

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF:

KENT HIGHLANDS LANDFILL,  
KENT, WASHINGTON

CONSENT ORDER

I.

JURISDICTION

This Consent Order (Order) is issued pursuant to the authority vested in the State of Washington, Department of Ecology (Ecology) by ch. 90.48 RCW, the Water Pollution Control Act, and all other applicable state and federal laws.

The parties in entering into this Order, do not admit, accept or intend to acknowledge any liability or fault with respect to any matter arising out of or relating to the Kent Highlands Landfill. The execution of this Order is not an admission of liability by either party of any issue dealt with in this Order.

On the basis of the results of the preliminary investigations described in the Statement of Facts, infra, and Ecology files and records, Ecology has determined that (1) the City of Seattle

1 (Seattle) is one of the persons responsible for the Kent Highlands  
2 Landfill Site (Site); (2) the Site is a disposal site; (3) a  
3 reasonable time for beginning and completing the measures required  
4 by this Order has been provided for; (4) the measures to be taken  
5 pursuant to this Order are reasonable; (5) Seattle has agreed to  
6 undertake the measures specified in this Order in accordance with  
7 the requirements of the National Oil and Hazardous Substances  
8 Pollution Contingency Plan, 40 CFR Part 300, federal and state  
9 laws and regulations and all applicable United States Environmental  
10 Protection Agency guidance documents; and (6) so long as Seattle  
11 maintains compliance with this Order, no further response action  
12 should be necessary with respect to the remedial response program  
13 covered by the scope of this Order at the Kent Highlands Landfill  
14 Site, if in the future the Site is nominated for or placed on the  
15 National Priorities List.

16 II.

17 PARTIES BOUND

18 This Order shall apply to and be binding upon Seattle and  
19 Ecology, their agents, successors, and assigns and upon all  
20 persons, contractors, and consultants acting under or for either  
21 Seattle or Ecology or both. Seattle agrees both to undertake all  
22 measures required of it by the terms and conditions of this Order  
23 and not to contest Ecology's jurisdiction regarding this Order.  
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1 Such plans, proposals, and submittals shall be subject to approval  
2 by Ecology. Seattle shall incorporate this procedure into this  
3 Order as Attachment 2 within sixty (60) days of the date that this  
4 Order becomes effective. This procedure shall be consistent with  
5 the National Oil and Hazardous Substances Pollution Contingency  
6 Plan, 40 CFR Part 300, federal and state laws and regulations, and  
7 all applicable United States Environmental Protection Agency guid-  
8 ance documents relating to initial remedial measures.

9 C. Remedial Investigation. Seattle shall plan, propose,  
10 initiate, complete, and report upon a remedial investigation of  
11 the Site. Such plans, proposals, and reports shall be subject to  
12 approval of Ecology. The purpose of the remedial investigation is  
13 to: 1) determine the nature and extent of any environmental prob-  
14 lem at the Site; and 2) characterize the Site to provide sufficient  
15 information needed for the evaluation, selection, and implementa-  
16 tion of response measures at the Site.

17 The remedial investigation shall be conducted in accordance  
18 with the requirements of the National Oil and Hazardous Substances  
19 Pollution Contingency Plan, 40 CFR Part 300, federal and state  
20 laws and regulations, and all applicable United States Environ-  
21 mental Protection Agency guidance documents relating to remedial  
22 investigations, including document EPA/540/G-85/002, Guidance On  
23 Remedial Investigations Under CERCLA.

24 Seattle shall, subject to approval of Ecology, incorporate  
25 all procedural and technical documents required to implement the  
26 remedial investigation into this Order as Attachment 3 within

1 sixty (60) days of the date that this Order becomes effective.  
2 Seattle shall submit the final report for the remedial investiga-  
3 tion no later than twenty-one (21) months from the date that this  
4 Order becomes effective.

5 D. Feasibility Study. Seattle shall plan, propose, initiate,  
6 complete, and report upon a feasibility study for the Site. Such  
7 plans, proposals, and reports shall be subject to approval of  
8 Ecology. The purpose of the feasibility study is to identify,  
9 develop, evaluate, and select response measure alternatives as  
10 identified through the remedial investigation conducted pursuant  
11 to Section C above. The feasibility study shall be conducted in  
12 accordance with the National Oil and Hazardous Substances Pollu-  
13 tion Contingency Plan, 40 CFR Part 300, federal and state laws and  
14 regulations, and all applicable United States Environmental Protec-  
15 tion Agency guidance documents relating to feasibility studies,  
16 including document EPA/540/G-85/003, Guidance On Feasibility Studies  
17 Under CERCLA and document EPA/625/G-85/006, Handbook Of Remedial  
18 Action At Waste Disposal Sites (Revised).

