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SUPERIOR COURT
SPOKANE, COUNTY, WN

SUPERIOR COURT OF WASHINGTON
FOR SPOKANE COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

v.

SPOKANE COUNTY, WASHINGTON

03202743-4

No.

CONSENT DECREE

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May 7th 2003
DAVID THORN
COURT COMMISSIONER

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1 **I. INTRODUCTION**

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology), and Spokane County (Defendant) is to
4 provide for remedial action at the Mica Landfill Site (Site), a facility where there has been a
5 release or threatened release of hazardous substances. This Decree requires the Defendant to
6 undertake the remedial actions as specified in the Mica Landfill Cleanup Action Plan (CAP), and
7 to comply with the Scope of Work and Schedule, as provided in Exhibits B and C respectively.
8 Ecology has determined that these actions are necessary to protect public health and the
9 environment.

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

15 C. In signing this Decree, the Defendant agrees to its entry and agrees to be bound by
16 its terms.

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

21 E. This Decree shall not be construed as proof of liability or responsibility for any
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;
provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any
proceeding to enforce this Decree.

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

1 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change
2 in ownership or corporate status shall alter the responsibility of the Defendant under this Decree.
3 Defendant shall provide a copy of this Decree to all agents, contractors and subcontractors
4 retained to perform work required by this Decree which may affect the integrity of any remedial
5 measures and shall ensure that all work undertaken by such contractors and subcontractors will
6 be in compliance with this Decree.

7 IV. DEFINITIONS

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

10 A. Site: The Site, referred to as Mica Landfill, is located within
11 Sections 11, 14, and 15, Township 24 North, Range 44 East, Willamette Meridian, Spokane
12 County, Washington. The Site is identified in Exhibit A of this Decree which is a general Site
13 vicinity map and Site location map.

14 B. Parties: Refers to the Washington State Department of Ecology and Spokane
15 County.

16 C. Defendant: Refers to Spokane County.

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

20 V. STATEMENT OF FACTS

21 Ecology makes the following findings of fact without any express or implied admissions
22 by the Defendant.

1 Mica Landfill is located at the junction of Sections 11, 14, and 15, Township 24
2 North, Range 44 East, Willamette Meridian in Spokane County, Washington. The Site covers
3 approximately 161 acres and partially overlies the Aquifer Sensitive Area of the Spokane-
4 Rathdrum Prairie Aquifer, which was designated as a "Sole Source Aquifer" in 1978 and

1 provides the drinking water for approximately 400,000 people.

2 2. The Site was operated as a solid waste landfill by Spokane County from 1972
3 until 1990, and until 1991 jointly by Spokane County and the City of Spokane, who only
4 collected fees at the scales.

5 3. The Site received approximately 65,000 tons of waste per year in the form of
6 residential and municipal solid waste, dewatered sewage treatment plant sludge, demolition
7 debris and industrial wastes. Also, approximately 24,000 tons of black dross, which is a
8 byproduct of the aluminum production industry, was disposed of in designated areas of the
9 landfill between 1974 and 1987. The Site stopped receiving waste in late 1991.

10 4. In 1981, a volatile organic compound was detected in an on-site well, and in one
11 off-site domestic well on one occasion. Residents stopped using the well. A Phase 1 and Phase
12 2 investigation was completed by Spokane County, and additional monitoring wells were
13 installed. Data showed that the groundwater was contaminated with volatile organic compounds
14 and inorganic compounds.

15 5. In 1985, the U.S. Environmental Protection Agency (EPA) placed the Site on the
16 federal National Priorities List (NPL) of hazardous waste sites.

17 6. In 1986, Spokane County purchased approximately 24 acres of adjacent property
18 to the southwest of the Site. The property was used to construct a lined leachate impoundment
19 for the Site.

20 7. Ecology and Spokane County entered into Consent Decree 88200005-5 to develop
21 and complete a Remedial Investigation at the landfill in 1988. EPA and Ecology agreed in 1989
22 that Ecology would assume lead agency status for the Site. A Memorandum of Agreement
(1989) between the EPA and Ecology gave Ecology responsibility for all aspects of the remedial
investigation, feasibility study, remedial design, remedial action, and community relations
activities at state lead sites. The agreement specified that all activities at state lead NPL sites
would be completed under state authorities.

