

Hidden valley
Landfill

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PIERCE COUNTY RECYCLING,
COMPOSTING AND DISPOSAL LLC
dba LRI; PIERCE COUNTY,

Defendants.

NO. 03 2 14687 6
CONSENT DECREE

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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 the defendants Pierce County Recycling,
4 Composting and Disposal LLC, dba LRI (LRI), and Pierce County (collectively "Defendants") is
5 to provide for remedial action at a facility where there has been a release or threatened release of
6 hazardous substances. This Decree requires the Defendants to undertake the following remedial
7 actions:

8 (1) Continue operation of the landfill gas control and destruction system and monitor
9 landfill gas in accordance with the approved final Landfill Gas Management Plan dated January
10 2002.

11 (2) Maintain the final cover system and surface water control systems in accordance
12 with the approved final Post-Closure Plan dated November 2001.

13 (3) Continue monitoring groundwater in accordance with the approved final
14 Groundwater Compliance Monitoring Plan dated February 2001.

15 (4) Implement institutional controls, including deed restrictions.

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

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

23 C. In 1987, Ecology and LRI executed Consent Order No. DE86-S173 (Consent Order)
24 under authority of the State of Washington Water Pollution Prevention Act, Chapter 90.48,
25 Revised Code of Washington (RCW); the Hazardous Waste Regulation Act, Chapter 70.105
26 RCW; the Washington Clean Air Act, Chapter 70.94 RCW; and subchapter IV of the Resource

1 Conservation and Recovery Act, 42USC 6901-6991. The Consent Order required LRI to prepare
2 remedial investigation and feasibility study reports, and to comply with a memorandum of
3 agreement with the Tacoma Pierce County Health Department regarding provisions for operation
4 and closure of the then existing landfill footprint

5 D. On September 21, 1988, the Consent Order was amended by LRI and Ecology. The
6 amendment modified the original schedule and sampling requirements.

7 E. This Decree addresses the implementation of the Cleanup Action Plan. This
8 Decree will replace and supercede the Consent Order executed for this Site.

9 F. In signing this Decree, Defendants agree to its entry and agree to be bound by its
10 terms.

11 G. By entering into this Decree, the parties do not intend to discharge nonsettling
12 parties from any liability they may have with respect to matters alleged in the complaint. The
13 parties retain their respective rights to seek reimbursement, in whole or in part, from any liable
14 persons for sums expended in connection with this Site.

15 H. This Decree shall not be construed as either proof of liability or responsibility for
16 any releases of hazardous substances or cost for remedial action, or as an admission of any facts.

17 I. Defendants agree not to challenge the jurisdiction of Ecology in any proceeding to
18 enforce this Decree.

19 J. The Court is fully advised of the reasons for entry of this Decree, and good cause
20 having been shown:

21 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

22 II. JURISDICTION

23 A. This Court has jurisdiction over the subject matter and over the parties pursuant to
24 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

25 B. Authority is conferred upon the Washington State Attorney General by RCW
26 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice

1 and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of
2 hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a
3 consent decree issued by a court of competent jurisdiction.

4 C. Ecology has determined that a release or threatened release of hazardous substances
5 has occurred at the Site.

6 D. Ecology notified both LRI and Pierce County of their status as a "potentially liable
7 person" under RCW 70.105D.040.

8 E. The actions to be taken pursuant to this Decree are necessary to protect public
9 health, welfare, and the environment.

10 F. Defendants have agreed to undertake the actions specified in this Decree and
11 consent to the entry of this Decree under the MTCA.

12 III. PARTIES BOUND

13 This Decree shall apply to and be binding upon the parties to this Decree, their successors
14 and assigns. The undersigned representative of each party hereby certifies that he or she is fully
15 authorized to enter into this Decree and to execute and legally bind such party to comply with the
16 Decree. Defendants agree to undertake all actions required by the terms and conditions of this
17 Decree and not to contest state jurisdiction regarding this Decree. No change in ownership or
18 corporate status shall alter the responsibility of the defendants under this Decree. Defendants shall
19 provide a copy of this Decree to all agents, contractors and subcontractors retained to perform
20 work required by this Decree and shall ensure that all work undertaken by such contractors and
21 subcontractors will be in compliance with this Decree.