19 Seattle shall, subject to approval of Ecology, incorporate  
20 all procedural and technical documents required to implement the  
21 feasibility study into this Order as Attachment 4 within  
22 twenty-one (21) months of the date that this Order becomes effec-  
23 tive. Seattle shall submit the final report for the feasibility  
24 study no later than twenty-seven (27) months from the date that  
25 this Order becomes effective.  
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1 III.

2 STATEMENT OF PURPOSE

3 In entering into this Order, the mutual objective of Ecology  
4 and Seattle is to provide a framework for the implementation of a  
5 remedial response program at the property, depicted and described  
6 in Attachment 1 to this Order, which was operated by Seattle within  
7 the City of Kent in King County, Washington. To accomplish this  
8 objective and to resolve the matter constructively and without  
9 litigation, Seattle consents to the measures required by this  
10 Order. The activities conducted pursuant to this Order shall be  
11 consistent with the National Oil and Hazardous Substances Pollu-  
12 tion Contingency Plan, 40 CFR Part 300, federal and state laws  
13 and regulations, and all applicable United States Environmental  
14 Protection Agency guidance documents.

15 IV.

16 STATEMENT OF FACTS

17 A. For the purposes of this Order, the following constitutes  
18 a summary of the facts upon which this Order is based. None  
19 of the facts or statements related herein or in the attached appen-  
20 dices shall be considered admissions by any party with respect to  
21 any claims unrelated to this Order. Seattle denies any liability  
22 or responsibility for the existence of hazardous substances, if  
23 any, at or near the Site, and therefore denies any facts inconsis-  
24 ent with such denial.

25 B. The project area (the Site) in this matter is known as  
26 the Kent Highlands Landfill and is situated within the City of  
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1 Kent in King County, Washington. The approximate location and  
2 boundaries of the Site are depicted by the diagram and legal  
3 description that is Attachment 1 to this Order.

4 C. Seattle operated a sanitary landfill at the Site until  
5 December 31, 1986 at which Seattle and other entities and persons  
6 disposed of both putrescible and non-putrescible wastes. Seattle  
7 initiated landfilling operations at the Site in June 1968.  
8 Entities and persons other than Seattle are the legal owners of  
9 the Site property.

10 D. In November 1984 and March 1986, Ecology conducted  
11 preliminary investigations of the Site, the specific purpose of  
12 which was to evaluate the need for a remedial response program at  
13 the Site.

14 E. Based on the above facts, Ecology has determined that a  
15 remedial response program, incorporating closure requirements and  
16 initial remedial measures, is necessary at the Site.

17 V.

18 SCOPE OF ORDER

19 This Order shall govern the following matters:

20 A. Closure. Seattle is currently preparing a closure plan  
21 for the Site. This plan shall be expanded and incorporated into  
22 the remedial response program, the elements of which are detailed  
23 in Sections B through F below.

24 B. Initial Remedial Measures: Seattle shall plan, propose,  
25 and submit a procedure for implementing initial remedial measures  
26 at the Site as they prove necessary, as determined by Ecology.

1        E. Remedial Design.    Seattle shall plan, propose, initiate,  
2 complete, and report upon a remedial design for the response  
3 measures which will be specifically adopted in the Closure Plan  
4 for the Site, provided that Ecology determines such measures to be  
5 appropriate.    Such plans, proposals, and reports shall be subject  
6 to the approval of Ecology.    The purpose of the remedial design is  
7 to provide detailed documentation of the specifications for the  
8 response measures, selected through the feasibility study con-  
9 ducted pursuant to Section D above, to be implemented at the Site.  
10 The remedial design shall be conducted in accordance with the  
11 National Oil and Hazardous Substances Pollution Contingency Plan,  
12 40 CFR Part 300, federal and state laws and regulations, and all  
13 applicable United States Environmental Protection Agency guidance  
14 documents relating to remedial designs.

15        Seattle shall, subject to approval of Ecology, incorporate  
16 all procedural and technical documents required to initiate the  
17 remedial design discussed above into this Order as Attachment 5  
18 within twenty-seven (27) months of the date that this Order becomes  
19 effective.    Seattle shall submit the finalized remedial design no  
20 later than thirty-six (36) months from the date that this Order  
21 becomes effective.

