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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ELF ATOCHEM NORTH AMERICA,
INC., (formerly PENNWALT
CORPORATION, INC.),

Defendant.

No. 87-2-01198-1

**STIPULATION AMENDING
CONSENT DECREE**

I. INTRODUCTION

On June 24, 1987, the Thurston County Superior Court entered Consent Decree DE 86-S159 in Thurston County Superior Court Cause No. 87-2-01198-1 (the "1987 Consent Decree"). The Consent Decree reflected an agreement between the State of Washington, Department of Ecology and the Pennwalt Corporation, Inc. (now Elf Atochem North America, Inc.) (collectively, "the Parties"), pursuant to which Elf Atochem agreed to perform a remedial investigation and feasibility study (RI/FS) at a log sort yard owned by Elf Atochem located on the southern bank of the Hylebos Waterway, at 3009 Taylor

**STIPULATION AMENDING
CONSENT DECREE**

1 Way, Tacoma, Washington, 98421 (hereinafter referred to as the
2 "3009 Taylor Way Site" or "the Site"). Elf Atochem has
3 completed the RI/FS and other work at the Site consistent with
4 the 1987 Consent Decree, as set forth below.

5 By this amendment Elf Atochem agrees to prepare certain
6 designs, plans, and reports that will be used to implement
7 final cleanup at the Site. During performance of these tasks
8 by Elf Atochem, Ecology intends to negotiate a new consent
9 decree with Elf Atochem and other PLPs. This new consent
10 decree will provide for final cleanup implementation by the
11 PLPs.

12 During the pendency of this stipulation, Ecology is not
13 precluded from taking enforcement action, including actions
14 under the authority of the Model Toxics Control Act, MTCA,
15 ch. 70.105D RCW. By way of example, but not by way of
16 limitation, Ecology may institute enforcement action if
17 Ecology determines that submissions made pursuant to this
18 stipulation are inadequate, untimely, or for any other reason
19 unacceptable or if reasonable progress in negotiations is not
20 being made. Elf Atochem reserves its rights to oppose any
21 such enforcement, on any basis.

22 This Stipulation and Amendment is made according to
23 section XVI of the 1987 Consent Decree which provides for
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1 amendments to that Decree by the parties' written stipulation
2 that is entered by the Court.

3 II. NAME CHANGE

4 The obligations of the former Pennwalt Corporation under
5 the 1987 Consent Decree are expressly adopted as obligations
6 of Elf Atochem by Elf Atochem's signature on this Stipulation
7 and Amendment.

8 III. STATEMENT OF FACTS

9 Elf Atochem has undertaken, at its expense and with
10 Ecology's approval, a number of actions required under the
11 1987 Consent Decree. Ecology is satisfied that these actions
12 have been performed in accordance with the requirements of the
13 1987 Consent Decree. In 1987, Elf Atochem performed a Focused
14 Feasibility Study under Paragraph V. A. 2 of the 1987 Consent
15 Decree to examine options for removal of approximately 40,000
16 cubic yards of wood waste at the Site. In 1989 and 1990, Elf
17 Atochem conducted an Expedited Response Action as the
18 "approved interim remedial alternative" under Paragraph
19 V. A. 3 of the 1987 Consent Decree to stage and process wood
20 waste. Elf Atochem commenced the RI/FS required under
21 Paragraph V. B. of the 1987 Consent Decree in 1988 and
22 completed it in late 1989. Elf Atochem conducted supplemental
23 field investigations as part of the Feasibility Study in 1990.

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1 The principal purpose of the 1987 Consent Decree was to
2 provide for completion of a Remedial Investigation and
3 Feasibility Study (the "RI/FS") at the Site. Elf Atochem is
4 prepared to demonstrate that it conducted the RI/FS in
5 accordance with the National Contingency Plan (the "NCP")
6 adopted by the U.S. EPA under the Comprehensive Environmental
7 Response, Compensation and Liability Act ("CERCLA"), as
8 amended, 42 U.S.C. § 9601 et seq. Elf Atochem is the only
9 entity, of those identified by Ecology as "potentially
10 responsible parties" in the 1987 Consent Decree, to sign the
11 1987 Consent Decree and undertake the work to be performed
12 under that Decree.

13 Ecology has evaluated the cleanup action alternatives
14 presented in the FS. Ecology has prepared a Cleanup Action
15 Plan that selects a method of cleanup at the Site. This
16 Cleanup Action Plan has been the subject of public comment.
17 The public comment period ran from October 8, 1991 to
18 November 29, 1991. Ecology has prepared a summary responding
19 to the comments received and has issued a final Cleanup Action
20 Plan which takes these comments into consideration.

21 Final cleanup at the Site will include implementation of
22 the Cleanup Action Plan. The Cleanup Action Plan will include
23 on-site consolidation of wood wastes, contaminated soils (if
24 any exist), and concentrated slag deposits. The consolidated
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26 **STIPULATION AMENDING
CONSENT DECREE**

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1 piles of wood wastes, soils, and slag deposits will then be
2 capped.

3 Ecology and Elf Atochem have determined that cleanup of
4 the Site will occur more expeditiously if the 1987 Consent
5 Decree is amended to provide for performance of the tasks
6 identified in the Work to be Performed section, while, at the
7 same time, Ecology, Elf Atochem, and other PLPs negotiate a
8 new decree that will provide for implementation of the final
9 Cleanup Action Plan and other documents developed pursuant to
10 Section IV below (hereinafter final Cleanup Action).