1 8. In 1988, Spokane County began conducting a Remedial Investigation/ Feasibility
2 Study (RI/FS) at the Site. The purpose of the RI was the following: (A) determine the nature
3 and extent of the release or threatened release of hazardous substances, pollutants and
4 contaminants at the Site; and (B) characterize the Site to provide sufficient information to
5 determine the necessity for and the proposed extent of remedial action. The purpose of the FS
6 was to identify, develop, evaluate, and select remedial action alternatives which are permanent to
7 the maximum extent practicable to prevent or minimize the release or threatened release of
hazardous substances, pollutants and contaminants from the Site.

8 9. The RI was completed in 1992. The results of the investigation substantiated
9 earlier data that leachate from the landfill is contaminating the underlying groundwater with
10 volatile and semi-volatile organic compounds and metals.

11 10. In 1992, work began to complete an Interim Action at the Site, which included
12 covering the landfill and installing engineering controls such as leachate, stormwater, and gas
13 collection and treatment systems. Work was completed in 1994. The Interim Action included
14 many elements of a FS, such as an analysis of applicable requirements, a screening of alternative
15 technologies, and a State Environmental Policy Act (SEPA) analysis. Groundwater was also
16 monitored on a quarterly basis to provide data to assess the performance of the Interim Action.
17 Because the Interim Action addressed all the contaminated media and potential exposure routes
and provided sufficient information to enable the selection of a cleanup action, a separate FS was
not completed for the Site.

18 11. Following additional opportunity for public review and comment, Ecology
19 finalized the Cleanup Action Plan (CAP) for the Site on December 27, 2001. The CAP affirmed
20 that the Interim Action was performing as expected, and that no further construction activities
21 would be required. It also specified that Spokane County would continue to provide institutional
22 controls for the Site and monitor Site groundwater. Five-year reviews would take place until
groundwater cleanup levels are achieved.

1 12. This Consent Decree is being entered into by Ecology and Spokane County. The
2 Consent Decree will allow for the implementation of the CAP.

3 VI. WORK TO BE PERFORMED

4 This Decree contains a program designed to protect public health, welfare, and the
5 environment from the known release, or threatened release, of hazardous substances, pollutants,
6 and contaminants at, on, or from the Site. This program implements the Cleanup Action Plan
7 (Exhibit B) and the Scope of Work and Schedule, which is set forth in Exhibit C of this Decree.
8 Exhibit C sets forth the work to be performed to accomplish required remedial action at the Site
9 during the duration of this Decree and the schedule for such remedial action. The Defendant
10 shall perform the remedial actions specified in detail within this Consent Decree and Exhibits B
11 and C.

12 A summary of the remedial actions to be performed by the Defendant pursuant to this
13 Consent Decree, the Cleanup Action Plan, and the Scope of Work and Schedule is as follows:

- 14 (1) Implement institutional controls at the Site to restrict extraction and use of
15 contaminated groundwater, to restrict development of landfill property, and to
16 ensure continued inspection and maintenance of the cover and related systems to
17 maintain the integrity of landfill cover.
- 18 (2) Conduct long-term groundwater monitoring to demonstrate compliance with
19 cleanup standards.
- 20 (3) Prepare and submit groundwater monitoring reports to Ecology on a periodic
21 basis.
- 22 (4) File a Restrictive Covenant with the deed for the Site and provide documentation
of this filing to Ecology.

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

Defendant agrees not to perform any remedial actions outside the scope of this Decree
unless the parties agree to amend the scope of work to cover these actions. All work conducted
under this Decree shall be done in accordance with Chapter 173-340 WAC and all other
applicable state and federal laws unless otherwise provided herein.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Sandra Treccani
Washington Department of Ecology
Eastern Regional Office
N. 4601 Monroe
Spokane, Washington 99205

The project coordinator for Defendant is:

William J. Wedlake
Public Works Bldg.
1026 West Broadway
Spokane, WA 99260

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

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

VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Any construction work must be performed in accordance WAC 173-340-400(6). Defendant shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

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IX. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the Defendant. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans.