22        If, upon the determination of Ecology, further response  
23 measures are deemed necessary, Seattle and Ecology will enter  
24 into negotiations to incorporate such further response measures  
25 into this Order, which measures shall be subject to the require-  
26 ments set forth above.

1        F. Remedial Action.    Seattle shall initiate, complete, and  
2 report upon remedial actions which will be specifically adopted in  
3 the Closure Plan for the site, provided that Ecology determines  
4 that such actions are appropriate. The planning and proposal for  
5 the remedial action will be incorporated in the remedial design  
6 conducted pursuant to Section E above. The remedial action shall  
7 be conducted in accordance with the National Oil and Hazardous  
8 Substances Pollution Contingency Plan, 40 CFR Part 300, federal  
9 and state laws and regulations, and all applicable United States  
10 Environmental Protection Agency guidance documents relating to  
11 remedial actions.

12        Seattle shall, subject to approval of Ecology, incorporate  
13 all procedural and technical documents required to initiate the  
14 remedial action discussed above into this Order as Attachment 6  
15 within forty (40) months of the date that this Order becomes  
16 effective. Seattle shall complete the construction phase of the  
17 remedial action no later than sixty (60) months from the date that  
18 this Order becomes effective, and shall continue to operate, main-  
19 tain, and monitor the remedial action, in a manner approved by  
20 Ecology.

21        If, upon the determination of Ecology, further remedial  
22 actions are deemed necessary, Seattle and Ecology will enter into  
23 negotiations to incorporate such further actions into this Order,  
24 which action shall be subject to the requirements set forth above.



1 VI.

2 PROJECT MANAGERS

3 On or before the effective date of this Order, Ecology and  
4 Seattle shall each designate a project manager. Each project  
5 manager shall be responsible for overseeing the implementation of  
6 this Order. The project managers shall have, at a minimum, the  
7 authority to: (1) coordinate the activities of their respective  
8 project staffs and respective project contractors to ensure the  
9 implementation of this Order; (2) coordinate amendments, pursuant  
10 to Part XVIII, of all technical and procedural documents attached  
11 to this Order pursuant to Part V of this Order; (3) coordinate  
12 amendments, pursuant to Part XVII, of all dates and times specified  
13 in Part V of this Order; (4) delegate their authority to members  
14 of their respective project and contractual staffs to fulfill  
15 their obligations as specified above and elsewhere in this Order;  
16 and (5) make or authorize minor field modifications in techniques,  
17 procedures, or design utilized in carrying out this Order which are  
18 necessary to the completion of the project. Any field modifica-  
19 tions shall be approved orally by all project managers. Within  
20 seventy-two (72) hours following the modification, the project  
21 manager who requested the modification shall prepare a memorandum  
22 detailing the modification and shall provide or mail a copy of the  
23 memorandum to the other project manager.

24 To the maximum extent possible, communications between Seattle  
25 and Ecology and all documents, including reports, approvals, and  
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1 other correspondence concerning the activities performed pursuant  
2 to the terms and conditions of this Order, shall be directed  
3 through the project managers. The Ecology project manager,  
4 William E. Wright, will be Ecology's designated representative  
5 at the Site; Seattle's project manager is Joan McGilton. Either  
6 party may change their respective project manager by notifying the  
7 other party, in writing, at least ten (10) calendar days prior to  
8 the change.

9 VII.

10 ACCESS

11 A. Ecology or any state contractor or consultant shall have  
12 the authority to enter onto and freely move about all property  
13 to which Seattle has either ownership or access authority both at  
14 the Site and on all other property associated with the Site or  
15 work under this Order, at all reasonable times for the purposes  
16 of, inter alia: inspecting records, operation logs, and contracts  
17 related to the Site; reviewing the progress in carrying out the  
18 terms of this Order; conducting such tests as Ecology or the pro-  
19 ject manager may deem necessary; using a camera, sound recording,  
20 or other documentary type equipment; and verifying the data sub-  
21 mitted to Ecology by Seattle. Seattle shall permit such persons  
22 to inspect and copy all records, files, photographs, documents,  
23 and other writings, including all sampling and monitoring data, in  
24 any way pertaining to work undertaken pursuant to this Order. All  
25 parties with access to the Site pursuant to this part shall comply  
26 with approved health and safety plans.

