

ORIGINAL FILED
MAR 15 1988
SUPERIOR COURT
SPOKANE COUNTY, WA.

MICA LF
5/18/88
MICA Landfill

ACCEPTANCE OF SERVICE

CLERK'S STAMP

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SPOKANE COUNTY,

Defendant.

No. 88-2-0005-5

CONSENT DECREE

A. The State of Washington, Department of Ecology ("Ecology"), filed a Complaint in this case on January 4, 1988, under Chapter 90.48 RCW, the Water Pollution Control Act; Chapter 70.105 RCW, the Hazardous Waste Management Act; 42 U.S.C. § 9601, et seq., the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by Public Law 99-499; and S.B. 6085 (Ch. 2, Laws of 1987, 2nd Ex. Sess.), alleging that:

1. As the owner, Spokane County, is liable for the release, threat of release, or disposal of hazardous substances or pollutants or contaminants at the site commonly known as the Mica Landfill (hereinafter "Site"), Spokane, Washington;

2. The release, or threat of release, is causing groundwater contamination and will continue to cause contamination of groundwater unless the release is abated;

KENNETH O EIKENBERRY ATTORNEY GENERAL
V. LEE OKARMA REES

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Office of the Attorney General
Ecology Division, PV-11
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98504 Telephone

1 3. The release, or threat of release, of hazardous
2 substances or pollutants or contaminants from the Site requires
3 action to protect the public health or welfare or the
4 environment;

5 4. Spokane County is one of the persons responsible for
6 the Site within the meaning of Chapter 90.48 RCW, Chapter 70.105
7 RCW, 42 U.S.C. § 6901, et seq.;

8 5. Spokane County is a potentially liable person for the
9 Site within the meaning of S.B. 6085 (Ch. 2, Laws of 1987, 2nd
10 Ex. Sess.);

11 6. In order to protect the public health, welfare, and
12 the environment, it is necessary that remedial action be taken
13 consistent with S.B. 6085 (Ch. 2, Laws of 1987, 2nd Ex. Sess.)
14 as amended, and with the National Contingency Plan ("NCP"), as
15 amended, to identify, eliminate, or minimize any threat or
16 potential threat posed by hazardous substances to human health
17 or the environment, including any investigative and monitoring
18 activities with respect to any release or threatened release of
19 a hazardous substance and any health assessments or health
20 effects studies conducted in order to determine the risk or
21 potential risk to human health; and

22 7. Ecology may conduct, provide for conducting, or
23 require potentially liable persons to conduct remedial action or
24 remedy a release or threatened release of a hazardous substance.

25 B. Whenever Ecology has reason to believe that a release or
26 threatened release of a hazardous substance will require remedial

1 action, it shall notify potentially liable persons with respect to
2 the release or threatened release, and provide them with a reasonable
3 opportunity to propose a settlement agreement providing for remedial
4 action.

5 C. Ecology has notified Spokane County that it is a
6 potentially liable party.

7 D. Without admitting any liability as to the allegations set
8 out in the aforementioned complaint or to this Decree, Spokane County,
9 by their undersigned representatives, have reached agreement with the
10 Department in the form of this proposed Consent Decree (Decree) pro-
11 viding for voluntary remedial action by Spokane County to do the
12 remedial investigation/feasibility study (RIFS).

13 E. Ecology and Spokane County recognize that the public
14 interest is best served by the entry of this Decree, which is subject
15 to at least 30 days for public comment before the proposed Decree is
16 entered, and this settlement avoids difficult and expensive
17 litigation.

18 NOW, THEREFORE, it is ordered as follows:
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1 I. JURISDICTION AND PARTIES

2 This Court has jurisdiction over the subject matter of this
3 Decree and personal jurisdiction over the party consenting hereto
4 pursuant to Chapter 90.48 RCW, Chapter 70.105 RCW, 42 U.S.C. § 9601
5 et seq., and S.B. 6085 (Ch. 2, Laws of 1987, 2nd Ex. Sess.)
6 (the "Toxic Control Act").

7 II. STATEMENT OF FACTS

8 For the purposes of this Decree only, the parties hereby
9 stipulate to the following:

10 A. Mica Landfill is located in Sections 11 and 14, Township 24
11 North, Range 44 E.W.M., in Spokane County, approximately 12 miles
12 southeast of the City of Spokane. The Site encompasses approximately
13 150 acres of land in a suburban-agricultural area of rolling hills
14 with forests and fields.

15 B. The landfill had been in operation since 1972. The
16 landfill is owned by the County of Spokane who contracts the daily
17 landfill operations to a private contractor. Residential, municipal,
18 and industrial wastes are or have been accepted at the landfill and
19 include certain wastes which are considered hazardous wastes subject
20 to CERCLA, 42 U.S.C. 9601 et seq., as amended, and/or Chapter 2,
21 Session Laws of 1987 of the State of Washington.

22 C. On February 10 and 11, 1981 an EPA subcontractor conducted
23 an analysis of water from the Mica monitoring well on the south side
24 of the landfill and the Hidden Hollow well 2,700 feet south of the
25 Mica monitoring well on privately owned property. Results of the
26 analysis indicated the presence of 1,1,1, trichloroethane at

1 concentrations which exceeded the background levels set by EPA to
2 score hazardous waste sites for inclusion on the national priority
3 list but below the currently established maximum contaminant level
4 for drinking water. Subsequent quarterly sampling of these wells to
5 date has not shown the presence of this contaminant.