11 On December 5, 1992, Ecology sent PLP Notification
12 letters to the following parties: Elf Atochem, ASARCO, Inc.,
13 Portac, Inc., Mitsui & Company (U.S.A.), Dunlap Towing
14 Company, Echo Lumber Company, Goodwin-Johnson, Ltd.

15 It is the objective of the Parties that the final Cleanup
16 Action be implemented during the summer months of 1992,
17 pursuant to a new decree to be negotiated between Ecology and
18 any willing PLPs. To meet this schedule, certain designs,
19 plans, and reports required under MTCA must be prepared now.
20 By this Stipulation and Amendment, Elf Atochem agrees to
21 prepare such reports and other documents, as set forth in
22 amended Section IV (Work to be Performed) of the 1987 Consent
23 Decree incorporated herein.

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**STIPULATION AMENDING
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1 IV. WORK TO BE PERFORMED

2 A. Elf Atochem has submitted the following Workplan
3 Deliverables to Ecology, each of which were approved by
4 Ecology by letter dated February 6, 1992.

5 1. Public Participation Plan Delivered
6 January 31, 1992

7 Elf Atochem has submitted a public participation plan
8 consistent with WAC 173-340-600(8). The public participation
9 plan includes:

- 10 a. Identification of at least one location where the
11 public can review information about the remedial action.
12 b. Methods of identifying the public's concerns.
13 c. Methods of addressing the public's concerns and
14 conveying information to the public.
15 d. Coordination of public participation requirements.
16 e. An outline describing the process for amending the
17 public participation plan.

18 2. Preliminary Containment Design
19 and Specifications Delivered
20 January 31, 1992

21 A preliminary containment design package has been
22 prepared and submitted to Ecology. The containment design
23 package is consistent with the final CAP and includes the
24 following:

25
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1 a. A containment system layout drawing showing
2 preliminary locations of slag and woodwaste containment
3 structures, fences, access roads, methane units, and
4 monitoring wells.

5 b. Cross sectional detail of the proposed cap layers or
6 components including a composite 60 mil very low density
7 polyethylene (provided chemical compatibility with the waste
8 is established) and geosynthetic clay liner, drainage layer,
9 soil layer, etc.

10 c. Miscellaneous drawings providing gas vent and
11 monitor well design information.

12 d. Preliminary specifications for waste and cover
13 compaction, liner, monitor wells, methane vent system, fences,
14 and erosion control.

15 e. List of required permits including issuance
16 timeframes and proposed application dates.

17 f. A proposed schedule for major remedial action
18 milestones, including a projected remedial action completion
19 date.

20 B. Elf Atochem will submit the following Workplan
21 Deliverables to Ecology on or before the corresponding
22 Deliverable Due Dates:

23 1. Engineering Design Report Deliverable Due Date
24 May 4, 1992

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1 An engineering design report consistent with WAC
2 173-340-400(4) (a) will be prepared and submitted to Ecology.
3 The engineering design report will include the following:¹
4 a. Goals of the cleanup action, including specific
5 cleanup or performance requirements;
6 b. General information on the facility, including a
7 summary of information in the state remedial investigation/
8 feasibility study updated as necessary to reflect the current
9 conditions;
10 c. Identification of who will own, operate, and
11 maintain the cleanup action during and following construction;
12 d. Facility maps showing existing site conditions and
13 proposed location of the cleanup action;
14 e. A site plan drawing showing the current location of
15 the woodwaste and localized concentrated slag deposits;
16 f. A detailed schedule for construction and monitoring,
17 including a proposed date for completion of construction;
18 g. A description of the cleanup action, including
19 construction details of the cap, gas venting system, surface
20 water monitoring locations, site regrading plans, including
21 topsoil addition and grass seeding, and any other facilities
22 and processes required to implement the final Cleanup Action;

23
24 _____
25 ¹ Some of this information has already been provided to
26 Ecology and may be incorporated by reference.

1 h. Engineering justification for design parameters,
2 including: Design criteria, assumptions, and calculations for
3 all components of the cleanup action; demonstration that the
4 cleanup action will achieve compliance with cleanup
5 requirements;

6 i. Design features for control of hazardous materials
7 releases (for example, containment structures, leak detection
8 devices, run-on and run-off controls);

9 j. Design features to assure long-term safety of
10 workers and local residences as applicable (for example,
11 hazardous substances monitoring devices, pressure valves,
12 bypass systems, safety cutoffs);

13 k. A discussion of methods for management or disposal
14 of any treatment residual and other waste materials containing
15 hazardous substances generated as a result of the cleanup
16 action;

17 l. Facility specific characteristics which may affect
18 design, construction, or operation of the selected cleanup
19 action, including: Relationship of the proposed cleanup
20 action to existing facility operations; probability of
21 flooding, probability of seismic activity, temperature
22 extremes, local planning and development issues; soil
23 characteristics and ground water system characteristics;

1 m. Any information not provided in the state remedial
2 investigation/feasibility study needed to fulfill the
3 applicable requirements, if any, of the State Environmental
4 Policy Act (Chapter 43.21C RCW);