1       B.   Seattle shall use its best efforts to gain access to or  
2 easements over property to which it does not currently have access  
3 to or easements over, under reasonable terms and conditions, for the  
4 purpose of accomplishing the requirements of this Order.  If  
5 Seattle determines that it is unable to obtain such access or  
6 easements under reasonable terms and conditions, Ecology agrees to  
7 assist Seattle, consistent with its authority, in obtaining such  
8 access or easements.

9                               VIII.

10                              PERFORMANCE

11       All work performed pursuant to this Order shall be under the  
12 direction and supervision of a qualified professional scientist or  
13 licensed engineer with experience and expertise in the cleanup of  
14 hazardous substances.  Seattle shall notify Ecology as to such  
15 scientist(s) or engineer(s), and of any contractors and subcon-  
16 tractors, to be used in carrying out the terms of this Order in  
17 advance of their involvement at the Site.

18                              IX.

19                              SAMPLING AND DATA AVAILABILITY

20       Seattle shall submit reports summarizing the data for  
21 requirements cited in Part V, above, to the project manager for  
22 Ecology.

23       Seattle shall make the results of all sampling and/or tests  
24 or other data generated by Seattle, or on Seattle's behalf, with  
25 respect to the implementation of this Order, available to Ecology  
26 and shall submit these results in progress reports as described in  
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1 Part X of this Order. Ecology will make available to Seattle the  
2 results of any sampling and/or tests or other data similarly gene-  
3 rated by Ecology, or on Ecology's behalf.

4 Each party to this Order, at the request of the other party,  
5 shall allow split or replicate samples to be taken, by the request-  
6 ing party and/or its contractor or consultant, of any samples  
7 collected pursuant to the implementation of this Order. Each  
8 party shall strive to notify the other party not less than five  
9 (5) days in advance of any sample collection activity, and in no  
10 instance shall provide less than forty-eight (48) hours notice in  
11 advance of any sample collection activity.

12 X.

13 PROGRESS REPORTS

14 Seattle shall submit to Ecology written monthly progress  
15 reports which describe the actions Seattle has taken during the  
16 previous month to implement the requirements of this Order.  
17 Progress reports shall also describe the activities scheduled to  
18 be taken during the next month. All progress reports shall be  
19 submitted by the twentieth (20th) day of each month after the  
20 effective date of this Order. The progress reports shall include  
21 a detailed statement of the manner and extent to which the require-  
22 ment and time schedules set out in the Order are being met. Unless  
23 otherwise specified, progress reports and any other documents  
24 submitted pursuant to this Order shall be addressed to:

1 William E. Wright, Project Manager  
2 Washington State Department of Ecology  
3 Hazardous Waste Cleanup Program  
4 Mail Stop PV-11  
5 Olympia, WA 98504-8711

6 XI.

7 COMMUNITY RELATIONS

8 Ecology shall maintain the lead for the community relations  
9 at the Site, and develop a community relations plan consistent  
10 with the requirements of the National Oil and Hazardous Substances  
11 Pollution Contingency Plan, 40 CFR Part 300. Seattle shall cooper-  
12 ate with Ecology in fulfilling the tasks specified in the community  
13 relations plan, which shall be incorporated into this Order as  
14 Attachment 7 within three (3) months of the date that this Order  
15 becomes effective. Seattle shall specifically:

16 1. Assist Ecology in the preparation and finalization of  
17 fact sheets, press releases, and public notices. To the extent  
18 possible, Ecology's press releases shall be prepared jointly and  
19 issued jointly. Ecology shall make reasonable efforts to accom-  
20 modate Seattle's concerns prior to release of such information;  
21 Ecology shall communicate the contents of the fact sheets, press  
22 releases, and public notices to Seattle forty-eight (48) hours,  
23 exclusive of weekends or holidays, prior to release of such infor-  
24 mation.

25 2. Distribute fact sheets referred to in 1. above;

26 3. Participate in public meetings related to the response  
27 program; and

4. Provide extra copies of appropriate documents and information for the information repository(ies).

5. To the extent possible, Seattle's press releases shall be prepared jointly and issued jointly. Seattle shall make reasonable efforts to accommodate Ecology's concerns with regard to Seattle's fact sheets, press releases, and public notices. Seattle shall communicate the contents of the fact sheets, press releases and public notices to Ecology forty-eight (48) hours, exclusive of weekends and holidays, prior to the release.

XII.