6 D. As a follow-up to these findings, Spokane County hired
7 George Maddox and Associates, Inc., to conduct a hydrogeologic study
8 of the landfill. This study was done in three phases: Phase I -
9 preliminary data gathering; Phase II - construction of monitoring
10 wells; and Phase III - monitoring program, and resulted in the drill-
11 ing of seven additional on-site monitoring wells. Water samples of
12 these wells have been taken on a quarterly basis since 1983. Analyses
13 shows that concentrations of acetone, 1,2, dichloroethane, toluene,
14 1,1,1, trichloroethane, chloride, and calcium have been found in
15 quantities which indicate a threat of release to groundwater.

16 E. On April 17, 1984, the site was scored in the Hazard
17 Ranking Score (HRS) system by the Environmental Protection Agency
18 (EPA) and nominated for the National Priority List in May 1984. It
19 was included on this list in August 1985.

20 III. SCOPE OF WORK

21 A. Work Plan. By April 30, 1988, Spokane County shall submit
22 to Ecology a proposed work plan, consisting of a detailed breakdown
23 of the scope of work, personnel requirements, project costs, and
24 schedules for the RI/FS, including the following elements thereof:

- 25 1. Quality Assurance/Quality Control
- 26 2. Health and Safety Plan

1 3. Data Management Plan

2 4. Sampling and Analysis Plan

3 5. Community Relations Plan

4 This work plan and each element thereof shall be designed,
5 implemented, and completed in accordance with the National
6 Contingency Plan (NCP) in effect on the effective date of this
7 Decree, and as amended, and in accordance with the requirements of
8 CERCLA as amended by SARA, the Toxic Control Act, as may be amended,
9 all applicable federal and state laws and regulations and all
10 applicable EPA guidance documents.

11 Within 30 days after receipt of the work plan Ecology shall
12 notify the county, in writing, of Ecology's approval or disapproval
13 of the work plan. In the event of any disapproval, Ecology shall
14 specify, in writing, both the deficiencies and any Ecology
15 recommended modifications regarding the work plan.

16 Within 15 days of the receipt of Ecology's notification of the
17 work plan disapproval or recommended modification, the county shall
18 amend and submit to Ecology a revised work plan. Disagreement shall
19 be resolved pursuant to Section XI, Resolution of Disputes,
20 contained herein.

21 Within 15 days of the final approval of the work plan, Spokane
22 County shall commence work and thereafter complete all tasks by the
23 dates indicated in subsections B and C of this section. If the
24 schedule of the work plan or performance of task of the work in the
25 work plan developed by Spokane County indicates that 22 months is
26

1 an impracticable or infeasible period in which to perform because of
2 (1) significant and unreasonable difficulty, expense or loss;
3 (2) complexity or difficulty in geohydrologic investigation or other
4 task which requires work or expense significantly greater than that
5 estimated in the forward plan; (3) insufficient time frame to conduct
6 sampling and analysis to adequately characterize the contamination,
7 or (4) other good and sufficient reason, then Ecology and Spokane
8 County agree to reconsider the time frames established herein through
9 Section XII, Extension of Schedule, and Section XIV, Amendments. The
10 approved work plan shall be attached to and incorporated into this
11 Decree.

12 In developing the work plan and in performing the RI/FS,
13 Spokane County shall consider, but shall not be bound to follow, the
14 forward plan.

15 B. Scope of Remedial Investigation. Pursuant to the work
16 plan, Spokane County shall plan, propose, initiate, complete, and
17 report upon a remedial investigation of the Site. Such plan and
18 proposals shall be subject to approval by Ecology. Where a
19 plan or proposal includes completion of the RI in phases, such plan
20 for each phase will be subject to approval by Ecology who will
21 determine and authorize additional phases. Work will begin 15 days
22 after authorization and approval by Ecology. The purpose of the
23 remedial investigation is to: (1) determine the nature and extent of
24 the release or threatened release of hazardous substances or pollut-
25 ants or contaminants at the Site; and (2) characterize the Site to

1 provide sufficient information to determine the necessity for and
2 proposed extent of remedial action.

3 This plan shall be conducted in accordance with the requirements
4 of CERCLA as amended by SARA (1986), the National Contingency Plan
5 (NCP) in effect on the effective date of this Decree and as amended,
6 the Toxic Control Act in effect on the effective date of this Decree
7 and as amended and in accordance with all federal and state laws and
8 regulations, and all applicable EPA guidance documents relating to
9 remedial investigations, including document EPA/540/G-85/002, "Guid-
10 ance on Remedial Investigations Under CERCLA," and Data Quality
11 Objectives for Remedial Response Activities, EPA guidance document
12 No. 540/C-37/003A."

13 In the event amendments to the NCP and/or Toxic Control Act or
14 other applicable and relevant laws and guidance documents are promul-
15 gated after the effective date of this Decree which materially affect
16 the rights or obligations of any party or the work plans or schedules
17 of the Decree the parties agree to negotiate in good faith a written
18 amendment to the Decree to provide for such changes.

19 In order to implement the remedial investigation, Spokane County
20 shall, subject to approval by Ecology, incorporate all procedural and
21 technical documents in the above guidance and regulations, including,
22 but not limited to: Quality Assurance/Quality Control Plan, Health &
23 Safety Plan, Management Plan, Sampling Plan, Community Relations
24 Plan, Data Management Plan, as numbered attachments to this Decree in
25 accordance with the schedule of the work plan. Spokane County shall

1 submit the final report for the remedial investigation no later than
2 May 1, 1989.