To the maximum extent permitted by law, defendant is responsible for obtaining access agreements from third-party property owners where property access is required to implement the Cleanup Action Plan.

X. SAMPLING, DATA REPORTING, AND AVAILABILITY

With respect to the implementation of this Decree, Defendant shall make the results of all sampling, laboratory reports, and/or test results generated by them, or on their behalf available to Ecology and shall submit these results in accordance with Section XI of this Decree.

Ground water sampling data shall be submitted in accordance with WAC 173-340-840(5). These submittals shall be provided to Ecology in accordance with Section XI of this Decree and WAC 173-340-810 through WAC 173-340-850.

If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendant pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendant or its authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere

1 with the Department's sampling. Without limitation on Ecology's rights under Section IX,
2 Ecology shall endeavor to notify Defendant prior to any sample collection activity.

3 XI. PROGRESS REPORTS

4 Defendant shall submit to Ecology written progress reports which describe the actions
5 taken during the reporting period to implement the requirements of this Decree. Reporting
6 periods are as follows:

7 A. Quarterly Reports. Following the filing of this Consent Decree, progress
8 reports shall be submitted quarterly, beginning chronologically with the next
9 report that would be required. Quarterly progress reports shall be submitted for
10 the duration of this Decree, as described in Section XXIV. These reports shall be
11 submitted as follows:

- 12 (1) First quarter report - Due on the first business day following June 31 of the
13 calendar year.
- 14 (2) Second quarter report - Due on the first business day following September
15 31 of the calendar year.
- 16 (3) Third quarter report - Due on the first business day following December
17 31 of the calendar year.
- 18 (4) Fourth quarter and annual report - Due on the first business day following
19 March 31 of the following calendar year.

20 These progress reports shall include:

- 21 (1) A list of on-site activities that have taken place during the quarter;
- 22 (2) A detailed description of any deviations and/or anticipated deviations from
required tasks not otherwise documented in project plans or amendment
requests;
- (3) For any such deviations, a plan for recovering lost time and maintaining
compliance with the Schedule;
- (4) All relevant data (including laboratory analysis) received by the Defendant
during the past quarter and an identification of the source of the samples.
Relevant data includes, but is not limited to, drill logs, test pit logs, air
quality monitoring data, and sample analytical data required for post
closure monitoring; and

1 (5) A list of deliverables for the upcoming quarter if different from the
2 Schedule.

3 Unless otherwise specified, progress reports and any other documents submitted pursuant
4 to this Decree shall be sent by certified mail, return receipt requested, or by express courier, or by
5 facsimile with a confirmation copy via the U.S. Postal Service to Ecology's project coordinator.

6 XII. RETENTION OF RECORDS

7 Defendant shall preserve, during the duration of this Decree and for ten (10) years from
8 the date this Decree is no longer in effect as provided in Section XXV, all records, reports,
9 documents, and underlying data in its possession relevant to the implementation of this Decree,
10 and shall insert in contracts with project contractors and subcontractors a similar record retention
11 requirement. Upon request of Ecology, Defendant shall make all non-archived records available
12 to Ecology and allow access for review. All archived records shall be made available to Ecology
13 within a reasonable period of time.

14 XIII. TRANSFER OF INTEREST IN PROPERTY

15 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
16 or other interest in any portion of the Site shall be consummated without provision for continued
17 operation and maintenance of any containment system, treatment system, or monitoring system
18 installed or implemented pursuant to this Decree. Restrictions specifically identified in the
19 Cleanup Action Plan shall also be included in any conveyance or relinquishment of title.

20 Prior to transfer of any legal or equitable interest in all or any portion of the property,
21 and during the effective period of this Decree, the Defendant shall serve a copy of this Decree
22 upon any prospective purchaser, lessee, transferee, assignee, or other successor-in-interest of the
property; and at least thirty (30) days prior to any transfer, that Defendant shall notify Ecology of
said contemplated transfer.