CONFIDENTIAL INFORMATION

Seattle may claim any exemption from disclosure of public records pursuant to existing law. Such a claim shall be adequately substantiated when the confidentiality claim is made. Quality-assured analytical data shall not be claimed as confidential by Seattle. Information determined to be confidential by Ecology will be afforded the protection specified by law. If no such claim accompanies the information when it is submitted to Ecology it may be made available to the public.

XIII.

## RETENTION OF RECORDS

Seattle shall preserve, during the pendency of this Order and for at least six (6) years from the date of satisfaction of this

1 Order, all records and documents in their possession, or in the  
2 possession of their employees, agents, or contractors, relevant to  
3 the implementation of this Order despite any document retention  
4 policy to the contrary. Upon request of Ecology, Seattle shall  
5 make all active, nonprivileged records available to Ecology within  
6 twenty-four (24) hours and allow access for review. All other  
7 nonprivileged records shall be made available to Ecology within a  
8 reasonable period of time.

9 XIV.

10 INDEMNIFICATION

11 A. Seattle agrees to indemnify and save and hold Ecology,  
12 its agents, employees, and contractors, harmless from any and all  
13 claims or causes of action arising from, or on account of, acts or  
14 omissions of Seattle, its officers, employees, agents, or contrac-  
15 tors in entering into and implementing this Order; provided, however,  
16 that Seattle shall not indemnify Ecology, nor save nor hold its  
17 employees, contractors, and agents, harmless from any claims or  
18 causes of action arising out of the acts or omissions of Ecology,  
19 or the employees, contractors, and agents of Ecology, in imple-  
20 menting the activities pursuant to this Order. Seattle agrees to  
21 indemnify, keep and save harmless Ecology against all damages  
22 claims, suits, liabilities, and judgments, which may in any manner  
23 accrue against Ecology as a result of Ecology's actions in assist-  
24 ing Seattle pursuant to Part VII.B of this Order.

1       B. Ecology agrees to indemnify and save and hold Seattle,  
2 its agents, employees, and contractors harmless from any and all  
3 claims or causes of action arising from, or on account of, acts or  
4 omissions of Ecology, its officers, employees, agents, or con-  
5 tractors in entering into and implementing this Order; provided,  
6 however, that Ecology shall not indemnify Seattle, nor save nor  
7 hold its employees, contractors, and agents, harmless from any  
8 claims or causes of action arising out of the acts or omissions of  
9 Seattle, or the employees, contractors, and agents of Seattle, in  
10 implementing the activities pursuant to this Order.

11                               XV.

12                               RESOLUTION OF DISPUTES

13       If Seattle objects to any Ecology notice of disapproval or  
14 decision made pursuant to this Order, it shall notify Ecology in  
15 writing of its objections within fourteen (14) days from receipt  
16 of such notice. Thereafter the parties shall confer in an effort  
17 to resolve the dispute. If agreement cannot be reached on the  
18 dispute within fourteen (14) days after receipt by Ecology of such  
19 objections, Ecology shall promptly provide a written statement of  
20 its final decision to Seattle.

21       Failure of either party to comply with a decision issued  
22 pursuant to this part shall not void this entire Order. Either  
23 party may, however, apply to a tribunal of competent jurisdiction  
24 for appropriate relief.



1 If either party fails to comply with the requirements of this  
2 part, the other party may apply to a tribunal of competent juris-  
3 diction for appropriate relief.

4 XVI.

5 ENDANGERMENT

6 In the event Ecology determines or concurs in a determination  
7 by another local, state, or federal agency that activities imple-  
8 menting, or in noncompliance, with this Order, or any other circum-  
9 stances or activities, are creating or have the potential to  
10 create a danger to the health or welfare of the people on the Site  
11 or in the surrounding area or to the environment, Ecology may  
12 order Seattle to stop further implementation of this Order for  
13 such period of time as needed to abate, control, or mitigate the  
14 danger or may petition a court of competent jurisdiction for such  
15 an order. During any stoppage of work under this part, Seattle's  
16 obligations with respect to the work ordered to be stopped shall  
17 be suspended and the time periods for performance of that work, as  
18 well as the time period for any other work dependent upon the work  
19 which stopped, shall be extended, pursuant to Part XVII of this  
20 Order, for such period of time as Ecology determines is reasonable  
21 under the circumstances.