22 IV. DEFINITIONS

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

25 A. Site: The Site, referred to as the Hidden Valley Landfill, is located in central Pierce
26 County at 17925 South Meridian Street, Puyallup, Washington and includes those properties

1 where hazardous substances originating from the landfill operations have come to be located. The
2 Site is a "facility" as defined at RCW 70.105D.020. Exhibit A of this Decree illustrates property
3 boundaries and the immediate vicinity associated with the Site and contains legal descriptions of
4 the properties

5 B. Parties: Refers to the Washington State Department of Ecology, Pierce County
6 Recycling, Composting and Disposal LLC, dba LRI, and Pierce County.

7 C. Properties: The LRI property and the Pierce County property described in Exhibit
8 A.

9 D. Defendants: Refers to LRI, and Pierce County.

10 E. Consent Decree or Decree: Refers to this Consent Decree and includes each and all
11 of the exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent
12 Decree.

13 V. STATEMENT OF FACTS

14 Ecology makes the following findings of fact. Defendants do not admit, either expressly or
15 by implication, any facts stated herein.

16 1. LRI owns the Hidden Valley Landfill, a closed municipal solid waste landfill
17 located at 17925 South Meridian Street, Puyallup, Washington. The legal description of the
18 property is included in Exhibit A.

19 2. Pierce County owns approximately five (5) acres of property described in Exhibit
20 A, which was once an active part of the landfill, and which also contains municipal solid waste.

21 3. The Site is a facility as defined in RCW 70.105D.020(4).

22 4. Pierce County operated the facility as a landfill from approximately 1965 to 1977.

23 5. LRI acquired the facility in 1977, and operated it as an active landfill from then
24 until December 31, 1998, when disposal activities ended.

25 6. LRI and Pierce County are each an "owner or operator" as defined at RCW
26 70.105D.020(12) of a facility.

1 7. Since approximately 1965 the landfill received municipal solid waste, demolition
2 wastes, and commercial wastes. Prior to 1985, small quantities of bulk liquids, sludges, and larger
3 volumes of industrial waste were reportedly accepted at the landfill.

4 8. In April 1989, Hidden Valley Landfill was placed on the National Priorities List
5 (NPL) pursuant to § 105 of CERCLA, 42 U.S.C. 9605.

6 9. All sites within the State of Washington which are placed on the NPL are
7 automatically included on the Washington State Hazardous Sites List. Hidden Valley Landfill was
8 placed on the State Hazardous Sites List in 1990.

9 10. A 30-acre lined cell was constructed at the Site in 1991 and 1993.

10 11. The landfill was capped in phases. The unlined area was capped during the
11 summer seasons of 1989 (13 acres), 1992 (26 acres), and 1993 (17 acres) in accordance with the
12 Minimum Functional Standards, Chapter 173-304 WAC. The lined cell was capped during the
13 summer seasons of 1998 (11 acres), and 1999 and 2000 (22 acres) in accordance with the Criteria
14 for Municipal Solid Waste Landfills, Chapter 173-351 WAC.

15 12. The landfill stopped accepting waste on December 31, 1998.

16 VI. WORK TO BE PERFORMED

17 This Decree contains a program designed to protect public health, welfare and the
18 environment from the known release, or threatened release, of hazardous substances or
19 contaminants at, on, or from the Site.

20 A. The Cleanup Action Plan and Scope of Work and Schedule are set forth in Exhibits
21 B and C of this Decree. LRI, Pierce County and Ecology hereby commit to implement the
22 requirements assigned to each in Exhibits B and C.

23 B. Defendants agree not to perform any remedial actions outside the scope of this
24 Decree unless the parties agree to amend the Scope of Work to cover these actions. All work
25 conducted under this Decree shall be done in accordance with Chapter 173-340 WAC unless
26 otherwise provided herein.