3 C. Scope of Feasibility Study. Pursuant to the work plan,
4 Spokane County shall plan, propose, initiate, complete, and report
5 upon a feasibility study for the Site. Such plans, proposals, and
6 reports shall be subject to approval by Ecology. Where a plan or
7 proposal includes completion of the FS in phases, such plan for each
8 phase will be subject to approval by Ecology who will determine and
9 authorize additional phases. Work will begin 15 days after authori-
10 zation and approval by Ecology. The purpose of the feasibility study
11 is to identify, develop, evaluate, and recommend remedial action
12 alternatives which are consistent with a permanent remedy and which
13 are available to prevent or minimize the release or threatened release
14 of hazardous substances or pollutants or contaminants from the Site,
15 as identified through the remedial investigation conducted pursuant
16 to Section III-B above, so that they do not migrate to cause substan-
17 tial danger to the present or future public health or welfare or the
18 environment. The feasibility study shall be conducted in accordance
19 with CERCLA, as amended by SARA, the NCP, in effect on the date of
20 this Decree and as amended, the Toxic Control Act, in effect
21 on the effective date of this Decree, and as amended, and with all
22 federal and state laws and regulations, and all applicable EPA
23 guidance documents relating to feasibility studies, including
24 document EPA/540/G-85/003, "Guidance on Feasibility Studies Under
25 CERCLA," and document EPA/625/G-85/006, "Handbook of Remedial Action

1 at Waste Disposal Sites (Revised)," and Data Quality Objectives for
2 Remedial Response Activities, EPA Guidance Documents No. 540/G-87/003A."

3 In order to implement the feasibility study, Spokane County
4 shall, subject to approval of Ecology, incorporate all procedural and
5 technical documents in the above guidance and regulations, including,
6 but not limited to: Endangerment Assessment, Post-Closure Plan,
7 Compliance Monitoring Schedule, Administrative Reports, and Document
8 Control, as numbered attachments to this Decree in accordance with
9 the schedule of the work plan. Spokane County shall submit a final
10 report for the feasibility study no later than November 1, 1989.
11 This date of November 1, 1989 does not include any time for public
12 comment and/or Ecology final review subsequent to public comment.

13 D. Scope of Removal Action. In the event that Ecology,
14 during the term of this Decree, determines that there is a threat to
15 public health or welfare or the environment based upon the factors in
16 40 CFR Part 300.65(b)(2) of the NCP, Ecology may require Spokane
17 County to conduct an appropriate removal action to abate, minimize,
18 stabilize, mitigate, or eliminate the release or threat of release of
19 hazardous substances or pollutants or contaminants, or the threat
20 resulting from such release or threat of release. All removal
21 actions shall be conducted in accordance with the NCP, in effect on
22 the effective date of this Decree, and as amended, the Toxic Control
23 Act as amended and all federal and state laws and regulations, and
24 all applicable EPA guidance documents relating to removal actions.

25 Upon receipt of notification from Ecology that a removal action
26 is required, Spokane County shall plan, propose, initiate, complete,

1 and report upon the required removal action for the Site. Such
2 plans, proposals, and reports shall be subject to approval of
3 Ecology. If Spokane County fails to undertake the required removal
4 action in a proper and prompt manner, Ecology reserves the right to
5 perform the required removal action and to recover all costs incurred
6 in doing so from Spokane County.

7 E. Future Negotiations Regarding Remedial Action. If the
8 feasibility study, performed pursuant to Section C above, indicates
9 the need for remedial action as defined by CERCLA/SARA at the Site,
10 Spokane County and Ecology, will enter into negotiations regarding
11 the matter, including the design, construction, and operations,
12 maintenance, and monitoring phases of such remedial action.

13 F. Interim Operating Plan for Solid Waste. Spokane County
14 shall plan, propose, initiate and complete an interim operating plan
15 for this Site. Such plan shall be subject to approval by Ecology's
16 project manager using the Minimum Functional Standards for Solid
17 Waste Handling, Chapter 173-304 WAC, as guidance. The interim
18 operating plan will describe operations at the landfill during the
19 RI/FS and be done in accordance with WAC 173-304-460(4). This plan
20 shall be submitted no later than July 1, 1988.

21 IV. COMMUNITY RELATIONS

22 Spokane County shall assist Ecology, who shall maintain the lead
23 in community relations at the Site. EPA has requested Ecology to
24 develop a community relations plan not inconsistent with the require-
25 ments of the NCP and relevant federal guidance documents. Spokane
26

1 County shall cooperate with Ecology in fulfilling the tasks specified
2 in the community relations plan by specifically:

3 A. Assisting Ecology in the preparation of fact sheets, press
4 releases, and public notices;

5 B. Distributing fact sheets referred to in A. above;

6 C. Participating in public meetings related to the activities
7 taken under this Decree; and

8 D. Providing extra copies of appropriate documents and
9 information for the information repositories, located in the downtown
10 Spokane Library Office of the Eastern Regional Ecology and the Spokane
11 Valley Branch of the County Library. Nothing provided in this sec-
12 tion shall prevent Spokane County from developing or conducting its
13 own Community Relations Program consistent with this Decree.

14 Spokane County and Ecology shall make reasonable efforts to
15 accommodate each other's concerns with regard to all fact sheets,
16 press releases, and public notices issued. Each party shall
17 communicate the contents of the fact sheets, press releases, and
18 public notices to the other party forty-eight (48) hours, exclusive
19 of weekends and holidays, prior to the release of such information.