5 n. Any additional information needed, if any, to
6 address the applicable state, federal, and local requirements;
7 and property access issues which need to be resolved to
8 implement the cleanup action;

9 o. A copy of all required permits or applications
10 (whichever are available at the time of submittal);

11 p. A compliance monitoring plan prepared under WAC
12 173-340-410 describing monitoring to be performed during
13 construction, as applicable. This section shall include:

- 14 1. A Protection Monitoring Plan, per WAC
15 173-340-410(1)(a), to confirm that human health
16 and the environment are adequately protected
17 during cleanup action construction.
- 18 2. A detailed Performance Monitoring Plan, per WAC
19 173-340-410(1)(b), for verifying that soil cleanup
20 limits listed in the CAP (Exhibit A) are achieved at
21 the remainder of the Site where wood waste, soils,
22 and slag have been excavated and transferred to the
23 consolidated area to be capped. The Performance
24 Monitoring Plan shall utilize a grid system approach
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1 and shall require a greater density of samples in
2 known areas of high slag or high arsenic
3 concentrations.

4 q. Provisions to assure safety and health requirements
5 of WAC 173-340-810 are met.

6 2. Construction Plans and Specifications Deliverable Due Date

7 May 4, 1992

8 a. Construction drawings and final specifications will
9 be prepared and submitted to Ecology. This submittal will
10 include all engineering drawings and specifications necessary
11 to properly construct the remediation project in conformance
12 with currently accepted engineering practices and techniques.

13 b. Specific quality control (QC) tests to be performed
14 to document the construction as applicable, including
15 specification for the testing or reference to specific testing
16 methods, frequency of testing, acceptable results, and other
17 documentation methods. This section shall include QC testing
18 during landfill cap construction and monitoring system
19 installation.

20 c. This section shall also include a Confirmational
21 Monitoring Plan, per WAC 173-340-410(1)(c). This plan will
22 include a proposed ground water monitoring system for the
23 capped waste area, including:

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A system of wells (three downgradient and one upgradient, minimum) designed to monitor the performance of the containment system.

The plan shall include proposed well locations, construction, sampling and analysis methodology, sampling frequency, and proposed methodologies for evaluation of sampling results to determine cap failure or non-compliance. The plan shall also include a surface water monitoring equipment/construction protocol and proposed sampling location(s).

3. Operation and Maintenance Plan Deliverable Due Date
September 4, 1992

An Operation and Maintenance Plan meeting the requirements of WAC 173-340-400(4)(c) and 410 will be prepared and submitted to Ecology. This plan will include the following:

- a. Name and phone number of the responsible individuals;
- b. Process description and operating principles;
- c. Design criteria and operating parameters and limits;
- d. A discussion of the detailed operation of individual treatment units, including methane venting equipment, including a description of various controls, recommended

1 operating parameters, safety features, and any other relevant
2 information;

3 e. Procedures and sample forms for collection and
4 management of operating and maintenance records;

5 f. Spare part and repair materials inventory, if any,
6 addresses of suppliers of spare parts, equipment warranties,
7 and appropriate equipment catalogues;

8 g. Equipment, venting system and cap inspection and
9 maintenance procedures and schedules, and schedules
10 incorporating manufacturers' recommendations;

11 h. Contingency procedures for spills, releases, and
12 personnel accidents;

13 i. A compliance monitoring plan prepared under WAC 173-
14 340-410, describing monitoring to be performed during
15 operation, designed to track compliance with remedial action
16 objectives;

17 j. A sampling and analysis plan meeting the
18 requirements of WAC 173-340-820;

19 k. Description of procedures which assure that the
20 safety and health requirements of WAC 173-340-810 are met,
21 including specification of contaminant action levels and
22 contingency plans, as appropriate;

23 l. Procedures for the maintenance of the facility after
24 completion of the cleanup action, including a methodology and
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1 schedule for removal of unneeded appurtenances, and the
2 maintenance of covers, caps, containment structures, and
3 monitoring devices.

4 C. Ecology Approvals

5 The due dates for each of the deliverables required
6 above, and the Parties' understanding that on-site
7 construction of the remedial work can be completed during the
8 summer months of 1992, are based upon an assumption that
9 Ecology will complete its review of drafts, or of previous
10 submissions by Elf Atochem which are contingent upon
11 completion of subsequent submissions, within ten (10) working
12 days from receipt of such drafts or submissions. In the event
13 that Ecology is unable to complete its reviews within ten (10)
14 working days of receipt by Ecology, the dates for delivery of
15 any subsequent Workplan Deliverables will be extended by the
16 additional time required for Ecology's review.

17 V. EFFECT OF AMENDMENT

18 The Parties stipulate and agree that this Stipulation
19 Amending Consent Decree shall affect and amend only those
20 sections of the 1987 Consent Decree set forth herein, and all
21 other provisions of the 1987 Consent Decree shall remain in
22 full force and effect.

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VI. EFFECTIVE DATE

This Amendment to the 1987 Consent Decree shall be effective upon the date that the Decree is entered by the Court.

BY THEIR SIGNATURES HEREON, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES.

IT IS SO AGREED AND ORDERED.

ELF ATOCHEM NORTH AMERICA, INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By _____

By _____

Its _____

Its _____

Date _____

Date _____

DATED this ____ day of _____, 1992.

