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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)
v.)
ASARCO INCORPORATED, DUNLAP)
TOWING COMPANY, ECHO LUMBER)
COMPANY, and ELF ATOCHEM)
NORTH AMERICA, INCORPORATED,)
Defendants.)

No. 92-2-11351-7
ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Affidavit of Mary Sue Wilson, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

Signed this 11th day of December, 1992.

BRIAN TOLLEFSON

Superior Court Judge

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
ASARCO INCORPORATED, DUNLAP TOWING)
COMPANY, ECHO LUMBER COMPANY, and)
ELF ATOCHEM NORTH AMERICA,)
INCORPORATED,)
)
Defendants.)

No. 92-2-11351-7

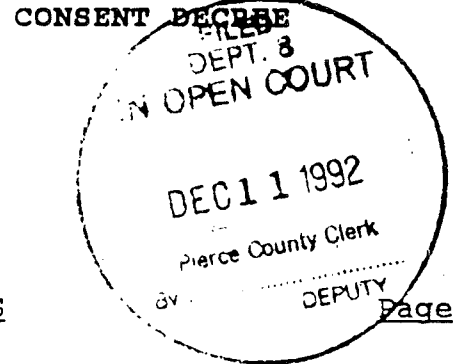


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INTRODUCTION

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3 A. In entering into this Consent Decree (Decree), the
4 mutual objective of the Washington State Department of Ecology
5 (Ecology) and ASARCO Incorporated ("Asarco"), Dunlap Towing
6 Company, Echo Lumber Company, and ELF ATOCHEM North America,
7 Inc. (hereinafter collectively Defendants) is to provide for
8 remedial action relating to releases of hazardous substances
9 at property, known as the 3009 Taylor Way Site (the Site),
10 owned by ELF ATOCHEM North America, Inc. in Pierce County,
11 Washington, the legal description of which is attached hereto
12 in Exhibit A (the Final Cleanup Action Plan). The Site is
13 located at 3009 Taylor Way in Tacoma, Washington. To
14 accomplish these objectives and to resolve the matter
15 constructively and without litigation, the Defendants consent
16 to the actions required by this Decree.

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

1 C. In signing this Decree, the Defendants agree to its
2 entry and agree to be bound by its terms.

3 D. By entering into this Decree, the parties do not
4 intend to discharge nonsettling parties from any liability
5 they may have with respect to matters alleged in the
6 complaint. The Defendants and Ecology retain the right to
7 seek reimbursement in whole or in part from any responsible
8 entities for sums expended pursuant to this Decree.

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

12 II.

13 JURISDICTION AND VENUE

14 A. This Court has jurisdiction over the subject matter
15 and over the parties pursuant to the Model Toxics Control Act
16 (MTCA), which was passed by initiative (Initiative 97) and
17 which took effect on March 1, 1989. The MTCA has been
18 codified as ch. 70.105D RCW. Venue is properly laid in Pierce
19 County, the location of the property at issue.

20 B. Authority is conferred upon the Washington State
21 Attorney General by RCW 70.105D.040(4)(a) to agree to a
22 settlement with any potentially liable person if, after public
23 notice and hearing, Ecology finds the proposed settlement
24 would lead to a more expeditious cleanup of hazardous
25 substances in compliance with cleanup standards under RCW

1 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a
2 settlement be entered as a consent decree issued by a court of
3 competent jurisdiction.

4 C. Ecology has given notice to the Defendants, as
5 provided in RCW 70.105D.020(8), of Ecology's determination
6 that they are potentially liable persons for the Site and that
7 there has been a release of hazardous substances at the Site.

8 D. This Decree is entered without prejudice to any
9 existing or future claims, or causes of action among
10 Defendants except as provided in Paragraph XXVIII. In any
11 subsequent action between or among Defendants, this Decree
12 shall not be construed as proof of liability or proof of
13 responsibility for any releases of hazardous substances or
14 cost for remedial action. This Decree shall not be admissible
15 in any judicial or administrative proceeding (other than to
16 enforce this Decree) as proof of liability or an admission of
17 any fact dealt with herein.

18 E. Ecology has determined that past activities at the
19 Site have given rise to a release of hazardous substances,
20 which requires remedial action pursuant to ch. 70.105D RCW.

21 F. The actions to be taken pursuant to this Decree are
22 necessary to protect the public health, welfare and the
23 environment.

24 G. By entering into this Decree, the Defendants agree
25 not to challenge the jurisdiction of Ecology in any proceeding

26 **CONSENT DECREE**

-5-

10-7-92

OFFICE OF THE ATTORNEY GENERAL
Ecology Division
4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

1 to enforce this Decree. The Defendants have agreed to
2 voluntarily undertake the actions specified in this Decree and
3 consent to the entry of this Decree, pursuant to ch. 70.105D
4 RCW.

5 III.

6 PARTIES BOUND

7 This Decree shall apply to and be binding upon the signa-
8 tories to this Decree (parties), their successors and assigns.
9 The undersigned representative of each party hereby certifies
10 that he or she is fully authorized to enter into this Decree
11 and to execute and legally bind such party to comply with the
12 Decree. Defendants agree to undertake all actions required by
13 the terms and conditions of this Decree and not to contest
14 state jurisdiction regarding this Decree. No change in
15 Defendants' ownership or corporate status shall alter the
16 responsibility of the Defendants under this Decree.
17 Defendants shall make a copy of this Decree available to each
18 of their agents, including all contractors and subcontractors
19 retained to perform work contemplated by this Decree, and
20 shall condition any contract for such work on compliance with
21 this Decree.

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1 IV.

2 DEFINITIONS

3 Except for as specified herein, all definitions in
4 ch. 70.105D RCW and WAC 173-340-200 apply to the terms in this
5 Decree.

6 A. Site: The Site, referred to as the 3009 Taylor Way
7 Site, is located in Pierce County, Washington.

8 B. Parties: Refers to the Washington State Department
9 of Ecology and Asarco, Dunlap Towing Company, Echo Lumber
10 Company, and ELF ATOCHEM North America, Inc.

11 C. Defendants: Refers to Asarco, Dunlap Towing
12 Company, Echo Lumber Company, and ELF ATOCHEM North America,
13 Inc.

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

19 V.

20 FINDINGS OF FACTS

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

23 The 3009 Taylor Way Site ("the Site") is situated on
24 Commencement Bay in Tacoma, Washington. The approximate
25 location and boundaries of the Site are depicted in Exhibit A

1 to this Decree. The Site consists of a 17.5 acre inactive log
2 sorting yard located on the southern bank of Hylebos Waterway
3 at 3009 Taylor Way, Tacoma, Washington 98421. The Site is
4 bounded on the east by Kaiser Ditch and the west by the East
5 Channel Ditch, both of which empty directly into Hylebos
6 Waterway.

7 1. ELF ATOCHEM North America, Inc. (formerly Pennwalt)
8 (hereinafter "ELF ATOCHEM") is the current owner of the Site.