20 V. DESIGNATED PROJECT MANAGER

21 Ecology and Spokane County shall each designate a project
22 manager. Each project manager shall be responsible for overseeing
23 the implementation of this Decree. The project managers shall, at a
24 minimum, have the authority to: (1) coordinate the activities of
25 their respective project and contractual staffs to ensure the imple-
26 mentation of this Decree; (2) coordinate amendments pursuant to

1 Section XIV of this Decree; (3) extend schedules pursuant to
2 Section XIII of this Decree; (4) delegate their authority to members
3 of their respective project and contractual staffs to fulfill their
4 obligations as specified above and elsewhere in this Decree; and
5 (5) make or authorize modifications in all technical and procedural
6 documents submitted pursuant to Section III of this Decree, which are
7 necessary to the successful completion of the project. Any such
8 modifications shall be approved orally by each project manager.
9 Within seventy-two (72) hours following any modification, the project
10 manager who requested the modification shall prepare a memorandum
11 detailing the modification and shall provide or mail a copy of the
12 memorandum to the other project managers.

13 To the maximum extent possible, communications between Spokane
14 and Ecology, and all documents and other correspondence concerning
15 the activities performed pursuant to the terms and conditions of
16 this Decree, shall be directed through the project managers. The
17 Ecology project manager, Marsha A. Beery, will be Ecology's
18 designated representative at the Site who has final approval
19 authority by signature. Spokane County's project manager is
20 Dean Fowler. Either party may change their respective project
21 manager by notifying the other party, in writing, at least 10 days
22 prior to the change.

23 VI. ACCESS

24 Pursuant to Section 11 of the Toxics Control Act, Ecology or any
25 state authorized representative shall have the authority to enter and
26 freely move about all property owned by the county in all reasonable

1 times for the purposes of, among other things, inspecting records,
2 operation logs, and contracts related to the Site; reviewing the
3 progress in carrying out the terms of this Decree; conducting such
4 tests as the state or the project manager may deem necessary using a
5 camera, sound recording, or other documentary-type equipment; and
6 verifying the data submitted to Ecology by Spokane County. Spokane
7 County shall permit such persons to inspect and copy all records,
8 files, photographs, documents, and other writings, including all
9 sampling and monitoring data, in any way pertaining to work under-
10 taken pursuant to this Decree within its control or possession,
11 other than privileged documents.

12 To the extent that access to the Site or easements over property
13 other than the Site is not authorized by this Decree or is not other-
14 wise available to the state by the Toxics Control Act, Spokane County
15 shall use its best efforts to obtain the access or easements to
16 effect the purpose of this Decree. If Spokane County is unable to
17 obtain access or easements under reasonable terms and conditions,
18 including costs, then Spokane County shall provide assistance, con-
19 sistent with their authority, including but not limited to, any
20 authority under its eminent domain powers as provided in Chapter 8.08
21 RCW to obtain access to The Site or easements over property other
22 than the Site for the purposes of accomplishing the requirements of
23 this Decree.

24 VII. PERFORMANCE

25 All work performed pursuant to this Decree shall be under the
26 direction and supervision of a qualified professional scientist or

1 licensed engineer with experience in hazardous substance release
2 response actions. Spokane County shall notify Ecology as to such
3 qualified experts, and of any contractors and subcontractors, to be
4 employed in carrying out the terms of this Decree in advance of their
5 involvement at the Site.

6 VIII. SAMPLING AND DATA AVAILABILITY

7 Spokane County shall make the results of all sampling and
8 testing, and all other data generated by them or on their behalf with
9 respect to the implementation of this Decree, available to Ecology
10 and shall submit these results in progress reports as described in
11 Section IX of this Decree. Ecology will make available to Spokane
12 County the results of any sampling and testing, and other data
13 similarly generated by Ecology or on Ecology's behalf. Each party
14 shall conduct all sampling consistent with the Quality Assurance/
15 Quality Control Plan for the Site.

16 Each party to this Decree, at the request of the other party,
17 shall allow split or replicate samples to be taken, by the
18 requesting party and/or its contractor or consultant, of any samples
19 collected pursuant to the implementation of this Decree. Each party
20 shall notify the other party not less than five days in advance of
21 any sample collection activity. A summary of all analytical results
22 from sampling and testing performed pursuant to this Decree shall
23 also be included in these progress reports.

24 IX. PROGRESS REPORTS

25 Spokane County shall submit to Ecology written monthly progress
26 reports which describe the actions Spokane County has taken during

1 the previous month to implement the requirements of this Decree. In
2 addition, progress reports shall also describe the activities
3 scheduled to be taken during the next month. All progress reports
4 shall be submitted by the 10th day of each month after the effective
5 date of this Decree. The progress reports shall include a detailed
6 statement of the manner and extent to which the requirement and time
7 schedules set out in the Decree are being met. Progress reports and
8 any other documents submitted pursuant to this Decree shall be
9 addressed to:

10 Marsha A. Beery, Project Manager
11 Washington State Department of Ecology
12 Hazardous Waste Cleanup Program
13 Mail Stop PV-11
14 Olympia, Washington 98504-8711

15 Ecology shall submit any comments to the progress reports by the
16 county within thirty (30) days of the receipt of said report.

17 X. RECOVERY OF EXPENSES

18 A. Spokane County agrees to reimburse the Treasury of the
19 State of Washington for reasonable and appropriate costs associated
20 with Ecology activities at the Site conducted during the implementa-
21 tion of this Decree. Within ninety (90) days of the end of each
22 fiscal quarter, Ecology will submit to Spokane County an itemized
23 statement of Ecology's expenses for the previous quarter. Following
24 receipt of the itemized statement, Spokane County shall pay, within
25 90 days, in the Treasury of the State of Washington, the required
26 sum. The required sum which shall not exceed a total of 12 percent
27 of Spokane County's contractual costs required by this Decree.

1 B. Spokane County agrees to reimburse the Treasury of the
2 State of Washington for all reasonable and appropriate costs
3 associated with Ecology's response activities at the Site conducted
4 prior to the implementation of this Decree. Ecology will submit to
5 Spokane County an itemized statement of Ecology's expenses incurred
6 prior to the implementation of this Decree. Within 90 days after
7 receipt of the itemized statement, Spokane County shall pay the
8 Treasury of the State of Washington, the required sum. The required
9 sum as of the date of this Decree is estimated to be approximately
10 \$30,000.