XIV. RESOLUTION OF DISPUTES

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

- (1) Upon receipt of the Ecology project coordinator's decision, the Defendant has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.
- (2) The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.
- (3) Defendant may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.
- (4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's request for review. The Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to Defendant, Defendant has the right to submit the dispute to the Court for resolution. The Defendant must appeal to the court within thirty (30) days of receiving Ecology's final written decision. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event the Defendant presents an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious, and render a decision based on such standard of review.

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

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

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

- 4 (1) Circumstances beyond the reasonable control and despite the due diligence of
5 Defendant, including delays caused by unrelated third parties or Ecology, such as
(but not limited to) delays by Ecology in reviewing, approving, or modifying
6 documents submitted by Defendant; or
- 7 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
unavoidable casualty; or
- 8 (3) Endangerment as described in Section XVII.

9 However, neither increased costs of performance of the terms of the Decree nor changed
10 economic circumstances shall be considered circumstances beyond the reasonable control of
11 Defendant.

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

- 14 (1) Delays in the issuance of a necessary permit which was applied for in a timely
15 manner; or
- 16 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or
- 17 (3) Endangerment as described in Section XVII.

18 Ecology shall give Defendant written notification in a timely fashion of any extensions
19 granted pursuant to this Decree.

20 XVII. ENDANGERMENT

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

1 time periods for performance of that work, as well as the time period for any other work
2 dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this
3 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

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

16 XVIII. INDEMNIFICATION

17 Defendant agrees to indemnify and save and hold the State of Washington, its employees,
18 and agents harmless from any and all claims or causes of action for death or injuries to persons or
19 for loss or damage to property arising from or on account of acts or omissions of Defendant, its
20 officers, employees, agents, or contractors in entering into and implementing this Decree.
21 However, the Defendant shall not indemnify the State of Washington nor save nor hold its
22 employees and agents harmless from any claims or causes of action arising out of the negligent
acts or omissions of the State of Washington, or the employees or agents of the state, in

1 implementing the activities pursuant to this Decree. The state shall be responsible for its own
2 negligence.

3 I. XIX. COMPLIANCE WITH APPLICABLE LAWS

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

7 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
8 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
9 local government permits or approvals for the remedial action under this Decree that are known
10 to be applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup
11 Action Plan, and are binding and enforceable requirements of the Decree.

12 Defendant has a continuing obligation to determine whether additional permits or
13 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
14 action under this Decree. In the event either Defendant or Ecology determines that additional
15 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
16 remedial action under this Decree, it shall promptly notify the other party of this determination.
17 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
18 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult
19 with the appropriate state and/or local agencies and provide Ecology with written documentation
20 from those agencies of the substantive requirements those agencies believe are applicable to the
21 remedial action. Ecology shall make the final determination on the additional substantive
22 requirements that must be met by Defendant and on how Defendant must meet those
requirements. Ecology shall inform Defendant in writing of these requirements. Once
established by Ecology, the additional requirements shall be enforceable requirements of this
Decree. Defendant shall not begin or continue the remedial action potentially subject to the
additional requirements until Ecology makes its final determination.

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

3 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
4 exemption from complying with the procedural requirements of the laws referenced in RCW
5 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for
6 the State to administer any federal law, the exemption shall not apply and the Defendant shall
7 comply with both the procedural and substantive requirements of the laws referenced in RCW
8 70.105D.090(1), including any requirements to obtain permits.