9 2. ELF ATOCHEM purchased the Site in April 1957 from
10 Milwaukee Boom Company, which subsequently merged with Foss
11 Tug and Barge Co.

12 3. Balfour Guthrie & Co., Ltd. leased the Site from
13 July 1, 1964 through December 31, 1966, and operated a log
14 sort business on the Site.

15 4. Goodwin-Johnson (1060) Ltd., through its subsidiary,
16 Johnson-Byers, Inc., leased the Site from ELF ATOCHEM from
17 January 1, 1967 through December 31, 1977, and operated a log
18 sort business on the Site.

19 5. West Coast Orient Lumber Mills assumed the lease on
20 October 24, 1977, from Johnson-Byers, Inc., and operated a log
21 sort business on the Site from that date until October 31,
22 1978.

23 6. In 1978, Mitsui U.S.A., a creditor of West Coast
24 Orient Lumber Mills ("WCOLM"), formed a wholly owned
25 subsidiary, named West Coast Lumber Operations Company

1 ("WCLO Co."). WCLO Co. took over the lease from WCOLM on
2 November 1, 1978, and continued to lease the Site through
3 November 1, 1983. WCLO Co. changed its name to Portac, Inc.
4 on August 15, 1983.

5 7. Dunlap Towing Company subleased the Site from
6 WCLO Co. from January 1, 1979 through November 1, 1983, and
7 operated a log sort business on the Site.

8 8. Echo Lumber Company leased the Site from ELF ATOCHEM
9 from August 1, 1984 through September 1986, and operated a log
10 chipping and processing business at the Site.

11 9. Asarco generated slag material ("Slag") which was
12 deposited at the Site between 1974 and 1986 for use as road
13 bed material.

14 10. B & L Trucking Company transported Slag to the Site
15 for disposal between 1974 and 1986.

16 11. Between 1981 and 1985, Ecology conducted studies at
17 and in the vicinity of the Site, the specific purpose of which
18 was to locate the sources of suspected contamination.

19 1981: In 1981 Ecology sampled surface water runoff at
20 the Site and in 1987 determined that the metals
21 contamination levels were several orders of
22 magnitude above United States Environmental
23 Protection Agency (EPA) 1986 Quality Criteria

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for Water¹: zinc 120,000 ppb; arsenic 140,000 ppb; lead 81,000 ppb; nickel 4,400 ppb; and copper 90,000 ppb.

1983-84: Ecology's survey (Norton and Johnson, Assessment of Log Sort Yards as Sources of Metals to Commencement Bay Waterways) found metals in Site runoff²: zinc 1,425 ppb and 315 ppb, copper 183 ppb and 342 ppb, arsenic 3,800 ppb and 2,680 ppb, and lead 171 ppb and 167 ppb in Site runoff. The Norton and Johnson study theorized that the cause of the contamination was the use of Slag as yard ballast. According to this theory, as Slag became pulverized by heavy equipment, metals within the Slag were mobilized in a combined acidic extraction by woodwaste decomposition products and stormwater. Norton and Johnson documented the existence of at least 1,000 tons of Slag on the Site.

1985: The Commencement Bay Nearshore/Tideflats Remedial Investigation (RI)
Determined sediments at the head of Hylebos Waterway to be one of the most heavily contami-

¹ Values are for Total Metals analysis.

² Values are for Total Metals analysis.

1 nated areas in Commencement Bay. The RI
2 further identified the Site as a significant
3 contributor of metals to these Hylebos
4 sediments and a potential source of phenol,
5 4-methyl-phenol, isopimaradiene, and metals to
6 Kaiser and East Channel ditches.

7 12. A series of field investigations were conducted at
8 the Site between 1987 and 1990. These investigations
9 included, in order of their performance, the Focused
10 Feasibility Study ("FFS") (1987), the Remedial Investigation
11 ("RI") (1988-1989), the Wood Waste Expedited Response
12 Investigation (1989-1990), and the FS Supplement Field
13 Investigation (1990). The purpose of these investigations
14 to characterize site conditions with regard to the quality of
15 soils, surface water runoff, and ground water.

16 Field work consisted of surface and subsurface soil
17 sampling, surface and ground water sampling, and sampling of
18 on-site residuals (wood waste and slag).

19 The major findings and conclusions of the various field
20 investigations are summarized as follows:

21 12.1 On-Site Residuals. Approximately 40,000 cubic yards
22 of wood waste remain on site in several piles. In 1989, as
23 part of an expedited response action, the wood waste was
24 screened to separate coarse material and metal debris. The
25 logs, stumps, large pieces of wood, and metal debris are

1 currently stored on-site in separate piles from the fine wood
2 waste.

3 Localized deposits of Slag estimated at 1,198 cubic yards
4 are located within the upper five feet of the soil column in
5 three discrete areas of the Site. Concentrated Slag deposits
6 are not widespread across the Site.

7 12.2 Ground Water Quality. Site hydrogeology is
8 characterized by a shallow unconfined aquifer lying above a
9 layer of clayey silt. The underlying clay layer acts as an
10 aquitard to prevent vertical migration. The shallow
11 unconfined ground water moves toward the northwest across the
12 Site to the Hylebos Waterway at an estimated rate of 7 to
13 24 ft./year. The shallow ground water at the Site is not a
14 current or potential future source of drinking water due to
15 its natural salinity.

16 Six shallow ground water monitoring wells were installed
17 at the Site. Shallow ground water collected from these wells
18 contains no detectable concentrations of organics of interest.
19 Dissolved arsenic was found in only one well, at a
20 concentration of 0.19 mg/l. Dissolved zinc was found in the
21 wells at low levels ranging from below the detection limit to
22 0.23 mg/l. Other dissolved metals of interest were not
23 detected.

24 Fill aquifer waters discharge to marine waters. Deep
25 aquifers have not been determined to be contaminant pathways.

1 12.3 Soil Quality. Most on-site soils have not been
2 appreciably impacted by metals or organics present in the Slag
3 and wood waste. Soils in the immediate vicinity of the
4 concentrated slag deposits located in three discrete locations
5 at the Site have elevated metal concentrations. The range of
6 total metal concentrations found in soil in the vicinity of
7 concentrated slag deposits are 16 to 1,600 mg/kg-arsenic, 26
8 to 1,500 mg/kg-copper, 2.5 to 980 mg/kg-lead, and 56 to
9 1,900 mg/kg-zinc. An as yet undefined quantity (estimated at
10 10,000 cubic yards) of soils exceeds soil cleanup levels for
11 the Site. Soil leaching tests conducted during the RI
12 indicate that the metals contained in on-site soils are not
13 easily dissolved from the soil matrix. Low metal
14 concentrations in the shallow ground water support this
15 observation.