11 C. No payment shall be due under this Decree prior to
12 September 1, 1988.

13 D. This Decree shall not be construed in any way as a waiver
14 of Ecology's or Spokane County's right to seek reimbursement from any
15 potentially liable persons, including entities not a signatory to
16 this Decree, for recovery of response costs incurred by Ecology or
17 Spokane County in conjunction with activities conducted pursuant to
18 this Decree.

19 XI. RESOLUTION OF DISPUTES

20 If either party objects to any subsequent action or decision of
21 the other party under the terms of this Decree, that party shall
22 notify the other party of its objections within seven (7) days of
23 the receipt of knowledge or constructive knowledge of the action or
24 decision. Within seven (7) days from the receipt of such notice the
25 parties shall confer in an effort to resolve the dispute. If agree-
26 ment cannot be reached on the dispute within fourteen (14) days after

1 the notice, either party shall have the right to petition the Court
2 to obtain appropriate relief. It is recognized that Section XI.
3 should not be used to cause unreasonable delay of the agreed compli-
4 ance schedules. If either party believes that Section XI. is being
5 invoked for the purpose of unreasonably delaying the agreed schedules,
6 that party, concurrent with the petition for relief, may petition the
7 Court for sanctions, to be determined by the Court.

8 XII. ENDANGERMENT

9 In the event Ecology determines or concurs in a determination
10 by another local, state, or federal agency that activities imple-
11 menting or in compliance with this Decree or any other circumstances
12 or activities are creating or have the potential to create a danger
13 to the health or welfare of the people on the Site or in the sur-
14 rounding area or to the environment, Ecology may order Spokane County
15 to stop further implementation of this Decree for such period of time
16 as needed to abate the danger or may petition a court of competent
17 jurisdiction for such an order. During the stoppage of work under
18 this Decree, the obligations of Spokane County with respect to the
19 work ordered to be stopped shall be suspended and the time period for
20 performance of that work, as well as the time period for any other
21 work dependent upon the work which stopped, shall be extended,
22 pursuant to the Extensions of Schedules Section XIII of this Decree,
23 for such period of time as Ecology determines is reasonable under the
24 circumstances, but no less than the period of work stoppage.

1 In the event Spokane County determines that activities undertaken
2 in furtherance of this Decree or any other circumstances or activi-
3 ties are creating an imminent and substantial endangerment to the
4 people on the Site or in the surrounding area or to the environment,
5 Spokane County may stop implementation of this Decree for such periods
6 of time necessary for Ecology to evaluate the situation and determine
7 whether Spokane County should proceed with implementation of the
8 Decree or whether the work stoppage should be continued until the
9 danger is abated. Spokane County shall notify either Ecology field
10 personnel on-site or the project manager as soon as possible but no
11 later than twenty-four (24) hours after such stoppage and provide
12 Ecology with documentation of its analysis in reaching this determi-
13 nation. If Ecology disagrees with such determination, it may order
14 Spokane County to resume implementation of this Decree. If Ecology
15 concurs in the work stoppage, the obligations of Spokane County shall
16 be suspended and the time period for performance of that work, as
17 well as the time period for any other work dependent upon the work
18 which was stopped, shall be extended, pursuant to the Extension of
19 Schedule, Section XIII, of this Decree, for such period of time as
20 Ecology determines is reasonable under the circumstances. Any
21 disagreement pursuant to this paragraph shall be resolved through the
22 Resolution of Disputes, Section XI.

23 XIII. EXTENSION OF SCHEDULES

24 A. Extensions of time schedules shall be granted only when
25 requests for such extensions are submitted within 14 days of the
26 occurrence of an event which reasonably can be recognized will cause
27 CONSENT DECREE

1 delay, but in any event submitted prior to the deadline date, and
2 good cause exists for granting the extension. All extensions shall
3 be requested in writing. The request shall specify the reason(s) the
4 extension is needed. Extensions shall only be granted for such
5 period of time as is reasonable under the circumstances. A requested
6 extension shall not be effective until approved by Ecology in writing.
7 It shall not be necessary pursuant to paragraph XIV to amend the
8 Decree when a schedule extension is granted.

9 B. The burden shall be on Spokane County to demonstrate that
10 the request for the extension has been submitted in a timely fashion
11 and that good cause exists for granting the extension. (a) Good
12 cause shall mean reasons acceptable to a reasonably prudent person
13 under the same or similar circumstances. Good cause may include, but
14 not be limited to, the following:

15 (1) Circumstances beyond the reasonable control and
16 despite the due diligence of Spokane County, including delays
17 caused by Ecology.

18 (2) Delays in the issuance of a necessary permit which
19 was timely applied for.

20 (3) Other circumstances which a reasonably prudent person
21 would deem exceptional or extraordinary.

22 (4) Changes in work plans.

23 (5) Unanticipated access, drilling or logistics problems.

24 (b) Good cause shall include the following:

25 (1) Ecology review periods in excess of 30 days shall be
26 regarded as delays caused by Ecology.

1 (2) Acts of God, fire, flood, and blizzard which prevent
2 a reasonably prudent person from reasonable performance of
3 scheduled activities.

4 (3) Judicial Stay.

5 C. Only one request for extension of the time schedule for the
6 same factual circumstances on any particular item shall be considered
7 in good faith.

8 Except as provided in Section IIIA and XIII above, neither
9 increased costs of performance of the terms of this Decree nor changed
10 economic circumstances may be considered circumstances beyond the
11 reasonable control of Spokane County.