22 In the event Seattle determines that activities undertaken in  
23 furtherance of this Order or any other circumstances or activities  
24 are creating an imminent and substantial endangerment to the people  
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1 on the Site or in the surrounding area or to the environment,  
2 Seattle may stop implementation of this Order for such periods of  
3 time necessary for Ecology to evaluate the situation and determine  
4 whether Seattle should proceed with implementation of this Order  
5 or whether the work stoppage should be continued until the danger  
6 or potential danger is abated, controlled, or mitigated. Seattle  
7 shall notify either Ecology field personnel on-site or the project  
8 manager as soon as is possible but no later than twenty-four (24)  
9 hours after such stoppage of work and provide Ecology with docu-  
10 mentation of its analysis in reaching this determination. If  
11 Ecology disagrees with Seattle's determination, it may order  
12 Seattle to resume implementation of this Order. If Ecology con-  
13 curs in the work stoppage, Seattle's obligations shall be sus-  
14 pended and the time periods for performance of that work, as well  
15 as the time period for any other work dependent upon the work  
16 which was stopped, shall be extended, pursuant to Part XVII of  
17 this Order, for such period of time as Ecology determines is  
18 reasonable under the circumstances. Any disagreements pursuant to  
19 this clause shall be resolved through the dispute resolution  
20 procedures.

21 Unless otherwise specified, all other notification of Ecology  
22 pursuant to this Order shall be made to William E. Wright at (206)  
23 438-3058.

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XVII.

EXTENSIONS OF SCHEDULES

A. Extensions shall be granted only when requests for extensions are submitted in a timely fashion and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. Extensions shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. A requested extension shall not be effective until approved by Ecology in writing.

B. The burden shall be on Seattle to demonstrate to the satisfaction of Ecology that the request for the extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but not be limited to, the following:

(1) Circumstances beyond the reasonable control and despite the due diligence of Seattle, including delays caused by Ecology;

(2) Delays which are directly attributable to any changes in permit terms or conditions, or refusals to grant a permit needed to implement the requirements of this Order if Seattle filed a timely application for the necessary permit; and

(3) Act of God, fire, flood, blizzard, extreme temperatures, or other unavoidable casualty.

However, neither increased costs of performance of the terms of this Order or changed economic circumstances may be considered circumstances beyond the reasonable control of Seattle.

C. Ecology may extend the time schedules contained in this Order for a period not to exceed ninety (90) days only, except if an extension is needed as a result of: (1) delays in the issuance of a necessary permit which was timely applied for, (2) judicial review of the issuance, non-issuance, or reissuance of a necessary permit, (3) changes in work plans, (4) seasonally related work, or (5) other circumstances deemed exceptional or extraordinary by Ecology.

## XVIII.

AMENDMENT OF ORDER

This Order may only be amended by a written agreement between Seattle and Ecology. Such amendment shall become effective upon signature of both parties.

Seattle shall submit in writing any proposal for modification to the response program or project schedule to Ecology for consideration. Ecology shall indicate its approval or disapproval of such request within ten (10) days after the request for modification is received. Any such disapproval shall state reasons for the disapproval.

Other than in Part VI, no guidance, suggestions, or comments by Ecology will be construed as relieving Seattle of its obligation to obtain formal approval as may be required by this Order.

1 No verbal communication by Ecology shall relieve Seattle of the  
2 obligations specified herein.

3 Ecology shall submit in writing any proposal for modification  
4 to the response program or project schedule to Seattle for consid-  
5 eration. Seattle shall indicate its approval or disapproval of  
6 such proposal within ten (10) days after the proposal for modifi-  
7 cation is received. Any such disapproval shall state reasons for  
8 the disapproval.

9 XIX.

10 STIPULATED PENALTIES

11 A. If Seattle fails to make a submittal to Ecology in  
12 accordance with this Order or comply with any time schedules con-  
13 tained in this Order or modified pursuant to Part XVII or XVIII  
14 of this Order, Seattle stipulates and agrees that it shall, at  
15 Ecology's discretion, be obligated to pay a civil penalty into the  
16 Hazardous Waste Cleanup and Elimination Account of the Treasury of  
17 the State of Washington an amount of one thousand dollars (\$1,000)  
18 per day for the first week of such failure or noncompliance, five  
19 thousand dollars (\$5,000) per day during the second week of such  
20 failure or noncompliance, and ten thousand dollars (\$10,000) per  
21 day for every day thereafter.