Judge, Thurston County Superior Court

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**STIPULATION AMENDING
CONSENT DECREE**



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

STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY,)	No. 87-2-01198-1
)	
Plaintiff,)	JOINT MOTION TO
)	AMEND CONSENT DECREE
v.)	
)	
ELF ATOCHEM NORTH AMERICA,)	
INC., (formerly PENNWALT)	
CORPORATION, INC.),)	
)	
Defendant.)	

The parties, Elf Atochem North America, Inc., represented by its attorney Brad Marten, of Preston, Thorgrimson, Shidler, Gates and Ellis, and the State of Washington, Department of Ecology, represented by its attorney, Mary Sue Wilson, Assistant Attorney General, jointly move the court to enter the attached "Stipulation Amending Consent Decree."

The Consent Decree in this case was entered by the court on June 24, 1987. This amendment is presented to the court

JOINT MOTION TO
AMEND CONSENT DECREE

1 for approval pursuant to section XVI, Amendment of Decree and
2 Modification of Work Plan, of the Consent Decree.

3 DATED this _____ day of _____, 1992.

4

5

Respectfully submitted,

6

7

BRAD MARTEN
Preston, Thorgrimson,
Shidler, Gates & Ellis
Attorney for Elf Atochem,
North America, Inc.

MARY SUE WILSON, WSBA #19257
Assistant Attorney General
Attorney for
State of Washington
Department of Ecology

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Date _____

Date _____

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JOINT MOTION TO
AMEND CONSENT DECREE

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Recorded at the Request of
and After Recording Return to:

RECORDED
CATHY PEARSALL-STAPEN
AUDITOR PIERCE CO. WASH 6 1993

Preston Thorgrimson Shidler Gates & Ellis
5400 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7078
Attn: Shannon J. Skinner

DRAINAGE EASEMENT AGREEMENT

This Drainage Easement Agreement, dated as of June 14, 1992, is by and between ELP ATOCHEM NORTH AMERICA, INC., a Pennsylvania corporation ("Atochem") to KAISER ALUMINUM & CHEMICAL CORPORATION, a Delaware corporation ("Kaiser").

RECITAL

Atochem is the owner of the real property located in Pierce County, Washington, described in Exhibit 1 attached hereto (the "Atochem Property"). Kaiser is the owner of the nearby real property located in Pierce County, Washington, described in Exhibit 2 attached hereto (the "Kaiser Property"). Atochem desires to grant to Kaiser an easement, for the purposes described herein and subject to the terms and conditions hereof, under the portion of the Atochem Property that is below the surface of the property described in Exhibit 3 attached hereto (such underground portion being the "Easement Property").

AGREEMENT

1. Grant of Easement. Atochem hereby conveys and quitclaims to Kaiser, for the benefit of the Kaiser Property, a non-exclusive easement under that portion of the Atochem Property described on Exhibit 3 attached hereto, for the purpose of placement, operation and maintenance of a drainage pipe (the "Improvements") to serve the Kaiser property.

2. Terms and Conditions of Easement. The easement granted herein (the "Easement") is subject to the following terms, reservations, and conditions:

A. Area of Use. Kaiser shall confine its use of the Easement, including, without limitation, any ingress and egress reasonably necessary hereunder, to the Easement Property. Kaiser shall have no right to come upon or use any portion of the Atochem Property other than the Easement Property, except for the temporary construction license granted below.

SEP 21 1993

EXCISE TAX EXEMPT: DATE _____
Pierce County

By [Signature] Auth. Sig

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B. Hazardous Materials. In no event shall Kaiser store or process on, dispose, release, or discharge from, or otherwise use any "Hazardous Materials" or other wastes or substances on the Easement Property or the Atochem Property. Notwithstanding the foregoing, Hazardous Materials contained in process water, cooling water and stormwater effluents from the Kaiser Property (and the plant thereon) may pass through the drainage pipe on the Easement Property so long as such passage is in accordance with all applicable laws, and so long as such Hazardous Materials are not released onto the Atochem Property. "Hazardous Materials" means any (a) petroleum products or by-products; (b) all hazardous or toxic substances, wastes or materials or pollutants, including hazardous substances as defined by § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or the Washington Model Toxics Control Act, RCW § 70.105D; and (c) any other chemical or material which is regulated by any governmental agency or authority under any environmental laws.

C. Risk of Damages. Any use of the Atochem Property by Kaiser or any of its agents, employees or contractors shall be deemed to be at the risk of the party using the same, and Atochem shall not be liable or responsible for any damage to property or injury to person or loss of life which may result to Kaiser or any of its agents, employees or contractors, whether arising due to the condition of the Atochem Property or otherwise. Neither Kaiser nor any of its agents, employees or contractors shall commit waste or create or permit nuisances on the Atochem Property. Kaiser accepts the Atochem Property in its present condition, "as-is," and Atochem shall have no duties to Kaiser regarding the condition of the Atochem Property. Notwithstanding the foregoing, Atochem shall not willfully or negligently interfere with Kaiser's use of the Atochem Property.