16 12.4 Surface Water Quality. Surface water discharges
17 from the site from eight drainage subbasins during rainfall
18 events of sufficient magnitude. By far the highest metals
19 concentrations in runoff exist in one of the eight drainage
20 basins. Metals concentrations in runoff from the remaining
21 seven drainage basins are all much lower. The range in runoff
22 water quality from these seven basins for each of the
23 parameters of interest is as follows:

| | | |
|---|----------------|--------------------|
| 1 | Organics | |
| 2 | 4-Methylphenol | <10 to 260 ug/l |
| | Phenol | <10 to 61 ug/l |
| 3 | Metals (total) | |
| 4 | Antimony | 0.01 to 0.1 mg/l |
| | Arsenic | 0.2 to 1.7 mg/l |
| | Copper | 0.04 to 0.1 mg/l |
| 5 | Lead | <0.02 to 0.06 mg/l |
| 6 | Zinc | 0.06 to 0.6 mg/l |

7 The water quality of runoff from the eighth drainage
8 basin, draining an area of known slag deposits, had the
9 following range of concentrations:

| | | |
|----|----------------|--------------------|
| 10 | Organics | |
| 11 | 4-Methylphenol | 2,500 ug/l |
| | Phenol | 700 ug/l |
| 12 | Metals (total) | |
| 13 | Antimony | 0.06 to 1.3 mg/l |
| | Arsenic | 5.46 to 17.0 mg/l |
| | Copper | 0.2 mg/l |
| 14 | Lead | <0.02 to 0.06 mg/l |
| | Zinc | 0.06 to 0.6 mg/l |

15 12.5 Woodwaste Extensive metals sampling was performed
16 by Elf Atochem on the roughly 40,000 cubic yards of woodwaste
17 remaining on the site in a report entitled, "Results of
18 Sampling and Analysis of Processed Wood Material from the
19 Expedited Response Action at the 3009 Taylor Way Site, Tacoma,
20 Washington" of February 1990. Total arsenic and EP Toxicity
21 testing for arsenic for the five (5) piles of woodwaste on
22 site yielded the following results:

26

Woodwaste Pile Arsenic Analyses

| <u>Pile Number</u> | <u>Volume</u> | <u>Total Arsenic Average Value (mg/kg)</u> | <u>EP Toxicity Arsenic (mg/l)</u> |
|--------------------|---------------|--|-----------------------------------|
| 1 | 8,800 | 235 | 0.44 |
| 2 | 11,000 | 185 | 0.62 |
| 3 | 18,700 | 210 | 0.65 |
| 4 | 3,900 | 60 | 0.34 |
| 5 | 1,800 | 173 | 0.09 |

The hazardous/dangerous waste designation limit is 5 mg/l for the toxicity characteristic leaching procedure per WAC 173-303-090(8). All test results are well below this limit. Chapter 173-303 WAC also regulates carcinogens per WAC 173-303-103. The limit for carcinogens is 100 mg/kg. The acreage concentration of arsenic in the woodwaste is above this limit. Therefore, if site wastes are removed from the area of contamination they must be managed as dangerous waste.

In 1991 the FS was completed by ELF Atochem and accepted by Ecology.

13. A final Cleanup Action Plan (CAP) (Exhibit A) was issued in December 1991 by Ecology based on ELF ATOCHEM's Draft and Final Feasibility Study Reports. The CAP, which has been subject to full public review per WAC 173-340-600 includes, inter alia, a Selected Cleanup Action for implementation at the Site and sets Remedial Action Objectives for site soil/fill and site groundwater.

1 14. On April 6, 1992 the Thurston County Superior Court
2 approved a Stipulation Amending Consent Decree (Thurston
3 County Cause No. 87-2-01198-1), agreed to by ELF ATOCHEM and
4 Ecology, pursuant to which ELF ATOCHEM has submitted, or will
5 submit, inter alia, the following Workplan Deliverables:
6 Engineering Design Report, Construction Plans and
7 Specifications, and Operation and Maintenance Plan. The
8 purpose of this Stipulation was to provide plans and designs
9 for construction, operation and maintenance of the Selected
10 Cleanup Action specified in the CAP (Exhibit A). ELF ATOCHEM
11 submitted the Public Participation Plan and Preliminary
12 Containment Design and Specifications to Ecology in January,
13 1992. These were approved by Ecology in February, 1992. The
14 Engineering Design Report, Confirmational and Performance
15 Monitoring Plan, Construction Quality Assurance Plan, and
16 Construction Plans and Specifications were submitted by
17 Elf Atochem to Ecology on May 4, 1992 pursuant to Stipu-
18 lated Amendment to Consent Decree (Thurston County Cause
19 No. 87-2-001198-1). These were approved by Ecology on May 21,
20 1992. On September 4, 1992, ELF ATOCHEM submitted to Ecology
21 an Operation and Maintenance Plan ("O&M Plan") meeting the
22 requirements of WAC 173-340-400(4)(c) and 410. Ecology
23 approved this O&M Plan on September 30, 1992.

24 15. This Decree sets forth measures necessary to ensure
25 the protection of public health, welfare and the environment.

1 Ecology has determined that the Defendants are potentially
2 liable persons for purposes of implementing the remedial
3 actions described below.

4 VI.

5 WORK TO BE PERFORMED

6 This Consent Decree contains a program designed to
7 protect the public health and welfare and the environment
8 from the known release, or threatened releases, of hazar-
9 dous substances at, on, or from the Site. Exhibits A (Final
10 CAP) and B (Declaration of Restrictive Covenants) are made
11 integral and enforceable parts of this Consent Decree. The
12 term "Consent Decree" shall include Exhibits A and B whenever
13 used in this document. Except where performance by another
14 party is expressly provided for, the Defendants commit to
15 implement the requirements of Exhibit A (Final Cleanup Action
16 Plan) and the Defendant ELF ATOCHEM commits to implement the
17 requirements of Exhibit B (Declaration of Restrictive
18 Covenant).

19 Any changes to the work to be performed will be
20 documented. The Defendants or their representative will
21 contact Ecology to propose any such changes. Initial contact
22 and approval may be accomplished either verbally or in
23 writing. Proposals for changes to the work to be performed
24 must include justification for the changes proposed. If
25 initial contact is verbal, both the Defendants' request and

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4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

1 Ecology's approval or disapproval must be documented in
2 writing. Any disagreement shall be addressed through the
3 dispute resolution procedures described in Section XIV of this
4 Decree.

5 A. Deliverables and Tasks. The Defendants shall
6 implement the Workplan Deliverables and Tasks listed below
7 within the Deliverables Due Dates listed therewith:

8 Phase 1 - Construction of Selected Due Date:
9 Cleanup Action.

10 As per schedule set
11 forth in the
12 Engineering Design
13 Report, once approved
14 by Ecology.

15 Construction shall be performed in accordance with, and
16 shall execute the requirements of, the Ecology-approved
17 Engineering Design Report and Construction Plans and
18 Specifications.