22 B. Seattle shall not be liable for payment under this part  
23 if it has submitted to Ecology a timely request for an exten-  
24 sion of schedules under Part XVII of this Order and such request  
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1 has been granted. If a timely, good faith request for extension  
2 has been denied, no penalty shall be imposed for the time period  
3 during the pendency of the extension request. Only one request  
4 for extension on any particular item will be considered in good  
5 faith, unless Ecology determines otherwise.

6 C. Upon determination by Ecology that Seattle has failed to  
7 make a submittal referenced herein, Ecology shall immediately give  
8 written notice to Seattle of the failure, specifying the provision  
9 of the Order which has not been complied with and specifying the  
10 amount of the civil penalty due pursuant to Section A above.  
11 Seattle shall pay the civil penalty within ninety (90) days of  
12 receipt of notification from Ecology that payment is due.

13 D. Payments required by this part shall accrue from the  
14 date on which the submittal was to have been made. Payments  
15 required by this part shall cease to accrue when Seattle delivers  
16 the required submittal to Ecology.

17 Nothing in this part shall be construed as prohibiting or in  
18 any way limiting the ability of Ecology to seek further civil  
19 penalties available under any applicable state or federal laws for  
20 any noncompliance with this Order, except for submittals and time  
21 schedules under this Order.

22 E. Any disagreement over the factual basis for issuance of  
23 a penalty under this section shall be resolved through the dispute  
24 resolution clause, Part XV of this Order.

1 XX.

2 RECOVERY OF EXPENSES

3 Seattle agrees to reimburse the appropriate account of the  
4 Treasury of the State of Washington, as identified by Ecology,  
5 for Ecology's reasonable and appropriate costs associated with  
6 Ecology activities at the Site conducted during the implementation  
7 of this Order. Within ninety (90) days of the end of each fiscal  
8 quarter, Ecology will submit to Seattle an itemized statement of  
9 Ecology's expenses for the previous quarter. Following receipt of  
10 the itemized statement, Seattle shall pay, within ninety (90)  
11 days, into the appropriate account of the Treasury of the State of  
12 Washington, as identified by Ecology, the required sum which sums  
13 shall not exceed a total of two hundred and fifty thousand dollars  
14 (\$250,000) per year during the term of this Order.

15 Payment of such sums shall not be construed in any way as  
16 evidence of or an admission of liability or responsibility by  
17 Seattle in any proceeding, including any cost recovery proceedings  
18 by Ecology. Seattle retains the right to seek reimbursement in  
19 whole or in part from any responsible entities for such sums  
20 expended.

21 XXI.

22 OTHER ACTIONS

23 In the event that Ecology determines that Seattle has failed  
24 to adhere to any requirement of this Order; or upon Ecology's  
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1 determination of the occurrence of the event of a release or  
2 threatened release of hazardous substances not addressed by this  
3 Order; or upon Ecology's determination that action beyond the  
4 terms of this Order is necessary to abate, control, or mitigate an  
5 imminent and substantial endangerment to the public health, wel-  
6 fare, or the environment that may be posed by this Site, Ecology  
7 may institute response measures and subject to Part XXV of this  
8 Order, subsequently pursue cost recovery action available.

9 XXII.

10 OTHER CLAIMS

11 Nothing herein is intended to release any claims, causes of  
12 action or demands in law or equity by any party against any  
13 person, entity, firm, partnership or corporation not a signatory  
14 to this Order for any liability arising out of, or relating in  
15 any way to, the disposal of waste at, or the release of any  
16 substance at, to, or from, the Kent Highlands Landfill.

17 XXIII.

18 RESERVATION OF RIGHTS

19 Seattle reserves all rights and defenses available in law  
20 and in equity regarding liability or responsibility in any pro-  
21 ceedings related to the Site, other than proceedings to enforce  
22 this Order.



This Order shall not be construed in any way as a waiver of or limitation on Ecology's or Seattle's right to seek reimbursement from any responsible party, including entities not a signatory to this Order, for investigative, response, and oversight costs incurred by Ecology or Seattle in connection with activities conducted at the Site.

## XXIV.

COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by Seattle pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

## XXV.

COVENANT NOT TO SUE AND SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Seattle's receipt of written certification from Ecology that the program outlined in this Order, as amended by any modifications made pursuant to Part XVIII of this Order, has been completed. Ecology's failure to certify completion is subject to the provisions of Part XV. Upon successful termination and satisfaction of the requirements of this Order, the work completed may be characterized as consistent with the National Oil and Hazardous Substance Pollution Contingency Plan, 40 CFR Part 300.68.