D. Maintenance. Kaiser, at Kaiser's sole cost and expense, shall keep and maintain the Improvements in the Easement Property in good condition and working order and shall make all repairs necessary or appropriate for such purpose. Maintenance of the pipeline shall consist, at a minimum, of: (1) installation of cathodic protection to protect the pipeline from corrosion (including checkout and adjustment for proper operation by a qualified corrosion engineer); (2) annual surveys of the pipeline and the corrosion protection system by a corrosion engineer; and (3) maintenance of the corrosion protection system by a corrosion engineer, as required. Kaiser shall provide Atochem with copies of all inspection reports, surveys or other test results relating to the operation and maintenance of the pipeline, including the corrosion protection system. Kaiser shall also provide Atochem with a copy of the final design drawings for the pipeline and the corrosion protection system.

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The Easement shall include the right to access by Kaiser (including its agents and contractors) over the surface of the property described on Exhibit 3 attached hereto as necessary for Kaiser to satisfy its maintenance and repair obligations set forth in this subparagraph (D), including inspection at reasonable intervals. Except as hereafter provided, Kaiser shall not construct any improvements in, over, under or on the Easement Property without Atochem's prior written consent, which may be granted or withheld by Atochem in its sole discretion.

E. Compliance with Laws. Kaiser, at Kaiser's sole cost and expense, shall comply with all laws, ordinances, rules and regulations of all governmental authorities having jurisdiction over the Easement Property and the use thereof. Without limitation, Kaiser, at Kaiser's sole cost and expense, shall acquire and maintain all appropriate licenses, certificates, permits and other authorizations and approvals necessary to operate the Improvements and to permit the surface water to drain therethrough; and shall deliver copies of same to Atochem within ten (10) days after Atochem's request therefor.

F. Liens. Kaiser shall have no right or power to create or permit any lien of any kind or character to attach to the Atochem Property (except construction liens on Kaiser's interest in the Easement Property) by reason of repair, construction or other work. Kaiser agrees to defend, indemnify and hold harmless Atochem and the Atochem Property from and against any and all claims, liens and demands, including without limitation, mechanic's and materialman's liens, by or on account of any party, arising from the use, occupancy, conduct, management of or from any work or thing whatsoever done on or about the Atochem Property by Kaiser or any party acting under Kaiser. Notice of the provisions of this subparagraph shall be put in all contracts with agents, contractors or other persons with lien rights performing work on the Atochem Property on behalf of Kaiser.

G. Indemnity and Insurance

(1) **Indemnity.** Kaiser covenants and agrees to defend, indemnify and hold harmless Atochem from and against any and all claims, demands, costs, losses, damages, liabilities and expenses (including investigation costs, remediation costs, court costs and attorneys' fees) arising out of or resulting from: (a) claims made by third persons or parties for personal injuries (including death) or damages to any property, remediation costs, and fines or penalties, incident to or arising out of the use of the Atochem Property by Kaiser, its agents, employees or contractors, and (b) the release, discharge, disposal, processing, handling, or use by Kaiser, its agents, employees and contractors, of (i) any Hazardous Materials on the Atochem Property, or (ii) any materials, including surface water, in such a manner as

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to contaminate, degrade, damage or cause injury to the Atochem Property. This indemnification shall not apply to the extent such claims, demands, costs, losses, damages, liabilities or expenses result from negligent acts or omissions or willful misconduct of Atochem, its officers, employees, agents or contractors or from the breach of this Agreement by Atochem.

(2) Insurance. In furtherance of the foregoing indemnity, unless Kaiser provides Atochem with evidence that Kaiser satisfies the financial test described in paragraph (3) below, Kaiser shall maintain in full force and effect during the term hereof a policy of public liability and property damage insurance relating to the Easement Property and Kaiser's use and occupancy thereof, under which policy Atochem is an additional insured as respects this Easement. The minimum limits of liability of such insurance shall be \$1,000,000.00 for personal injury or death in any one occurrence and \$500,000.00 for injury or destruction to property in any one occurrence. Alternatively, such insurance may be provided as part of blanket insurance policies maintained by Kaiser (in which case the references herein to "policy" shall refer to the parts of such policy concerning the Easement Property). Such policy shall be issued by a company acceptable to Atochem and shall be non-cancellable without thirty (30) days' advance written notice to Atochem. A certificate evidencing such coverage shall be furnished to Atochem promptly upon request therefor by Atochem from time to time. Kaiser shall pay all insurance premiums required under such policy in advance, allowing no delinquency in payment. If Kaiser fails to comply with the foregoing requirements relating to insurance, Atochem, at its option, may obtain such insurance and Kaiser shall pay to Atochem on demand the premium cost thereof plus interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum and (b) the maximum rate of interest permitted to be charged under applicable law, from the date of payment by Atochem until repaid by Kaiser. Further, in the event Kaiser maintains from time to time additional public liability and property damage insurance or self-insurance relating to the Easement Property, Kaiser shall promptly notify Atochem of such additional coverage and shall furnish to Atochem, promptly upon request therefor by Atochem, a certificate evidencing such additional insurance or self-insurance and the coverage of Atochem and Kaiser thereunder as named insureds.

(3) Self-Insurance. In lieu of maintaining insurance as described in paragraph (2) above, Kaiser may provide Atochem, not more than 90 days after the close of each fiscal year, a certificate from an authorized representative of Kaiser stating that Kaiser would meet the financial test necessary to demonstrate liability coverage of \$1 million under 40 CFR § 264.147(f) (as now or hereafter in effect), and setting forth Kaiser's calculations, using the line items set forth in Part A

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of the form contained in 40 CFR § 264.151(g) (as now or hereafter in effect).