12 XIV. AMENDMENTS

13 A. Consent Decree. This Decree may only be amended by a
14 written approval of the Court. If a party wishes to amend the Decree,
15 a proposed amendment by stipulation shall be submitted to the other
16 party. Agreement to the stipulation will not be unreasonably with-
17 held by any party to the amendment of this Decree. If agreement to a
18 proposed stipulation cannot be reached within 20 days, either party
19 may petition the Court for an Amendment to the Decree.

20 B. Hazardous Substances Response Program. Spokane County
21 shall submit any request for amendment of the hazardous substance
22 response program to Ecology's project manager for approval. Ecology
23 shall indicate its approval or disapproval of such request within ten
24 (10) days after the request for amendment is received. Any such
25 disapproval shall state reasons for the disapproval.

1 No guidance, suggestions, or comments by Ecology will be
2 construed as relieving Spokane County of its obligation to obtain
3 formal approval as may be required by this Decree. No verbal
4 communication by Ecology shall relieve Spokane County of the
5 obligations specified herein.

6 XV. PENALTIES

7 Spokane County and Ecology agree that the Court can assess a
8 penalty of up to ten thousand dollars (\$10,000.00) per day against
9 Spokane County for violations of this Decree.

10 In the event that Spokane County fails to make a submittal to
11 Ecology in accordance with this Decree or comply with any time
12 schedule approved in writing by Ecology pursuant to this Decree, or
13 otherwise fails to comply with this Decree, Spokane County shall be
14 liable to pay a civil penalty into an account of the State of
15 Washington designated by Ecology in an amount per day to be set by
16 the Superior Court with jurisdiction over this Decree. Any penalty
17 shall accrue from the date Ecology provides written notice to the
18 Court and Spokane County that an alleged violation of the Consent
19 Decree has occurred.

20 Upon determination by Ecology that Spokane County failed to
21 make a submittal referenced herein or otherwise failed to comply
22 with this Decree, Ecology shall give written notice to the Court and
23 to Spokane County of the alleged failure. Said notice shall specify
24 the provision(s) of the Decree which Ecology believes had (have) not
25 been complied with and shall recommend a per day amount to be set by
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1 the Court. In setting the per day amount, the Court may consider,
2 but shall not be controlled by or limited to, the following:

3 (1) Minimum penalties. Should the court find that the
4 alleged failure(s) identified by Ecology did indeed occur,
5 Ecology may propose a penalty of \$500.00 per day but the amount
6 of the actual penalty shall be determined by the Court.

7 (2) Aggravating factors.

8 (a) The impact of the failure of Spokane County to
9 make a timely submittal on the overall work schedule or
10 other time schedule as set out in the Decree.

11 (b) The impact of the failure of Spokane County to
12 accomplish a remedial investigation and feasibility study
13 consistent with standard engineering practices.

14 (c) A record of similar failure indicating a
15 disregard for the Consent Decree.

16 (d) The likelihood for harm to public health and the
17 environment.

18 (3) Mitigating factors. Demonstration by Spokane County
19 (who shall have the burden of proof) of hardship or of
20 extenuating circumstances affecting its ability to prevent
21 the failure.

22 XVI. INDEMNIFICATION

23 Spokane County agrees to indemnify and save and hold Ecology,
24 its agents, employees, and contractors, harmless from any and all
25 claims or causes of action arising from, or on account of, acts or
26 omissions of Spokane County, its officers, employees, agents, or

1 contractors in entering into and implementing this Decree; provided,
2 however, that Spokane County shall not indemnify Ecology, nor save or
3 hold its employees, contractors, and agents, harmless from any claims
4 or causes of action arising out of the acts or omissions of Ecology,
5 or the employees, and contractors, and agents of Ecology, in
6 implementing the activities pursuant to this Decree.

7 XVII. OTHER ACTIONS

8 In the event that Spokane County fails to adhere to any
9 requirement of this Decree; or, notwithstanding compliance with the
10 terms of this Decree, upon the occurrence or discovery of a situation
11 as to which Ecology would be empowered to take any further response
12 measures including, but not limited to, removal actions; or in the
13 event of a release or threatened release not addressed by this
14 Decree; or upon the determination that action beyond the terms of
15 this Decree is necessary to abate, control, or mitigate an imminent
16 and substantial endangerment to the public health, welfare or the
17 environment that may be posed by this facility; or under any other
18 circumstances authorized by law, Ecology may institute response
19 measures and subsequently pursue cost recovery action available,
20 and/or Ecology may issue orders to Spokane County pursuant to
21 available statutory authority.

22 XVIII. OTHER CLAIMS

23 Nothing herein is intended to release any claims, causes of
24 action or demands in law or equity by any party against any person,
25 entity, firm, partnership or corporation not a signatory to this
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1 Decree for any liability arising out of, or relating in any way to,
2 the disposal of waste at, or the release of any substance at, to, or
3 from the Site.

4 XIX. OTHER REMEDIES

5 Ecology and Spokane County recognize, that the scope of this
6 Consent Decree is for an RI/FS only, and a covenant not to sue, under
7 section 8(2) of the Toxic Control Act is premature. However, Ecology
8 agrees that Ecology will not sue Spokane County to enforce an RI/FS
9 action solely as defined herein as long as Spokane County adheres to
10 each and every provision as set out in this Consent Decree.

11 Ecology is not restricted in any manner whatsoever from enforcing
12 against Spokane County should new circumstances arise not evident on
13 the effective date of this Decree; should a new potential threat to
14 the public or environment arise not evident on the effective date of
15 this Decree, or for any action not within the scope of this Decree.