VII DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Mohsen Kourehdar
Toxics Cleanup Site Manager
Washington State Department of Ecology
P.O. Box 47775
Olympia, Washington 98504-7775
Phone: (360) 407-6256

The project coordinator for LRI is:

Jody Snyder
LRI
P.O. Box 73057
Puyallup, WA 98373
Phone: (253) 927-6810

The project coordinator for Pierce County is:

Rickard-Johnston
Pierce County Public Works & Utilities
9116 Gravelly Lake Drive SW
Tacoma, WA 98499-3190
Phone: (253) 798-4050

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 Defendants 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. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

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

1 VIII. PERFORMANCE

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

9 IX. ACCESS

10 Ecology or any Ecology-authorized representatives shall have the authority to enter and
11 freely move about all property at the Site that the Defendants either own, control or have access
12 rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs,
13 and contracts related to the work being performed pursuant to this Decree; reviewing Defendants'
14 progress in carrying out the terms of this Decree; conducting such tests or collecting such samples
15 as Ecology may deem necessary; using a camera, sound recording, or other documentary type
16 equipment to record work done pursuant to this Decree; and verifying the data submitted to
17 Ecology by the Defendants. Defendants shall make reasonable efforts to secure access to those
18 properties within the Site not owned or controlled by the Defendants and needed for the work to be
19 performed pursuant to this Decree. Pursuant to RCW 70.105D.030(1)(a), Ecology or any Ecology
20 authorized representative shall give reasonable notice before entering any Site property unless an
21 emergency prevents such notice. All parties with access to the Site pursuant to this paragraph shall
22 comply with approved health and safety plans.

23 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

24 With respect to the implementation of this Decree, Defendants shall make the results of all
25 sampling, laboratory reports, and/or test results generated by them, or on their behalf for purposes
26 of carrying out the requirements of this Decree, available to Ecology and shall submit these results

1 in accordance with Section XI of this Decree

2 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken by
3 Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to
4 the implementation of this Decree. Defendants shall notify Ecology of the schedule for sample
5 collection in accordance with provisions of the Groundwater Compliance Monitoring Plan.
6 Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants or their
7 authorized representatives of any samples collected by Ecology pursuant to the implementation of
8 this Decree. Without limitation on Ecology's rights under Section IX, Ecology shall notify
9 Defendants prior to any sample collection activity, unless an emergency prevents such notice.

10 XI. PROGRESS REPORTS

11 Defendants shall submit to Ecology written annual progress reports which describe the
12 actions taken during the previous year to implement the requirements of this Decree. The progress
13 report shall include the following:

- 14 A. A list of on-site activities that have taken place during the year;
- 15 B. Detailed description of any deviations from required tasks not otherwise
16 documented in project plans or amendment requests;
- 17 C. Description of all deviations from the schedule (Exhibit C) during the current year
18 and any planned deviations in the upcoming year;
- 19 D. For any deviations in schedule, a plan for recovering lost time and maintaining
20 compliance with the schedule;
- 21 E. All field data and laboratory reports received by the Defendants during the past year
22 and an identification of the source of the sample; and

- 23 F. A list of deliverables for the upcoming year if different from the schedule.

24 Each annual report shall be submitted by the first day of April in the year in which it is due
25 after the effective date of this Decree. Unless otherwise specified, progress reports and any other
26

1 documents submitted pursuant to this Decree shall be sent by certified mail, return receipt
2 requested, to Ecology's project coordinator.

3 XII. RETENTION OF RECORDS

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

12 XIII. TRANSFER OF INTEREST IN PROPERTY

13 No conveyance or relinquishment of title, easement, leasehold, or other interest in any
14 portion of the Site on which a containment system, treatment system, or monitoring system
15 installed or implemented pursuant to this Decree remains in existence, or on which there is a
16 Restrictive Covenant pursuant to this Decree shall be consummated without provision for
17 continued operation and maintenance of any such system(s) and Restrictive Covenant(s).

18 Prior to transfer of any legal or equitable interest in any portion of the Site on which a
19 containment system, treatment system, or monitoring system installed or implemented pursuant to
20 this Decree remains in existence or on which there is a Restrictive Covenant pursuant to this
21 Decree, and during the effective period of this Decree, Defendants shall serve a copy of this
22 Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest
23 of the property; and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology
24 of said contemplated transfer.