9 **XX. REMEDIAL AND INVESTIGATIVE COSTS**

10 The Defendant agrees to pay costs incurred by Ecology to date and incurred by Ecology
11 pursuant to this Decree. These costs shall include work performed by Ecology or its contractors
12 for investigations, remedial actions, and Decree preparation, negotiations, oversight and
13 administration. In accordance with WAC 173-340-550(2), Ecology costs shall include costs of
14 direct activities; e.g., employee salary, travel costs, laboratory costs, contractor fees, and
15 employee benefit packages; and Ecology indirect costs of direct activities. The Defendant agrees
16 to pay the required amount within ninety (90) days of receiving from Ecology an itemized
17 statement of costs that includes a summary of costs incurred, an identification of involved staff,
18 and the amount of time spent by involved staff members on the project. A general statement of
19 work performed will be provided upon request. Itemized statements shall be prepared quarterly.
20 Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will
21 result in interest charges.
22

23 **XXI. IMPLEMENTATION OF REMEDIAL ACTION**

24 If Ecology determines that Defendant has failed without good cause to implement the
25 remedial action, Ecology may, after two weeks written notice to Defendant except in an
26 emergency, perform any or all portions of the remedial action that remain incomplete. If Ecology
27 performs all or portions of the remedial action because of the Defendant's failure to comply with

1 its obligations under this Decree, Defendant shall reimburse Ecology for the costs of doing such
2 work in accordance with Section XXI, provided that Defendant is not obligated under this section
3 to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this
4 Decree.

5 **XXII. FIVE YEAR REVIEW**

6 As remedial action, including ground water monitoring, continues at the Site, the parties
7 agree to review the progress of remedial action at the Site, and to review the data accumulated as
8 a result of site monitoring as often as is necessary and appropriate under the circumstances. At
9 least every five (5) years the parties shall meet to discuss the status of the Site and the need, if
10 any, for further remedial action at the Site. Ecology reserves the right to require further remedial
11 action at the Site under appropriate circumstances. This provision shall remain in effect for the
12 duration of the Decree.

13 **XXIII. PUBLIC PARTICIPATION**

14 Ecology shall maintain the responsibility for public participation at the Site. However,
15 Defendant shall prepare a public participation plan for review and approval by Ecology. In
16 addition, Defendant shall cooperate with Ecology as needed, and, if agreed to by Ecology, shall:

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

21 B. Notify Ecology's project coordinator at least 48 hours prior to the distribution of
22 all press releases and fact sheets, and before major meetings with the interested public and local
governments. Likewise, Ecology shall notify Defendant at least 48 hours prior to the issuance of
all press releases and fact sheets, and before major meetings with the interested public and local
governments;

1 C. Participate in public presentations on the progress of the remedial action at the
2 Site at Ecology's request. Participation may be through attendance at public meetings to assist in
3 answering questions, or as a presenter;

4 D. In cooperation with Ecology, arrange and/or continue information repositories to
5 be located at Spokane Public Library, Spokane County Public Library, Spokane County Utilities
6 Division, and Ecology's Eastern Regional Office at N. 4601 Monroe, Spokane, Washington. At
7 a minimum, copies of the Cleanup Action Plan, Consent Decree and Scope of Work, all remedial
8 actions, work plans, engineering design reports, and any other documents as specified in the
9 public participation plan shall be promptly placed in these repositories.

10 **XXIV. DURATION OF DECREE**

11 This Decree shall remain in effect and the remedial program described in the Decree shall
12 be maintained and continued until the Defendant has received written notification from Ecology
13 that the requirements of this Decree have been satisfactorily completed.

14 **XXV. CLAIMS AGAINST THE STATE**

15 Defendant hereby agrees that it will not seek to recover any costs accrued in
16 implementing the remedial action required by this Decree from the State of Washington or any of
17 its agencies; and further, that the Defendant will make no claim against the State Toxics Control
18 Account or any Local Toxics Control Account for any costs incurred in implementing this
19 Decree. Except as provided above, however, Defendant expressly reserves the right to seek to
20 recover any costs incurred in implementing this Decree from any other potentially liable person.

21 **XXVI. EFFECTIVE DATE**

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

XXVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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

4 **XXVIII. COVENANT NOT TO SUE**

5 In consideration of Defendant's compliance with the terms and conditions of this Decree,
6 the state covenants not to institute legal or administrative actions against Defendant regarding
7 contamination covered by this Decree unless confirmational monitoring indicates that additional
8 remedial actions are necessary at the Site to attain MTCA cleanup standards within the reasonable
9 restoration time frame set forth in the CAP (Exhibit B). Until cleanup standards are met at this Site,
10 compliance with this Decree shall satisfy Defendant's cleanup obligations for the release or
11 threatened release of hazardous substances covered by the terms of this Decree, unless, as noted
12 above, confirmational monitoring indicates that additional remedial actions are necessary at the Site
13 to attain MTCA cleanup standards within the reasonable restoration time frame set forth in the
14 CAP (Exhibit B).