16 XX. COMPLIANCE WITH APPLICABLE LAWS

17 All actions carried out by Spokane County pursuant to this
18 Decree shall be done in accordance with all applicable federal,
19 state, and local requirements, including requirements to obtain
20 necessary permits not otherwise exempt under the Toxics Control Act.

21 XXI. NO ADMISSION OF LIABILITY

22 The county, in entering into this Decree, does not admit,
23 accept, or intend to acknowledge any liability or fault with respect
24 to any matters arising out of or relating to this complaint or to
25 this Decree nor to a violation of any law. The county does not
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1 contest Ecology's authority or jurisdiction to enter into and enforce
2 this Decree. However, by not contesting any factual or legal find-
3 ings, conclusions, or determinations made by Ecology, Spokane County
4 does not admit the same.

5 Spokane County reserves the rights and defenses which it may
6 have regarding liability or responsibility in any subsequent proceedings.

7 Ecology and Spokane County agree this Decree is intended to be
8 used by the signatory parties for the purposes set forth herein only
9 and is not intended to be used by a nonparty for the purpose of
10 establishing fault or liability on the part of any party.

11 Nothing in this Decree shall be construed as preventing Spokane
12 County from exercising its rights under 42 U.S.C. § 9613(f) or the
13 Toxic Control Act to seek contribution under the Uniform Contribution
14 Among Tortfeasors Act, and other applicable law, or from any person
15 as defined in Section 2(8) or 2(9) of the Toxic Control Act who is
16 liable or potentially liable under 42 U.S.C. § 9606 or 42 U.S.C.
17 § 9607, or the Toxic Control Act, or to seek relief from any person
18 as defined in Section 2(8) or 2(9) of the Toxic Control Act other
19 than the fund.

20 XXII. GRANT/LOAN/OR MIXED FUNDING

21 Section VII(7) and XXII(4) of the Toxic Control Act establishes
22 the state Toxic Control Account and the local Toxic Control
23 Account. The parties agree that by entering into this Consent
24 Decree at this time, Spokane County shall not be precluded from
25 applying for grants and/or loans or mixed funding once Ecology
26 establishes eligibility guidelines or regulations. If Spokane

1 County meets the established eligibility requirement, then Spokane
2 County shall not be prohibited from including in any grant, loan, or
3 mixed funding application, any expenditures incurred by Spokane
4 County under the terms of this Consent Decree commencing from the
5 date of filing of this Decree. Ecology and Spokane County agree to
6 meet, if necessary, within 60 days after promulgation of guidelines
7 and regulations by Ecology and/or approval of Spokane County's
8 grant, loan or mixed funding application and negotiate, if
9 necessary, an amendment to this Decree with regard to Spokane
10 County's participation.

11 XXIII. CERTIFICATION OF COMPLETION

12 At the appropriate time, Spokane County may apply for a
13 certificate of completion pursuant to Section 9 of the Toxic Control
14 Act. Any disputes as to such certificate shall be subject to the
15 Dispute Resolution clause.

16 XXIV. DEFINITIONS

17 The following definitions shall apply to this Decree:

18 A. Mica Landfill Site (Site) means the Site located in Spokane
19 County as described in Attachment 1 and any abutting properties that
20 contain hazardous substances which have or potentially have migrated
21 from the property described in Attachment 1. as a result of landfill
22 operations.

23 B. CERCLA means the Comprehensive Environmental Response
24 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; as amended,
25 also known as "Superfund," and "SARA."

1 C. National Contingency Plan ("NCP") means the plan
2 promulgated pursuant to CERCLA and codified at 40 CFR Part 300 et
3 seq., as amended.

4 D. Remedial Action, unless otherwise defined or unless
5 referenced to CERCLA/SARA or documents generated thereunder, means
6 any action or expenditure consistent with the purposes of the Toxic
7 Control Act to identify, eliminate or minimize any threat or poten-
8 tial threat posed by hazardous substances to human health or the
9 environment including any investigative and monitoring activities
10 with respect to any release or threatened release of a hazardous
11 substance and any health assessment or health effects studies con-
12 ducted in order to determine the risk or potential risk to human
13 health.

14 E. Toxic Control Act means Chapter 2, 3rd Ex. Session, Laws of
15 1987, State of Washington, also known as the Hazardous Waste Cleanup
16 Act as codified in chapter 70.105B RCW.

17 F. Hazardous Waste Response Program refers to the program
18 provided for in Subpart F of the National Contingency Plan.

19 G. Remedial Investigation/Feasibility Study (R1/F5) refers to
20 a remedial investigation feasibility study as defined in the NCP.
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1 XXV. NOTICE AND PUBLIC COMMENT

2 Pursuant to agreed order entered January 4, 1988, the public
3 was provided notice of a proposed consent decree in the above
4 subject cause and provided a 30-day public comment period.

5 Comments were received and reviewed by Ecology. None of the
6 comments received disclosed facts or considerations which indicate
7 that the decree is inappropriate, improper or inadequate.
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1 XXVI. APPROVAL AND EFFECTIVE DATE

2 This Decree is hereby approved and is effective on entry.

3
4 The undersigned approve this Decree and represent that they have
5 authority to bind the parties they represent.

6
7 APPROVED BY:

8 FOR SPOKANE COUNTY

9
10 By *John A. Schulteis*
11 County Commissioner

12 Date 3-14-88

13 By *Patricia A. Mumme*
14 County Commissioner

15 Date 3-14-88

16 By *Keith Leonard*
17 County Commissioner

18 Date 3-14-88

19 ATTEST:

20 *Loranne Montoya*
21 Clerk of the Board

FOR STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

By *Marc A. Horton*
Marc A. Horton
Deputy Director
Office of Operations and
Enforcement
Department of Ecology

Date March 8, 1988

March 14, 1988
Date

22 DATED AND ENTERED this 15 day of March, 1988.

23
24 JOHN A. SCHULTHEIS

25 Judge

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27 CONSENT DECREE

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Defendant.