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26

XIV RESOLUTION OF DISPUTES

1
2 A. In the event a dispute arises as to an approval, disapproval, proposed modification
3 or other decision or action pertaining to implementation of this Decree by Ecology's project
4 coordinator, the parties shall utilize the dispute resolution procedure set forth below.

5 (1) Upon receipt of the Ecology project coordinator's decision, each Defendant has
6 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the
7 decision.

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

11 (3) Either Defendant may then request Ecology management review of the decision.
12 This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven
13 (7) days of receipt of Ecology's project coordinator's decision.

14 (4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a
15 written decision regarding the dispute within thirty (30) days of the Defendant's request for review.
16 The Program Manager's decision shall be Ecology's final decision on the disputed matter.

17 B. If Ecology's final written decision is unacceptable to Defendants, either Defendant
18 has the right to submit the dispute to the Court for resolution. The parties agree that one judge
19 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
20 this Decree. In the event either Defendant presents an issue to the Court for review, the Court
21 shall review the action or decision of Ecology on the basis of whether such action or decision was
22 arbitrary and capricious and render a decision based on such standard of review.

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

1 D. Upon agreement by all parties, an alternative dispute resolution process may be
2 used as an alternative or addition to the judicial resolution procedure set forth above.

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

6 XV. AMENDMENT OF CONSENT DECREE

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

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

17 XVI. EXTENSION OF SCHEDULE

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

22 An extension shall only be granted for such period of time as Ecology determines is
23 reasonable under the circumstances. A requested extension shall not be effective until approved
24 by Ecology or the Court. Ecology shall act upon any written request for extension in a timely
25 fashion. It shall not be necessary to formally amend this Decree pursuant to Section XV when a
26 schedule extension is granted.

1 B. The burden shall be on the Defendants to demonstrate to the satisfaction of Ecology
2 that the request for such extension has been submitted in a timely fashion and that good cause
3 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 Defendants including delays caused by unrelated third parties or Ecology, such as (but not limited
6 to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendants;
7 or

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

10 (3) Endangerment as described in Section XVII.

11 However, neither increased costs of performance of the terms of the Decree nor changed
12 economic circumstances shall be considered circumstances beyond the reasonable control of
13 Defendants.

14 C. Generally, Ecology may extend the schedule for a period not to exceed ninety (90)
15 days. However, Ecology may extend the schedule for a longer period when more time is needed as
16 a result of:

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

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

20 (3) Endangerment as described in Section XVII.

21 Ecology shall give Defendants written notification in a timely fashion of any extensions
22 granted pursuant to this Decree.

23 XVII. ENDANGERMENT

24 In the event Ecology determines that activities implementing or in noncompliance with this
25 Decree, or any other circumstances or activities, are creating or have the potential to create a
26 danger to the health or welfare of the people on the Site or in the surrounding area or to the

1 environment, Ecology may order Defendants to stop further implementation of this Decree for
2 such period of time as needed to abate the danger or may petition the Court for an order as
3 appropriate. During any stoppage of work under this section, the obligations of Defendants with
4 respect to the work under this Decree which is ordered to be stopped shall be suspended and the
5 time periods for performance of that work, as well as the time period for any other work dependent
6 upon the work which is stopped, shall be extended, pursuant to Section XVI of this Decree, for
7 such period of time as Ecology determines is reasonable under the circumstances.