15 The terms and application of this Consent Decree are strictly limited to the Site specifically
16 identified in Exhibit A and to those hazardous substances which Ecology knows to be located at the
17 Site as of the entry of this Decree. This Consent Decree shall not be applicable to any other
18 hazardous substance or area, and the state retains all of its authority relative to such substances and
19 areas.

20 A. Ecology specifically reserves the right to institute legal or administrative action
21 against Defendant seeking to require it to perform additional response actions at the Site, and to
22 pursue appropriate cost recovery in accordance with provisions set out in RCW 70.105D.050, under
the following circumstances:

- (1) Upon Defendant's failure to meet the requirements of this Decree, including but not limited to, failure of the remedial action to meet the cleanup standards identified in the Cleanup Action Plan (Exhibit B);

- 1 (2) Upon Ecology's determination that action beyond the terms of this Decree is
2 necessary to abate an imminent and substantial endangerment to public health or
3 welfare or to the environment;
- 4 (3) Upon Ecology's determination that additional remedial actions are necessary to
5 achieve cleanup standards within the reasonable restoration time frame set forth in
6 the CAP (Exhibit B).
- 7 (4) In the event new information becomes available regarding factors previously
8 unknown to Ecology, including the nature or quantity of hazardous substances at the
9 Site, and this new information presents a previously unknown threat to human
10 health or the environment, and Ecology determines, in light of this new information,
11 that further remedial action is necessary at the Site, to protect human health or the
12 environment, and Defendant, after notice, fails to take the necessary action within a
13 reasonable time.

14 B. Any Covenant Not to Sue concerning work performed under this Consent Decree
15 shall have no applicability whatsoever to:

- 16 1. Criminal liability;
- 17 2. Liability for damages to natural resources;
- 18 3. Any Ecology action against potentially liable persons not a party to this Decree,
19 including cost recovery.

20 XXIX. LAND USE RESTRICTIONS

21 Spokane County agrees that the restrictive covenant, Exhibit D, shall be recorded with the
22 office of the Spokane County Auditor within ten (10) days of the entry of this Decree and shall
restrict future uses of the Site. With Ecology's prior written approval and public notice and
comment, and after completion of the remedial action required by this Decree, Spokane County,
or its successor(s), may record an instrument that provides that the restrictive covenant provided
in Exhibit D shall no longer limit uses of the Site or be of any further force or effect.

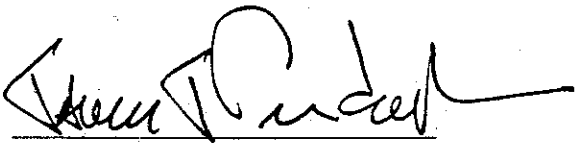
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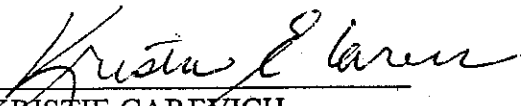
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


JAMES J. PENDOWSKI
Program Manager
Toxics Cleanup Program
Date 4/22/03

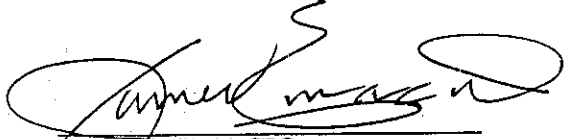
STATE OF WASHINGTON
ATTORNEY GENERAL'S OFFICE


KRISTIE CAREVICH
WSBA #28018
Assistant Attorney General
Date 4/21/03

SPOKANE COUNTY

Date _____

SPOKANE COUNTY


JAMES EMACIO
WSBA #4862
Chief Deputy Prosecuting Attorney
Date _____

DATED this _____ day of _____, 2003.

JUDGE
Spokane County Superior Court