19 All aspects of construction shall be performed under the
20 supervision of a professional engineer registered in the state
21 of Washington or a qualified technician, under the direct
22 supervision of a professional engineer registered in the state
23 of Washington. During construction, detailed records shall be
24 kept of all aspects of the work performed, including construc-
25 tion techniques and materials used, items installed, and tests
26 and measurements performed.

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Photographic documentation of all major and critical construction phases shall be performed by the Defendants. An extra copy of the photos shall be submitted to Ecology along with the project record drawings.

During construction of the landfill cap segment of the remedial action, the Defendants' project coordinator or his designee will orally make semi-weekly reports to the Ecology project manager or his/her on-site supervisor regarding progress. Any significant problems, deviation from plans, or emergency conditions will be reported to Ecology immediately.

Phase 2 - Operation and Maintenance of Remedial Action System.

Due Date:

Upon completion of cleanup action construction.

Operation and maintenance of remedial action system shall be in conformance with, and shall execute the applicable requirements of, the following Ecology-approved Workplan Deliverables: Engineering Design Report, Construction Plans and Specifications, and Operation and Maintenance Plan.

Phase 3 - Confirmational Monitoring.

Due Date:

Upon completion of cleanup action construction.

This task is to be performed in conformance with the Ecology approved Confirmational Monitoring Plan.

1 Phase 4 - Project Record Drawings.

Due Date:

2 Two months after
3 completion of cleanup
4 action construction.

4 At the completion of construction, the engineer
5 responsible for the supervision of construction shall prepare
6 Project Record Drawings and a report documenting all aspects
7 of facility construction.

8 The report shall also contain an opinion from the project
9 manager and the engineer, based on testing results and inspec-
10 tions, as to whether the cleanup action has been constructed
11 in substantial compliance with the plans and specifications
12 and related documents.

13 B. Ecology Approvals. The due dates for each of the
14 deliverables required above, and the Parties' understanding
15 that on-site construction of the remedial work can be
16 completed during the summer months of 1992, are based upon an
17 assumption that Ecology will complete its review of drafts, or
18 of previous submissions by ELF ATOCHEM which are contingent
19 upon completion of subsequent submissions, within ten (10)
20 working days from receipt of such drafts or submissions. In
21 the event that Ecology is unable to complete its review within
22 ten (10) working days of receipt by Ecology, the dates for
23 delivery of any subsequent Workplan Deliverables will be
24 extended by the additional time required for Ecology's review.

1 Ecology's notification that it has completed its review may
2 by written FAX.

3 VII.

4 DESIGNATED PROJECT COORDINATORS

5 On or before the entry of this Decree, Ecology and Defen-
6 dants shall each designate a project coordinator. Each
7 project coordinator shall be responsible for overseeing the
8 implementation of this Decree. The Ecology project
9 coordinator will be Ecology's designated representative at the
10 Site. To the maximum extent possible, communications between
11 Ecology and the Defendants and all documents, including
12 reports, approvals, and other correspondence concerning the
13 activities performed pursuant to the terms and conditions of
14 this Decree, shall be directed through the project coordina-
15 tors. The project coordinators may designate working level
16 staff contacts for all or portions of the implementation of
17 the remedial work required by this Decree.

18 Any party may change its respective project coordinator.
19 To the extent possible, written notification shall be given to
20 the other party, in writing, at least ten (10) calendar days
21 prior to the change.

22 The project coordinator for Ecology is Dom Reale at the
23 following address:

1 Dom Reale, P.E.
2 Southwest Regional Office
3 Department of Ecology
4 P.O. Box 47775
5 7272 Cleanwater Lane
6 Olympia, WA 98504-7775

7 The project coordinator for the purposes of carrying out
8 the tasks set forth in paragraph VI is Doug Loutzenhiser, at
9 the following address:

10 Doug Loutzenhiser
11 Elf Atochem North America, Inc.
12 900 First Ave.
13 P.O. Box 1536
14 King of Prussia, PA 19406-0018

15 The representative for Asarco is Thomas Aldrich, at the
16 following address:

17 Thomas Aldrich
18 Asarco
19 P.O. Box 1677
20 Tacoma, WA 98401-1677

21 The representative for Dunlap Towing is Charles K.
22 Douthwaite, at the following address:

23 Charles K. Douthwaite
24 Eisenhower & Carlson
25 1200 First Interstate Plaza
26 1201 Pacific Avenue
Tacoma, WA 98402-4395

Ecology shall provide copies of all documents, reports,
approvals and other correspondence concerning activities, to
Asarco's representative and Dunlap's representative, as well
as to the Project Coordinator.

VIII.

PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer, qualified hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. For all purposes of this Decree, ENSR Consulting & Engineering is approved as having these qualifications.

IX.

ACCESS

Ecology or any Ecology authorized representative 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 and copying all records, operation logs, plans, specifications, engineering designs, files, photographs, documents, and other writings, including all sampling and monitoring data, related to the work being performed pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree; conducting such tests or collecting samples as Ecology or the project coordinator 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 Defendants. In the event that neither Defendants' project coordinator nor an employee of Defendants' consultants is

1 present on the Site, or in the event Ecology wishes to conduct
2 sampling, Ecology will, except in emergency situations,
3 provide Defendants' project coordinator with five (5) days'
4 notice prior to entering the Site. Upon request, Ecology
5 shall split any samples taken during an inspection unless the
6 Defendants fail to make available a representative for the
7 purpose of splitting samples. All parties with access to the
8 Site pursuant to this paragraph shall comply with reasonable
9 health and safety requirements.

10 ELF ATOCHEM shall sign the Declaration of Restrictive
11 Covenants (Exhibit B), which allows implementation of the
12 cleanup action and long-term site monitoring and maintenance,
13 and any other work required pursuant to this Decree.

14 X.

15 SAMPLING, DATA REPORTING AND AVAILABILITY

16 The Defendants shall make the results of all sampling,
17 laboratory reports, and/or test results generated by them, or
18 on their behalf, with respect to the implementation of this
19 Decree available to Ecology and shall submit these results in
20 progress reports submitted in accordance with paragraph XI
21 (Progress Reports).

22 At the request of Ecology, the Defendants shall allow
23 split or duplicate samples to be taken by Ecology and/or its
24 authorized representatives of any samples collected by the
25 Defendants pursuant to the implementation of this Decree.

26 **CONSENT DECREE**

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1 Except in the event of an emergency, the Defendants shall
2 notify Ecology two (2) working days in advance of any sample
3 collection activity. Ecology shall allow split or duplicate
4 samples to be taken by the Defendants, or their authorized
5 representatives, of any samples collected by Ecology pursuant
6 to the implementation of this Decree. Except in the event of
7 an emergency, Ecology shall notify the Defendants two (2)
8 working days prior to conducting any sample collection
9 activity.