8 In the event Defendants determine that activities undertaken in furtherance of this Decree
9 or any other circumstances or activities are creating an endangerment to the people on the Site or
10 in the surrounding area or to the environment, Defendants may stop implementation of this Decree
11 for such period of time as necessary for Ecology to evaluate the situation and determine whether
12 Defendants should proceed with implementation of the Decree or whether the work stoppage
13 should be continued until the danger is abated. Defendants shall notify Ecology's project
14 coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of
15 work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If
16 Ecology disagrees with the Defendants' determination, it may order Defendants to resume
17 implementation of this Decree. Provided Defendants restart work as directed by Ecology, the time
18 period between work stoppage and receipt of notice from Ecology to restart work will not count
19 against any deliverable deadlines or other schedule, and Defendants will not otherwise be
20 penalized for this work stoppage. If Ecology concurs with the work stoppage, the Defendants'
21 obligations shall be suspended and the time period for performance of that work, as well as the
22 time period for any other work dependent upon the work which was stopped, shall be extended,
23 pursuant to Section XVI of this Decree, for such period of time as Ecology determines is
24 reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved
25 through the dispute resolution procedures in Section XIV.

1 XVIII. INDEMNIFICATION

2 Defendants agree to indemnify and save and hold the State of Washington, its employees,
3 and agents harmless from any and all claims or causes of action for death or injuries to persons or
4 for loss or damage to property arising from or on account of acts or omissions of Defendants, their
5 officers, employees, agents, or contractors in entering into and implementing this Decree.
6 However, the Defendants shall not indemnify the State of Washington nor save nor hold its
7 employees and agents harmless from any claims or causes of action arising out of the intentional or
8 negligent acts or omissions of the State of Washington, or the employees or agents of the State.

9 XIX. COMPLIANCE WITH APPLICABLE LAWS

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

13 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94,
14 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local
15 government permits or approvals for the remedial action under this Decree that are known to be
16 applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action
17 Plan, and are binding and enforceable requirements of the Decree.

18 Defendants have a continuing obligation to determine whether additional permits or
19 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action
20 under this Decree. In the event either of the Defendants or Ecology determines that additional
21 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
22 remedial action under this Decree, it shall promptly notify the other parties of this determination.
23 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
24 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
25 with the appropriate state and/or local agencies and provide Ecology with written documentation
26 from those agencies of the substantive requirements those agencies believe are applicable to the

1 remedial action. Ecology will provide Defendants with an opportunity to respond to and negotiate
2 with Ecology prior to issuing its final determination regarding these substantive requirements.
3 Any such negotiation will be completed within seven (7) days, unless Ecology determines a longer
4 period is appropriate. Ecology shall make the final determination on the additional substantive
5 requirements that must be met by Defendants and on how Defendants must meet those
6 requirements. Ecology shall inform Defendants in writing of these requirements. Once
7 established by Ecology, the additional requirements shall be filed with the Court and become
8 enforceable requirements of this Decree. Defendants shall not begin or continue the remedial
9 action potentially subject to the additional requirements until Ecology makes its final
10 determination.

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

13 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
14 exemption from complying with the procedural requirements of the laws referenced in RCW
15 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for
16 the State to administer any federal law, the exemption shall not apply and the Defendants shall
17 comply with both the procedural and substantive requirements of the laws referenced in RCW
18 70.105D.090(1), including any requirements to obtain permits.

19 XX. REMEDIAL AND INVESTIGATIVE COSTS

20 The Defendants agree to pay costs incurred by Ecology in implementing and overseeing
21 implementation of this Decree. These costs shall include work performed by Ecology or its
22 contractors for, or on, the Site under Ch. 70.105D RCW subsequent to December 31, 2002, for
23 investigations, remedial actions, and Decree preparation, negotiations, oversight and
24 administration. Ecology costs shall include costs of direct activities and support costs of direct
25 activities as defined in WAC 173-340-550(2). In addition, Defendants agree to pay costs incurred
26 by Ecology prior to December 31, 2002, in the amount of \$43,600. The Defendant agrees to pay

1 the required amount within ninety (90) days of receiving from Ecology an itemized statement of
2 costs that includes a summary of costs incurred, an identification of involved staff, and the amount
3 of time spent by involved staff members on the project. A general statement of work performed
4 will also be provided. Itemized statements for work performed subsequent to December 31, 2002
5 shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the
6 itemized statement will result in interest charges. Defendants may challenge Ecology costs for
7 work performed after January 1, 2003 using the provisions of Section XIV of this Decree.