1 In consideration for Seattle's performance of the terms and  
2 conditions of this Order, Ecology agrees that during the period  
3 of performance of the terms and conditions of this Order compli-  
4 ance with this Order shall stand in lieu of any and all administra-  
5 tive, legal, and equitable remedies available to Ecology to  
6 respond to any release or threatened release of hazardous sub-  
7 stances at the Site. Nothing in this Order shall preclude Ecology  
8 from exercising any administrative, legal, or equitable remedies  
9 available to it to require, during the time period covered by this  
10 Order, additional actions by Seattle to be taken to remedy the  
11 following circumstances: (1) the presence of hazardous substances  
12 not evident on the effective date of this Order; or (2) a threat or  
13 potential threat to the public health, welfare, or the environment  
14 not evident on the effective date of this Order.

15 Ecology reserves the right to bring an action against Seattle  
16 pursuant to all applicable federal and state law for recovery of  
17 all response costs, other than those covered by Part XX of this  
18 Order, incurred by Ecology in responding to the presence of  
19 hazardous substances not evident on the effective date of this  
20 Order; and in responding to a threat or potential threat to the  
21 public health, welfare, or the environment not evident on the  
22 effective date of this Order; in the event that Seattle fails  
23 to adhere to any requirement of this Order; and for activities not  
24 covered by implementation of this Order. Seattle reserves all  
25 rights to contest any claims made by Ecology including a claim  
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1 that Seattle is a responsible or potentially responsible party  
2 under all applicable federal and state law for costs incurred by  
3 Ecology in taking response measures in connection with the Site.

4 Nothing in this Order shall preclude Ecology from asserting a  
5 cross-claim, third-party claim, counterclaim or contribution claim  
6 against Seattle in the event that Ecology is sued over any matter  
7 related to the Site.

8 Nothing herein shall waive Ecology's right to enforce this  
9 Order under ch. 90.48 RCW or any and all other applicable state  
10 and federal laws. Nothing herein shall waive Ecology's right to  
11 take any action authorized by ch. 90.48 RCW or any and all other  
12 applicable state and federal laws should Seattle fail to maintain  
13 compliance with this Order.

14 XXVI.

15 DEED NOTICE, LAND USE AND CONVEYANCE OF TITLE

16 Seattle shall not use any portion of the Site in any manner  
17 that would adversely affect the integrity of any containment  
18 system, treatment system, or monitoring system installed pursuant  
19 to this Order.

20 No conveyance of title, easement, or other interest in any  
21 portion of the Site owned by Seattle shall be consummated without  
22 provision for continued operation, maintenance, and monitoring of  
23 any containment system, treatment system, and monitoring system  
24 installed or implemented pursuant to this Order. Until the  
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1 response program described in this Order is completed, Seattle  
2 shall notify Ecology by registered mail, at the address listed in  
3 Part X of this Order, at least ninety (90) days prior to any  
4 conveyance of any interest in property that, in whole or part, is  
5 located within the Site.

6 Within thirty (30) days after issuance of this Order by  
7 Ecology Seattle shall cause to be recorded in the appropriate  
8 registry of deeds a notice and a copy of this Order with the deeds  
9 for its property at the Site, and to verify to Ecology that such  
10 recording has been completed.

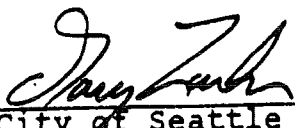
11 XXVII.

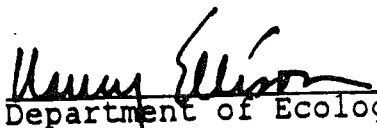
12 EFFECTIVE DATE

13 This Order is effective upon the date that Ecology executes  
14 this Order.

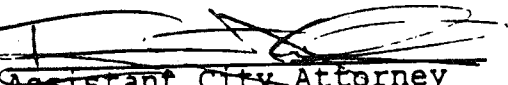
1 By their signatures hereon, the undersigned represent that  
2 they have authority to bind the parties they represent.


3 It is so agreed and ordered:

4  
5 By:  Director, Seattle Engineering Dept. May 26, 1987  
6 City of Seattle Title Date

7  Regional Manager 5/26/87  
8 Department of Ecology Title Date

9 Approved as to form:

10  
11   
12 Assistant City Attorney  
City of Seattle

13  
14   
15 Assistant Attorney General  
State of Washington