H. Reservation. Atochem excepts and reserves unto Atochem and assigns, the right and privilege, exercisable on a continuing basis from time to time, to construct out of any materials, place, maintain, inspect, protect, repair, alter, substitute, replace and remove such facilities as may be deemed necessary, appropriate or advisable by Atochem, including, without limitation, fences, roads, streets, sidewalks, parking lots, pipelines, drainage pipes, water lines, sewer lines and other lines or conduits for utility services, on, over, under, through and across the Easement Property, provided that such operations do not unreasonably interfere with Kaiser's use and enjoyment of the Easement for the purposes herein stated. Notwithstanding the foregoing, Atochem agrees not to build, place or maintain any building or other structure on the Easement Property that unreasonably interferes with Kaiser's use thereof for the purposes set forth herein. In addition to the rights reserved by Atochem hereinabove, and not by way of limitation, Atochem, shall also have the right to use and enjoy the Easement Property for any other purpose whatsoever that does not unreasonably interfere with the use thereof by Kaiser for the purposes herein specifically stated.

I. Nonexclusive. The rights herein granted to Kaiser are not public and are not exclusive, and Atochem shall have the right from time to time to grant other licenses or easements to other parties for such purposes and at such place or places as Atochem may at such time or times deem proper, subject to the limitation that such additional license or easement holders shall not unreasonably interfere with Kaiser's right to use and enjoy the Easement for the purposes herein stated. No interest in the property described as the Easement Property is granted hereby except the above-described Easement.

3. Construction License. Atochem hereby grants Kaiser a temporary license for the purpose of constructing the Improvements in the Easement Property over, under and across the property described on Exhibit 4 hereto (the "Construction Area"). The Construction Area consists of two parts, the Phase I Area (which is shown as the cross-hatched area on Exhibit 5 attached hereto) and the Phase II Area, which is the remainder of the Construction Area. This temporary license is subject to the following terms and conditions:

A. Construction Activities. Kaiser shall provide Atochem at least five days prior written notice of the date on which Kaiser plans to begin construction activity on the Easement Property and Construction Area. Kaiser shall perform all work in a good, workman-like and lien-free manner. Kaiser shall also as

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part of its construction activities restore the surface of the Atochem Property to as similar a condition as is reasonably practical to the condition existing immediately before the construction work, including replacement of any paving or landscaping that is disturbed. All terms and conditions set forth in paragraph 2 of this Drainage Easement regarding the Easement shall apply to Kaiser's use of this temporary license (including without limitation the indemnity and insurance provisions).

As part of Kaiser's work on the Easement Property, Kaiser shall install markers or surveyor monuments over and along the underground pipeline installed on the Easement Property adequate to mark on the ground and give visual notice of the actual location of the pipeline. Atochem and others using the Easement Property shall be entitled to rely on such markers as evidence of the actual location of the pipeline and shall not be responsible for any damage to the pipeline if the markers are inaccurately placed.

Atochem will, if requested by Kaiser, cooperate with Kaiser, but without expense to Atochem, in obtaining required governmental approval of Kaiser's construction of the Improvements, and Atochem further agrees to join with Kaiser, but without expense to Atochem, in any appropriate application to any governmental authority for approvals, permits or licenses to construct and use the Improvements on the Easement Property.

B. Construction License Termination. This temporary construction license shall expire on the earlier of (i) as to the Phase I Area, May 31, 1992; (ii) as to the Phase II Area, June 30, 1992; or (iii) the issuance by the Washington Department of Ecology of a Notice of Completion as provided in Section XVII of the Consent Decree No. 90-2-06209-6 entered in Pierce County Superior Court on July 12, 1990 (State of Washington Dept. of Ecology v. Kaiser Aluminum & Chemical Corp.). All construction and restoration activity described herein shall be completed before June 1, 1992 as to the Phase I Area, and July 1, 1992 as to the Phase II Area.

Kaiser represents and warrants that, to the best of its knowledge, its use of the Construction Area will be completed (and the Atochem Property restored as provided herein) before June 1, 1992 as to the Phase I Area and July 1, 1992 as to the Phase II Area.

Kaiser acknowledges that it is extremely important to Atochem that Kaiser's use of the two parts of the Construction Area be completed before the deadlines set forth above. This is because Atochem must start remediation work on the Atochem Property before those deadlines to comply with a Consent Decree with the Washington Department of Ecology ("DOE") for clean-up of