8 XXI. ECOLOGY IMPLEMENTATION OF REMEDIAL ACTION

9 If Ecology determines that Defendants have failed without good cause to implement the
10 remedial action, Ecology may, after giving notice and a schedule to correct or cure the identified
11 failure to Defendants, perform any or all portions of the remedial action that remain incomplete. If
12 Ecology then performs all or portions of the remedial action that remain incomplete due to the
13 Defendants' failure after notice of schedule to implement the remedial action, Defendants shall
14 reimburse Ecology for the costs of doing such work in accordance with Section XX, provided that
15 Defendants are not obligated under this section to reimburse Ecology for costs incurred for work
16 inconsistent with or beyond the scope of this Decree.

17 XXII. FIVE-YEAR REVIEW

18 As remedial action, including ground water monitoring, continues at the Site, the parties
19 agree to review the progress of remedial action at the Site, and to review the data accumulated as a
20 result of site monitoring as often as is necessary and appropriate under the circumstances. At least
21 every five years the parties shall meet to discuss the status of the Site and the need, if any, for
22 further remedial action at the Site. Ecology reserves the right to require further remedial action at
23 the Site under the circumstances set forth in Section XXVI, subject to dispute resolution and
24 amendment provisions in Sections XIV and XV. This provision shall remain in effect for the
25 duration of the Decree.
26

1 XXIII. PUBLIC PARTICIPATION

2 Ecology assumes and shall maintain the responsibility for public participation at the Site.
3 However, Defendants shall cooperate with Ecology and, if agreed to by Ecology, shall:

4 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
5 action. Ecology will finalize (including editing if necessary) and distribute such fact sheets and
6 prepare and distribute public notices of Ecology's presentations and meetings;

7 B. Notify Ecology's project coordinator prior to the preparation of all press releases
8 and fact sheets, and before major meetings with the interested public and local governments.
9 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact
10 sheets, and before major meetings with the interested public and local governments;

11 C. Participate in public presentations on the progress of the remedial action at the Site.
12 Participation may be through attendance at public meetings to assist in answering questions, or as
13 a presenter;

14 D. In cooperation with Ecology, arrange and/or continue information repositories to be
15 located at Ecology's Southwest Regional Office at 300 Desmond Drive Southeast, Olympia,
16 Washington. At a minimum, copies of all public notices, fact sheets, and press releases; all quality
17 assured ground water, soil sediment, and air monitoring data; remedial action plans, supplemental
18 remedial planning documents, and all other similar documents relating to performance of the
19 remedial action required by this Decree shall be promptly placed in the repository.

20 XXIV. DURATION OF DECREE

21 This Decree shall remain in effect and the remedial program described in the Decree shall
22 be maintained and continued until the Defendants have received written notification from Ecology
23 that the requirements of this Decree have been satisfactorily completed.

24 XXV. CLAIMS AGAINST THE STATE

25 Defendants hereby agree that they will not seek to recover any costs accrued in
26 implementing the remedial action required by this Decree from the State of Washington or any of

1 its agencies; and further, that the Defendants will make no claim against the State Toxics Control
2 Account or any Local Toxics Control Account for any costs incurred in implementing this Decree.
3 Except as provided above, however, Defendants expressly reserve their right to seek to recover any
4 costs incurred in implementing this Decree from any other potentially liable person

5 XXVI. COVENANT NOT TO SUE

6 A. In consideration of LRI and Pierce County's compliance with the terms and
7 conditions of this Decree, the State of Washington covenants that compliance with this Decree
8 shall stand in lieu of any and all administrative, legal, equitable, or enforcement actions available
9 to Ecology against LRI or Pierce County for the release or threatened release of hazardous
10 substances covered by the terms of this Decree.

11 B. This covenant is strictly limited in its application to the Site specifically defined in
12 Exhibits A and B (Figures 2 and 5), and to those hazardous substances which Ecology knows to be
13 located at the Site as of the date of entry of this Decree. This covenant is not applicable to any
14 other hazardous substances or area, and Ecology retains all of its authority relative to such
15 substances and areas.