10 XI.

11 PROGRESS REPORTS

12 Defendants shall submit to Ecology written monthly
13 progress reports which describe the actions they have taken
14 during the previous month to implement the requirements of
15 this Decree including:

16 A. A list of on-site activities that have taken place
17 during the month;

18 B. Detailed description of any deviations from required
19 tasks not otherwise documented in project plans or amendment
20 requests;

21 C. Description of all deviations from the schedule
22 during the current month and any planned deviations in the
23 upcoming month;

24

25

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1 D. For any deviations in schedule, a plan for
2 recovering lost time and maintaining compliance with the
3 schedule;

4 E. All validated sampling data (including laboratory
5 analysis) received by the Defendant during the past month and
6 an identification of the source of the sample;

7 F. A list of deliverables for the upcoming month if
8 different from the schedule;

9 G. A description of the activities scheduled to be
10 taken during the next month.

11 All progress reports shall be submitted by the fifteenth
12 (15th) day of the month following the month for which they are
13 written, commencing after the effective date of this Decree.
14 The progress reports shall include a detailed statement of the
15 manner and extent to which the requirements and time schedules
16 set out in the Decree are being met. Unless otherwise speci-
17 fied, progress reports and any other documents submitted
18 pursuant to this Decree shall be sent by certified mail,
19 return-receipt requested, to Ecology's project coordinator.

20 After completion of remedial action construction, the
21 reports shall be due quarterly for a period of two (2) years
22 and, thereafter, annually.

23 During performance of Confirmational Monitoring,
24 Defendants shall submit results to Ecology as part of the
25 progress reports. These reports shall include validated data

1 submitted to Ecology for verification of compliance with
2 cleanup standards.

3 In the event that validated data indicates exceedances of
4 the cleanup levels set for this Site, or where validated data
5 indicates other unanticipated results, Defendants shall report
6 this information to Ecology immediately.

7 XII.

8 RETENTION OF RECORDS

9 Defendants shall preserve, during the pendency of this
10 Decree and for ten (10) years from the date of completion of
11 construction, all records, reports, documents, and underlying
12 data prepared in connection with the implementation of this
13 Decree and shall insert in contracts with project contracto
14 a similar records retention requirement. Upon request of
15 Ecology, each Defendant shall make all non-privileged, non-
16 archived records within its possession and control available
17 to Ecology and allow access for review. All archived records
18 shall be made available to Ecology within a reasonable period
19 of time. Ecology agrees, to the extent permitted by law, to
20 maintain the confidentiality of any proprietary information
21 requested.

1 XIII.

2 TRANSFER OF INTEREST IN PROPERTY

3 No voluntary or involuntary conveyance or relinquishment
4 of title, easement, leasehold, or other interest in any por-
5 tion of the Site shall be consummated without provision for
6 continued operation and maintenance of any containment system,
7 treatment system (if any), institutional control measure, and
8 monitoring system installed or implemented pursuant to this
9 Decree.

10 Prior to transfer of any legal or equitable interest in
11 all or any portion of the property, the Defendant involved in
12 the transfer shall serve a copy of this Decree and the
13 attached Exhibits upon any prospective purchaser, lessee,
14 transferee, assignee, or other successor in interest of the
15 property; and, at least thirty (30) days prior to any
16 transfer, said Defendant shall notify Ecology of said
17 contemplated transfer.

18 XIV.

19 RESOLUTION OF DISPUTES

20 A. In the event any dispute arises under any provision
21 of this Consent Decree, the parties shall utilize the dispute
22 resolution procedure set forth below.

23 (1) In the event the dispute relates to an approval,
24 disapproval, proposed modification or other written decision
25 by Ecology, the Defendants' project coordinator has fourteen

1 (14) days from receipt of the Ecology project coordinator's
2 written decision within which to notify Ecology's project
3 coordinator of its objection to the decision. In all other
4 cases, the project coordinator for the party requesting
5 dispute resolution shall make such request within a reasonable
6 time of determining that such dispute exists.

7 (2) The parties' project coordinators shall then confer
8 in an effort to resolve the dispute. If the project
9 coordinators cannot resolve the dispute within seven (7) days,
10 Ecology's project coordinator shall issue a written decision.

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

16 (4) Ecology's Program Manager shall conduct a review of
17 the dispute and shall issue a written decision regarding the
18 dispute within seven (7) days of the Defendants' project
19 coordinator's request for review. The Program Manager's
20 decision shall be Ecology's final decision on the disputed
21 matter.

22 B. If Ecology's final written decision is unacceptable
23 to Defendants, the Defendants have the right to submit the
24 dispute to the Court for resolution. The parties agree that
25 one judge should retain jurisdiction over this case and shall,

1 as necessary, resolve any dispute arising under this Decree.
2 In the event Defendants present an issue to the Court for
3 review, the Court shall review the action or decision of
4 Ecology on the basis of whether such action or decision was
5 arbitrary and capricious and render a decision based on such
6 standard of review.

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

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

17 XV.

18 AMENDMENT OF CONSENT DECREE

19 This Decree may only be amended by a written stipulation
20 between the parties, entered by the Court, or by Court order.
21 Such amendment shall become effective upon entry by the Court.
22 Agreement to amend shall not be unreasonably withheld by any
23 party to the Decree.

24 Defendants shall submit any request for an amendment to
25 Ecology for approval. Ecology shall indicate its approval or

26 **CONSENT DECREE**

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1 disapproval within fifteen (15) working days after the request
2 for amendment is received. Reasons for the disapproval shall
3 be stated in writing. If Ecology does not agree to any
4 proposed amendment, the disagreement may be addressed through
5 the dispute resolution procedures described in Section XIV of
6 this Decree. No guidance, suggestions, or comments by
7 Ecology will be construed as relieving Defendants of their
8 obligation to obtain formal approval as may be required by
9 this Decree. No verbal communication by Ecology shall relieve
10 Defendants of the obligations specified herein.

11 Ecology shall notify Defendants of any Ecology requested
12 amendment and, within fifteen (15) working days of receipt of
13 such a request, the Defendants shall, in writing, indicate
14 their agreement or disagreement and, if they disagree, the
15 rationale. If Defendants do not agree with any Ecology
16 proposed amendment, the disagreement may be addressed through
17 the dispute resolution procedures described in Section XIV of
18 this Decree.

19 XVI.

20 EXTENSION OF SCHEDULE

21 A. An extension of schedule shall be granted only when
22 a request for an extension is submitted in a timely fashion,
23 generally at least 15 days prior to expiration of the deadline
24 for which the extension is requested, and good cause exists
25 for granting the extension. All extensions shall be requested

1 in writing. The request shall specify the reason(s) the
2 extension is needed.

3 An extension shall only be granted for such period of
4 time as Ecology or the Court, in the event the parties are
5 before the Court as a result of employing the process outlined
6 in Section XIV (Resolution of Disputes), determines is
7 reasonable under the circumstances. A requested extension
8 shall not be effective until approved by Ecology or the Court.
9 Ecology shall act upon any written request for extension in a
10 timely fashion. It shall not be necessary to formally amend
11 this Decree pursuant to Section XV when a schedule extension
12 is granted.

