railroad Area.

3. On behalf of Ecology, I took part in the negotiations that led to the Consent Decree that is being presented to the court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a). Ecology also conducted a public hearing as required by WAC 173-340-600(9)(d).

**DECLARATION OF
RICHARD ROEDER**

1 5. Ecology received no oral comment and nine written comments during the
2 public comment period on the substance of the Consent Decree.

3 6. As the Site Manager, I reviewed all of the public comments and drafted the
4 Responsiveness Summary issued by Ecology which is attached hereto as Exhibit A.

5 7. No changes to the Consent Decree were made as a result of the comments
6 received.

7 I declare under penalty of perjury of the laws of the state of Washington that the
8 foregoing is true and correct.

9 DATED this 17 day of April, 1997.



10
11 RICHARD ROEDER
12 Site Manager
13 State of Washington
14 Department of Ecology

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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.