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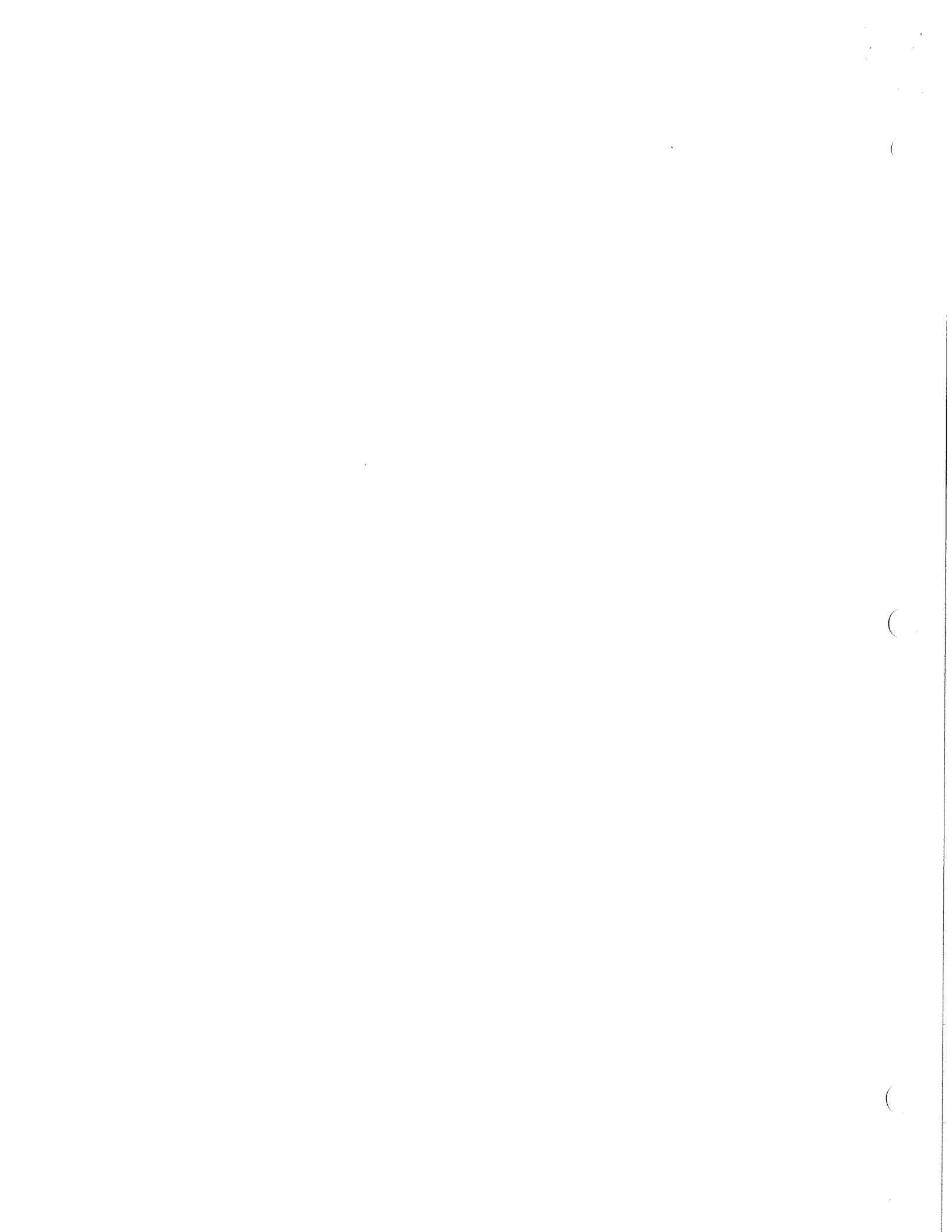
contaminated wood waste on the Atochem Property, and the Construction Area will be needed to perform this remediation work. Kaiser agrees that it will have ceased using the Phase I Area before June 1, 1992, and the Phase II Area before July 1, 1992 regardless of any delays in its construction, whether or not such delays are beyond its control, and regardless of whether it must fill in dirt, remove pipe, lose the benefit of work performed or otherwise take steps to end its work before the work is completed, even if such failure to complete causes a default under Kaiser's Consent Decree referenced above.

To partially compensate Atochem for damages it may incur if Kaiser fails to cease its use of the Phase I Area before June 1, 1992, and the Phase II Area before July 1, 1992, Kaiser will pay to Atochem the greater of (a) \$2,500 per day for each day or part of a day that Kaiser uses the relevant part of the Construction Area beyond the applicable deadline set forth above, or (b) the amount that DOE charges Atochem on a daily basis for its failure to complete its remediation work by the required deadline, to the extent such failure is attributable to delays in starting such work because Kaiser had not completed its work before the relevant deadline.

Atochem may, in its sole discretion, extend the construction license to Kaiser for parts of the Construction Area beyond the stated deadlines, if Atochem determines in its sole judgment that Kaiser's use will not interfere with Atochem's use of the Construction Area. If Atochem extends the construction license beyond a deadline stated above, such extension shall not in any way waive or compromise Atochem's right to thereafter terminate the construction license upon two days notice to Kaiser.

C. Additional Construction Licenses for Repairs.
Upon reasonable notice to Atochem from Kaiser that Kaiser needs to make repairs or alterations to the Improvements, Atochem shall grant Kaiser a temporary license to make such repairs or alterations, for a reasonable period on terms substantially similar to those set forth in this paragraph 3. Notwithstanding the foregoing, Atochem will not be required to grant such license if it would in any way interfere with Atochem's other uses of the Atochem Property, including without limitation, Atochem's wood-waste remediation project to be done on the Atochem Property.

4. No Modification: Integration. This Agreement may not be modified or amended except by a subsequent agreement in writing signed by Atochem and Kaiser. This Agreement, including the exhibits attached hereto, constitutes the entire agreement and understanding between the parties hereto and supersedes all prior and contemporaneous agreements and undertakings of the parties in connection therewith. No statements, agreements or understandings, representations, warranties or conditions not



expressed in this Agreement shall be binding upon the parties hereto or shall be effective to interpret, change or restrict the provisions of this Agreement unless such is in writing signed by both parties hereto and by reference made a part hereof.