13 B. The burden shall be on the Defendants to demonstrate
14 to the satisfaction of Ecology that the request for such
15 extension has been submitted in a timely fashion and that good
16 cause exists for granting the extension. Good cause includes,
17 but is not limited to, the following.

18 (1) Circumstances beyond the reasonable control and
19 despite the due diligence of Defendants including delays
20 caused by unrelated third parties or Ecology, such as (but not
21 limited to) delays by Ecology in reviewing, approving, or
22 modifying documents submitted by Defendants; or

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

25 (3) Endangerment as described in Section XVII.

1 However, neither increased costs of performance of the
2 terms of the Decree nor changed economic circumstances shall
3 be considered circumstances beyond the reasonable control of
4 Defendants.

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

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

10 (2) Delays caused by conditions contained in a permit;

11 (3) Other circumstances deemed exceptional or
12 extraordinary by Ecology; or

13 (4) Endangerment as described in Section XVII.

14 Ecology shall give Defendants written notification in a
15 timely fashion of any extensions granted pursuant to this
16 Decree.

17 XVII.

18 ENDANGERMENT

19 In the event Ecology determines or concurs in a determin-
20 ation by another local, state, or federal agency that activit-
21 ies implementing or in noncompliance with this Decree, or any
22 other circumstances or activities, are creating or have the
23 potential to create a danger to the health or welfare of the
24 people on the Site or in the surrounding area or to the
25 environment, Ecology may order Defendants to stop further

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

11 In the event Defendants determine that activities under-
12 taken in furtherance of this Decree or any other circumstances
13 or activities are creating a danger to the health and welfare
14 of people on the Site or in the surrounding area or to the
15 environment, Defendants may stop implementation of this Decree
16 for such periods of time necessary for Ecology to evaluate the
17 situation and determine whether Defendants should proceed with
18 implementation of the Decree or whether the work stoppage
19 should be continued until the danger is abated. Defendants
20 shall notify either Ecology field personnel on-site or the
21 project coordinator as soon as is possible, but no later than
22 twenty-four (24) hours after such stoppage of work, and pro-
23 vide Ecology with documentation of their analysis in reaching
24 this determination. If Ecology disagrees with Defendants'
25 determination, it may order Defendants to resume implementa-

1 tion of this Decree. If Ecology concurs in the work stoppage,
2 Defendants' obligations shall be suspended and the time period
3 for performance of that work, as well as the time period for
4 any other work dependent upon the work which was stopped,
5 shall be extended, pursuant to Section XVI of this Decree, for
6 such period of time as Ecology determines is reasonable under
7 the circumstances. Any disagreements pursuant to this clause
8 shall be resolved through the dispute resolution procedures in
9 Section XIV.

10 XVIII.

11 OTHER ACTIONS

12 Ecology reserves its rights to institute remedial
13 action(s) at the Site, and subsequently pursue cost recovery
14 and to issue orders and/or penalties pursuant to available
15 statutory authority, under the following circumstances:

16 1. Where Defendants fail to adhere to any requirement
17 of this Decree and, after written notice, fail to come into
18 compliance;

19 2. In the event or upon the discovery of a release or
20 threatened release not addressed by this Decree, which
21 Defendants, after written notice, fail to address;

22 3. Upon Ecology's determination that action beyond the
23 terms of this Decree is necessary to abate an emergency situa-
24 tion which threatens the public health or welfare or the envi-
25

1 ronment and which Defendants, after written notice, fail to
2 address; or

3 4. Upon the occurrence or discovery of facts or
4 conditions beyond the scope of this Decree as to which
5 Ecology would be empowered to perform any remedial action
6 or to issue an order and/or penalty, or to take any other
7 enforcement action under applicable laws other than the Model
8 Toxics Control Act, and which Defendants, after written
9 notice, fail to address.

10 Ecology reserves all rights regarding the injury to,
11 destruction of, or loss of natural resources resulting from
12 the release or threatened release of hazardous substances from
13 the 3009 Taylor Way Site.

14 Ecology reserves the right to take any enforcement action
15 whatsoever, including a cost recovery action, against
16 potentially liable persons not party to this Decree.

17 XIX.

18 INDEMNIFICATION

19 Defendants agree to indemnify and save and hold the State
20 of Washington, its employees, and agents harmless from any and
21 all claims or causes of action for death or injuries to
22 persons or for loss or damage to property arising from or on
23 account of acts or omissions of Defendants, their officers,
24 employees, agents, or contractors in entering into and
25 implementing this Decree. Such indemnity shall not extend to

1 citizen suits or other actions brought challenging the
2 adequacy of the Cleanup Action Plan. The Defendants shall not
3 indemnify the State of Washington nor save nor hold its
4 employees and agents harmless from any claims or causes of
5 action arising out of the acts or omissions of the State of
6 Washington, or the employees or agents of the State, in
7 implementing activities pursuant to this Decree.

8 XX.

9 COMPLIANCE WITH APPLICABLE LAWS

10 Defendants assert that the work performed to date by
11 Defendants has been carried out consistent with the National
12 Contingency Plan ("NCP"), 40 C.F.R. Pt. 300.

13 All actions carried out by Defendants pursuant to this
14 Decree shall be conducted in accordance with all applicable
15 federal, state, and local laws and requirements, including
16 requirements, if any, to obtain necessary permits.

17 All facilities used by Defendants for the off-site treat-
18 ment, storage, or disposal of hazardous wastes removed from
19 the Site must be in compliance with the applicable require-
20 ments of the Resource Conservation and Recovery Act, as
21 amended in November 1984, 42 U.S.C. 6901, et. seq.; and
22 ch. 70.105 RCW. Defendants must designate in a report to
23 Ecology any facilities that Defendants propose to use for such
24 off-site storage, treatment, or disposal, and Ecology must
25 give prior approval for the use of such facilities.

XXI.

REMEDIAL AND INVESTIGATIVE COSTS

The Defendants agree to pay Ecology's past oversight costs in the amount of \$38,856.53 for oversight performed through June 30, 1992. This amount shall be due to Ecology within 60 days of entry of this Decree.

The Defendants also agree to pay costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, travel costs, laboratory costs, contractor fees, and employee benefit packages; and Ecology indirect costs of direct activities. The Defendants agree to pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement may result in interest charges.

1 Nothing in this section shall preclude Ecology or other
2 federal, state or local governmental entities from seeking to
3 recover other costs incurred by such entities for which
4 Defendants are liable.

5 XXII.

6 IMPLEMENTATION OF REMEDIAL ACTION

7 If Ecology determines that Defendants have failed without
8 good cause to implement the remedial action, Ecology may,
9 after notice to Defendants, perform any or all portions of the
10 remedial action that remain incomplete. Such action may be
11 the subject of the Dispute Resolution Process (Section XIV).
12 Ecology reserves all rights under federal, state, or local law
13 to seek cost recovery for costs expended in performing such
14 remedial action.