16 C. Reopeners: In the following circumstances, the State of Washington may exercise
17 its full legal authority to address releases and/or threatened releases of hazardous substances at the
18 Site notwithstanding the Covenant Not to Sue set forth above:

19 1. In the event LRI and Pierce County fail to comply with the terms and conditions of
20 this Decree, including all Exhibits, and LRI and Pierce County, after written notices of
21 noncompliance, fail to come into compliance;

22 2. In the event factors not known at the time of entry of this Decree are discovered
23 and present a previously unknown threat to human health or environment; provided that if this
24 paragraph becomes operative Ecology will allow LRI or Pierce County to propose a cure to the
25 condition giving rise to the threat and if such a cure is acceptable to Ecology, LRI or Pierce County
26 and Ecology will negotiate an appropriate timetable for implementation; or

1 3. Upon Ecology’s determination that action beyond the terms of this Decree is
2 necessary to abate an emergency situation that threatens public health or welfare or the
3 environment.

4 D. Applicability: The Covenant Not to Sue set forth above shall have no applicability
5 whatsoever to:

6 1. Criminal liability;

7 2. Liability for damages to natural resources;

8 3. Any Ecology action against potentially liable persons not a party to this Decree,
9 including cost recovery.

10 XXVII. CONTRIBUTION PROTECTION

11 With regard to claims for contribution against any Defendant for matters addressed in this Consent
12 Decree, the parties hereto agree that each Defendant is entitled to contribution protection from any
13 actions or claims pursuant to MTCA, RCW 70.150D.080, CERCLA §107 or 113, or any other
14 federal or state claim seeking, under other theories, substantially similar relief, to the fullest extent
15 allowed by MTCA, RCW 70.105D.040 and CERCLA §113(f)(2). The contribution protection
16 conferred in this section shall not be frustrated by the use of non-CERCLA or non-MTCA theories
17 to seek relief in the nature of contribution or indemnification.

18 XXVIII. EFFECTIVE DATE

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

20 XXIX. TERMINATION OF CONSENT ORDER

21 Entry of this Decree shall terminate Consent Order No DE 86-S173 signed by LRI and
22 Ecology.

23 XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

24 This Decree has been the subject of public notice and comment under RCW
25 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a
26 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 DATED this _____ day of JAN 02 2004, 2003.

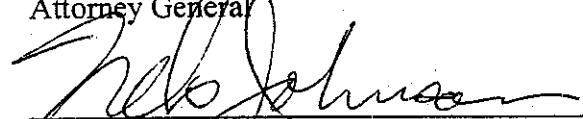
5 DAVID H. JOHNSON
6 COURT COMMISSIONER

7 JUDGE
8 Pierce County Superior Court

9 STATE OF WASHINGTON

CHRISTINE O. GREGOIRE
Attorney General

10 

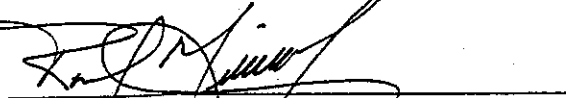


11 JIM PENDOWSKI
12 Washington Department of Ecology
13 Program Manager
14 Toxics Cleanup Program
15 Dated 11/21/03

16 NELS JOHNSON, WSBA #28616
17 Assistant Attorney General
18 State of Washington
19 Office of Attorney General
20 Dated 12/29/03

21 PIERCE COUNTY RECYCLING,
22 COMPOSTING AND DISPOSAL LLC, DBA

HELLER, EHRMAN, WHITE & McAULIFFE

23 



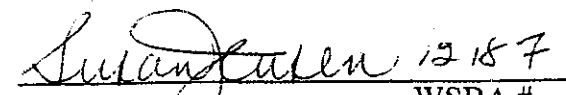
24 RON MIDDLESTAT
25 President
26 Dated 11/19/03

LESLIE C. NELLERMOE, WSBA #8758
Attorneys for Land Recovery, Inc.
Dated November 15, 2003
October 2003

PIERCE COUNTY

Approved as to form and notice of
presentation waived:

27 

 12187
WSBA #

28 JOHN LADENBURG
29 Pierce County Executive
30 Dated 9-10-03

Deputy Prosecuting Attorney
Dated 8-11-03