NOTICE OF PRESENTATION
OF CONSENT DECREE

DATED this 8th day of March, 1988.

V. LEE OKARMA REES
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology

1
2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
3 FOR SPOKANE COUNTY

4 STATE OF WASHINGTON,)
5 DEPARTMENT OF ECOLOGY,)

6 Plaintiff,)

7 v.)

8 SPOKANE COUNTY,)

9 Defendant.)
10

No. 88-2-0005-5

STIPULATION AND ORDER FOR
ENTRY OF CONSENT DECREE
AND WAIVER OF FURTHER
HEARING

11 STIPULATION

12 COME NOW the parties to the consent decree attached
13 hereto (the "consent decree"), the Department of Ecology
14 ("Ecology") represented by V. Lee Okarma Rees, Assistant
15 Attorney General; Spokane County, represented by James P.
16 Emacio, Chief Deputy, Spokane County Prosecuting Attorney,
17 and Jerry Neal, Lukins & Annis, and stipulate and agree as
18 follows:

19 1. The parties have voluntarily entered into and
20 executed the consent decree providing for a remedial investi-
21 gation and feasibility study (RI/FS) for the purpose of
22 determining the nature and extent of the release or threat-
23 ened release of hazardous substances, characterizing the site
24 and identifying, developing, evaluating and recommending
25 remedial action alternatives, which are consistent with a
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1 permanent remedy to prevent or minimize the release or
2 threatened release of hazardous substances or pollutants or
3 contaminants from the site.

4 2. The consent decree contains specific descriptions
5 of the site, work to be performed, schedules, monitoring and
6 agreement to negotiate future remedial actions required at
7 the site. The consent decree also addresses an Interim
8 Operating Plan for Solid Waste at the site.

9 3. Section 7(5) of the state Toxic Control Act re-
10 quires that proposed consent decrees for voluntary remedial
11 actions be filed with the appropriate superior court for at
12 least thirty (30) days for public comment prior to entry of a
13 decree by the court. This provision also requires any
14 written comments received on the proposed decree be filed
15 with the court.

16 4. A proposed consent decree was filed with the court
17 on January 4, 1988.

18 5. Pursuant to Stipulation and Agreed Order entered
19 January 4, 1988, Ecology provided notice to the public and
20 allowed at least thirty (30) days for public comment on the
21 proposed consent decree prior to entry of the decree in
22 accordance with state law.

1
2 6. Ecology determined that a public meeting was not
3 necessary until field work begins to test for the types and
4 extent of contamination at the site.

5 7. Ecology received 34 responses to the public notice
6 published January 11, 1988 on the proposed consent decree.
7 (Attachment 2.) Eight of the responses were comment letters
8 and the remainder were requests to be put on the mailing
9 list. Concerns were expressed about potential health effects
10 due to possible drinking water contamination and possible
11 leachate and methane leaving the site. Concerns were also
12 expressed about the cleanup process. No one opposed the
13 consent decree.

14 8. Ecology prepared a Responsiveness Summary, (Attach-
15 ment 3), and addressed the public's concerns. This respon-
16 siveness summary will be sent to all those who responded
17 during the public comment period.

18 9. The parties have received notice of the presentment
19 of the consent decree and this stipulation and order.

20 10. The parties agree that the Honorable John J.
21 Ripple, originally assigned to this case, is unavailable and
22 that the Honorable John A. Schultheis, presiding, has agreed
23 to perform the duties that would otherwise be performed by
24 Judge Ripple in his absence.

1 11. The parties respectfully request that the court
2 enter the consent decree, as provided by Section 7(5) of the
3 Toxic Control Act and retain jurisdiction to enforce the
4 terms of the decree.

5 DATED this 8th day of March, 1988.

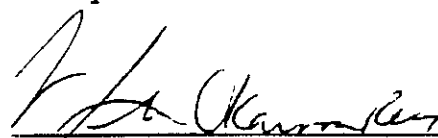
6
7 SPOKANE COUNTY

STATE OF WASHINGTON
KENNETH O. EIKENBERRY
Attorney General

8
9
10 By

JAMES P. EMACIO
Chief Deputy
Spokane County
Prosecuting Attorney

By


V. LEE OKARMA REES
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology

11
12
13
14 By

JERRY NEAL
Lukins & Annis

Attorneys for Spokane County

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED:

Pursuant to the foregoing stipulation of counsel, that
the consent decree attached hereto be and hereby is entered
as provided by the terms of the consent decree and Section 7
of S.B. 6085, that any further notice and hearing on this
matter has been waived by all parties hereto, and that this
court shall retain jurisdiction to enforce the terms of said
decree.


DATED this _____ day of _____, 1988.

HONORABLE JOHN A. SCHULTHEIS
Superior Court Judge

Presented by:

KENNETH O. EIKENBERRY
Attorney General

By


V. LEE OKARMA REES
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology

Approved as to form
and Notice of Presentation
waived:

STIPULATION AND ORDER FOR
ENTRY OF CONSENT DECREE AND
WAIVER OF FURTHER HEARING

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By _____
JAMES P. EMACIO
Chief Deputy
Spokane County
Prosecuting Attorney

By _____
JERRY NEAL
Lukins & Annis
Attorneys for Spokane County

ATTACHMENTS:
Consent Decree
Public Comments
Responsiveness Summary