15 XXIII.

16 FIVE YEAR REVIEW

17 As remedial action, including groundwater monitoring,
18 continues at the Site, the parties agree to review the
19 progress of remedial action at the Site, and to review the
20 data accumulated as a result of site monitoring as often as is
21 necessary and appropriate under the circumstances. At least
22 every five years during the term of this Decree, the parties
23 shall meet to discuss the status of the Site and the need, if
24 any, of further remedial action at the Site. Ecology reserves

1 the right to require further remedial action at the Site
2 pursuant to Section XVIII of this Decree.

3 XXIV.

4 PUBLIC PARTICIPATION

5 Ecology shall maintain the responsibility for public
6 participation at the Site. However, Defendants shall
7 cooperate with Ecology and shall:

8 A. Prepare drafts of public notices and fact sheets at
9 important stages of the remedial action, such as the
10 completion of the remedial action. Ecology will finalize
11 (including editing if necessary) and distribute such fact
12 sheets and prepare and distribute public notices of Ecology's
13 presentations and meetings. Ecology will make available to
14 Defendants for review any final edited fact sheets and public
15 notices;

16 B. Notify Ecology's project coordinator prior to the
17 issuance of all press releases and fact sheets, and before
18 major meetings with the interested public and local
19 governments. Likewise, Ecology shall notify Defendants prior
20 to the issuance of all press releases and fact sheets, and
21 before major meetings with the interested public and local
22 governments;

23 C. Participate in public presentations on the progress
24 of Remedial Action at the Site. Participation may be through
25

1 attendance at public meetings to assist in answering questions
2 or as a presenter;

3 D. In cooperation with Ecology, arrange and/or continue
4 information repositories to be located at the Tacoma Public
5 Library, Main Branch, Northwest Room, 1102 Tacoma Avenue
6 South, Tacoma, Washington 98402-2006; at Citizens for a
7 Healthy Bay, 771 Broadway, Tacoma; at Asarco Information
8 Center, 5311 N. Commercial Street, Ruston, Washington 98407-
9 3111; and at Ecology's Southwest Regional Office in Tumwater.
10 At a minimum, copies of all public notices, fact sheets, and
11 press releases, all quality assured groundwater, surface
12 water, soil, sediment, and air monitoring data, remedial
13 action plans, supplemental remedial planning documents, and
14 all other similar documents relating to performance of the
15 remedial action required by this Decree shall be promptly
16 placed in these repositories.

17 XXV.

18 COVENANT NOT TO SUE

19 In consideration of Defendants' compliance with the terms
20 and conditions of this Decree, the state agrees that
21 Defendants are eligible for a Covenant Not to Sue consistent
22 with RCW 70.105D.040(4)(c). Compliance with this Decree shall
23 stand in lieu of any and all administrative, legal, and
24 equitable remedies and enforcement actions available to the
25

1 state against Defendants for the release or threatened release
2 of hazardous substances covered by the terms of this Decree.

3 This covenant is strictly limited in its application to
4 the Site specifically defined in Exhibit A and to those
5 hazardous substances which Ecology knows to be located at the
6 Site as of the entry of this Decree. This Covenant is not
7 applicable to any other hazardous substance or area and the
8 state retains all of its authority relative to such substances
9 and areas.

10 A. Reopeners: In the following circumstances the State
11 of Washington may exercise its full legal authority to address
12 releases of hazardous substances at the Site notwithstanding
13 the Covenant Not to Sue set forth above:

14 1. In the event Defendants fail to comply with the
15 terms and conditions of this Consent Decree,
16 including all exhibits, and, after written notice of
17 noncompliance, fail to come into compliance; Ecology
18 agrees that it will use good faith in determining
19 whether to invoke this reopener. This reopener
20 should ordinarily not be invoked, for example, where
21 Defendants' noncompliance with a term or condition
22 of this Decree results in an insignificant time
23 delay in performance;

24 2. In the event factors not known at the time of entry
25 of this Decree are discovered and present a

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previously unknown threat to human health or the environment;

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

- 1. Criminal liability;
- 2. Liability for damages to natural resources;
- 3. Any Ecology action against potentially liable persons not a party to this Decree.

XXVI.

LAND USE RESTRICTION

Upon entry of this Decree, Defendant ELF ATOCHEM agrees that the restrictive covenant, attached hereto as Exhibit "B," shall be recorded with the Office of the Pierce County Auditor and shall restrict future uses of the Remedial Action Area as defined and designated in Exhibit B.

XXVII.

CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in implementing this Decree from the State of Washington or any of its agencies and, further, that the Defendants will make no claim against the state toxics control account or any local toxics control account for any costs incurred in implementing this Decree.

1 || XXVIII.

2 || CONTRIBUTION PROTECTION

3 || Defendants shall not be liable for claims for
4 || contribution as provided in RCW 70.105D.040(4)(d).

5 || XXIX.

6 || RESERVATION OF RIGHTS

7 || By agreeing to the entry of this Decree, the Defendants
8 || and Ecology agree to abide by its terms. While the parties
9 || believe that the recitals contained in this Decree are
10 || accurate, the execution and performance of the Decree is not,
11 || however, an admission by the Defendants of any fact or
12 || liability for any purpose other than as a foundation for the
13 || entry of this Decree. Defendants' performance under the
14 || Decree is undertaken without waiver of or prejudice to any
15 || claims or defenses whatsoever that may be asserted in the
16 || event of further administrative proceedings or litigation not
17 || associated with, or related to, this Decree. Nor is the
18 || execution or the performance of the Decree an agreement by
19 || Defendants to take any action at the Site other than that
20 || described in this document. Defendants expressly reserve
21 || their rights to seek to recover any costs incurred in
22 || implementing this Decree from any other potentially liable
23 || person.

XXX.

MONTHLY MEETINGS

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2
3 Beginning the first month after Ecology approval of the
4 Engineering Design Report, the project coordinators or their
5 designees shall, on a monthly basis, confer as to the progress
6 being made by the Defendants with respect to this Decree.
7 Representatives of all Defendants shall be invited to confer
8 by the Defendants' project coordinator. The date, time and
9 place for each conference shall be set prior to the 25th day
10 of the previous month by the project coordinators or their
11 designees. The goal of these conferences is to ensure the
12 construction of the remedial action, as well as other
13 deliverables of this Decree, are implemented in accordance
14 with this Decree and are acceptable to Ecology. These
15 conferences shall occur until the Ecology project coordinator
16 indicates in writing to the Defendants' project coordinator
17 that construction is complete or that conferences are no
18 longer needed. The Ecology project coordinator may cancel a
19 monthly conference if it is felt to be unnecessary.
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1 XXXI.

2 TERMINATION OF PRIOR CONSENT DECREE

3 This Consent Decree supersedes the current decree entered
4 into by ELF ATOCHEM and Ecology in 1987 (Thurston County Cause
5 No. 87-2-01198-1), as amended in 1992. No later than thirty
6 (30) days following entry of this Consent Decree, the Parties
7 shall file a joint stipulation dismissing the 1987 Consent
8 Decree.

9 XXXII.

10 DURATION OF DECREE

11 This Decree shall remain in effect and the work described
12 in the Decree shall be maintained and continued until the work
13 called for by this Decree has been satisfactorily completed or
14 until Ecology and the Defendants agree in writing that the
15 Decree should be terminated and/or a Court directs that the
16 Decree be terminated.

17 XXXIII.

18 EFFECTIVE DATE

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

21 XXXIV.

22 PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

23 This Decree has been the subject of public notice and
24 comment under RCW 70.105D.040(4)(a). As a result of this
25 process, Ecology has found that this Decree will lead to a

26 **CONSENT DECREE**

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OFFICE OF THE ATTORNEY GENERAL
Ecology Division
4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

1 more expeditious cleanup of hazardous substances at the Site,
2 in compliance with applicable cleanup standards.

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

8 XXXV.

9 INSPECTION

10 A. Inspection: Defendants may request that Ecology
11 make an inspection of the site to determine whether Defendants
12 have completed the remedial construction activities as set
13 forth in the engineering design report. Ecology will inspe
14 the site within thirty (30) days of Defendants' request unless
15 the parties agree to a later date.

16 B. Determination of Completion: Based upon review of
17 submittals by Defendants and the visual inspection described
18 in paragraph A above, within thirty (30) days of its
19 inspection Ecology will, to the extent possible, determine
20 whether Defendants have completed the remedial construction
21 activities as set forth in the engineering design report.
22 Upon such determination, Ecology shall provide a written
23 statement to Defendants' project coordinator indicating that
24 Ecology has determined that the remedial construction

1 activities as set forth in the engineering design report have
2 been completed.

3 C. Limitations of this Section: The determinations
4 made by Ecology pursuant to this section will be based only
5 upon information obtained by Ecology through review of
6 submittals from Defendants and through visual inspection(s) of
7 the site.

8 Nothing in this section, or in a Determination of
9 Completion issued by Ecology pursuant to this section, shall
10 be construed to limit any other provision of this Decree
11 including, but not limited to, the reopeners identified in
12 Section XXV (Covenant Not to Sue) and the rights identified in
13 Section XVIII (Other Actions).

14 SIGNED by the Parties on the dates indicated below.

15 STATE OF WASHINGTON
16 DEPARTMENT OF ECOLOGY

STATE OF WASHINGTON
OFFICE OF ATTORNEY GENERAL

17 BY Carol F. Fleskes
18 CAROL FLESKES
19 Program Manager
20 Toxics Cleanup Program
21 Department of Ecology

BY Mary Sue Wilson
MARY SUE WILSON, WSBA #19257
Assistant Attorney General
Attorney for Plaintiff
State of Washington

22 Date 11-4-92

23 Date 11-4-92

24
25
26 CONSENT DECREE

-48-

10-7-92

OFFICE OF THE ATTORNEY GENERAL
Ecology Division
4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

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ELF ATOCHEM NORTH
AMERICA, INC.

By Robert LeBlanc
ROBERT LeBLANC
Group President
ELF ATOCHEM NORTH
AMERICA, INC.

Date 10/20/92

MORRISON & FOERSTER

BY Bradley M. Marten
BRADLEY M. MARTEN
Attorney for ELF ATOCHEM
NORTH AMERICA, INC.

Date 10/20/92

ASARCO INCORPORATED

By _____

Date _____

HELLER EHRMAN WHITE
& MCAULIFFE

By _____
MARCIA NEWLANDS
Attorney for ASARCO Inc.

Date _____

ECHO LUMBER COMPANY

By _____

Date _____

By _____
RICHARD FINNIGAN
Attorney for Echo Lumber Co.

Date _____

DUNLAP TOWING COMPANY

By _____

Date _____

CONSENT DECREE

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ELF ATOCHEM NORTH
AMERICA, INC.

By _____
ROBERT LeBLANC
Group President
ELF ATOCHEM NORTH
AMERICA, INC.

Date _____

ASARCO INCORPORATED

By *Augustus K... ..*
VICE PRESIDENT

Date October 30, 1992

ECHO LUMBER COMPANY

By _____

Date _____

DUNLAP TOWING COMPANY

By _____

Date _____

CONSENT DECREE

MORRISON & FOERSTER

By _____
BRADLEY M. MARTEN
Attorney for ELF ATOCHEM
NORTH AMERICA, INC.

Date _____

HELLER EHRMAN WHITE
& MCAULIFFE

By *[Signature]*
MARCIA NEWLANDS
Attorney for ASARCO Inc.

Date _____

By _____
RICHARD FINNIGAN
Attorney for Echo Lumber Co.

Date _____

1 | ELF ATOCHEM NORTH
2 | AMERICA, INC.

MORRISON & FOERSTER

3 | By _____
4 | ROBERT LeBLANC
5 | Group President
6 | ELF ATOCHEM NORTH
7 | AMERICA, INC.

By _____
BRADLEY M. MARTEN
Attorney for ELF ATOCHEM
NORTH AMERICA, INC.

6 | Date _____

Date _____

7 | ASARCO INCORPORATED

HELLER EHRMAN WHITE
& MCAULIFFE

9 | By _____

By _____
MARCIA NEWLANDS
Attorney for ASARCO Inc.

11 | Date _____

Date _____

13 | ECHO LUMBER COMPANY

14 | By *H. E. Brown*

By *Richard Finnigan*
for RICHARD FINNIGAN
Attorney for Echo Lumber Co.

16 | Date _____

Date 10-13-92

18 | DUNLAP TOWING COMPANY

19 | By _____

21 | Date _____

26 | CONSENT DECREE

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This DECREE is approved and IT IS SO ORDERED this 11th
day of December, 1992.

DEAN TOLLEFSON

SUPERIOR COURT JUDGE
Pierce County Superior Court

132\atocbem.csd

1 ELF ATOCHEM NORTH
2 AMERICA, INC.

MORRISON & FOERSTER

3 By _____
4 ROBERT LeBLANC
5 Group President
6 ELF ATOCHEM NORTH
7 AMERICA, INC.

By _____
BRADLEY M. MARTEN
Attorney for ELF ATOCHEM
NORTH AMERICA, INC.

8 Date _____

Date _____

9 ASARCO INCORPORATED

HELLER EHRMAN WHITE
& MCAULIFFE

10 By _____

By _____
MARCIA NEWLANDS
Attorney for ASARCO Inc.

11 Date _____

Date _____

12 ECHO LUMBER COMPANY

13 By _____

By _____
RICHARD FINNIGAN
Attorney for Echo Lumber Co.

14 Date _____

Date _____

15 DUNLAP TOWING COMPANY

16 By *[Signature]*

17 Date *Oct 14, 1992*

18 CONSENT DECREE