5. Notice. Any notice permitted or required to be given by either party to this Agreement shall be given in writing and may be effected by certified United States mail, with return receipt requested, properly addressed, postage prepaid, by reputable overnight delivery service, or by personal delivery, as follows:

A. In the case of Atochem, addressed to Atochem at 3009 Taylor Way, Tacoma, WA 98421, to the attention of plant manager; and

B. In the case of Kaiser, addressed to Kaiser at 3400 Taylor Way, Tacoma, Washington 98421-4396, to the attention of Mark Jones;

or to such other address or to such other person's attention of which notice was given in accordance with this paragraph. Notice shall be effective upon receipt.

6. Easement Termination. In the event Kaiser or Kaiser's agents, employees or contractors neglect or fail to comply with any of the terms, provisions or conditions herein contained, and such neglect or failure continues for a period of thirty (30) days after delivery by Atochem to Kaiser of written notice thereof, then this Agreement and all rights of Kaiser hereunder, including, without limitation, the Easement and the temporary construction license, shall, at the option of Atochem and upon five (5) days prior written notice, thereupon immediately cease and terminate. Such termination, however, shall be without prejudice to any claims or causes of action of Atochem that shall have accrued hereunder as of the date of such termination. Upon any such termination, Atochem may record notice thereof without the joinder of Kaiser. Nevertheless, Kaiser agrees, for Kaiser and its successors and assigns, to execute and deliver to Atochem, upon request by Atochem, a written release, in recordable form, of all Kaiser's rights in the Easement and hereunder.

Notwithstanding the foregoing, in the case of a default by Kaiser which Kaiser, using diligent efforts, is prevented from curing within such thirty-day period on account of Kaiser's inability, using diligent efforts, to obtain the consent, approval or order, if any, required by an applicable governmental agency or authority having jurisdiction in order to complete such curative action, this Agreement and the Easement hereunder may not be terminated by Atochem on account of such default and failure to cure until the one year has passed from the date of

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the notice of default given by Atochem to Kaiser, so long as Kaiser is actively engaged in efforts with such governmental agency or authority to obtain such requisite consent, approval or order and, upon obtaining any such requisite consent, approval or order, prosecutes the curing of such default to completion as soon as possible using diligent efforts.

7. Abandonment. In the event that Kaiser does not use the Improvements, once constructed, for the purposes herein stated for a period of one year or more (other than lack of use due to delays in obtaining any governmental consent, approval or order as described in paragraph 5 above), or the Improvements and cleanup work described in paragraph 3 hereof are not complete by December 31, 1992, Atochem may deem the Easement abandoned and terminate the Easement by notice to Kaiser and by recording notice of such termination.

8. Other Remedies. In the event that Kaiser or Kaiser's agents, employees or contractors neglect or fail to comply with any of the terms, provisions or conditions herein contained, Atochem shall have available, in addition to the right to terminate provided for above, all other rights and remedies provided Atochem at law or in equity, including the right to bring an action for all damages incurred by Atochem arising out of or resulting from such neglect or failure.

9. Successors and Assigns. The benefits and burdens hereof shall be binding upon and shall inure to the benefit of Atochem and Kaiser and their respective successors, assigns and legal representatives.

10. Attorneys' Fees. In the event of any dispute arising from or relating to this Agreement, the prevailing party in any such proceeding shall be entitled to recover its costs and reasonable attorneys' fees.

ELF ATOCHEM NORTH AMERICA, INC.,
a Pennsylvania corporation

By *Robert D. LeBlanc*
 Robert D. LeBlanc
Its *Group President*

KAISER ALUMINUM CHEMICAL
CORPORATION, a Delaware corporation

By *Ronald C. Schuts*
 Ronald C. Schuts
Its *Alcon Works Manager*

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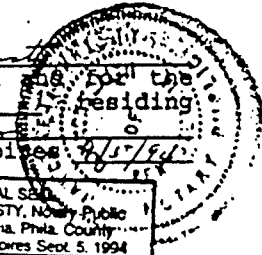
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STATE OF Pa)
COUNTY OF Philadelphia) SS.

On this 14th day of June, 1993, before me, the undersigned, a Notary Public in and for the State of Pa, duly commissioned and sworn, personally appeared Robert P. LeBlanc, to me known to be the GROUP PRESIDENT of ELF ATOCHEM NORTH AMERICA, INC., the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Margaret Christy
NOTARY PUBLIC in and for the State of Pa, residing at Thru Parkway
My commission expires 7/17/94



STATE OF WASHINGTON)
COUNTY OF Pierce) SS.

On this 7th day of September, 1993, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Ronald C. Schut, to me known to be the Area Sales Manager of KAISER ALUMINUM CHEMICAL CORPORATION, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Kathleen M. Penson
NOTARY PUBLIC in and for the State of Washington, residing at Bellevue, WA
My commission expires 9/27/96



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RCV BY: PRESTON, THORGRIMSEN : 9-11-91 10:14AM

215 587,711 BK 0 934 PG 1-505 DATE: 7.5

EXHIBIT 1
(Atocha Property)

That portion of the West 800.00 feet of the northeast quarter of the southwest quarter of Section 36, Township 21 North, Range 3 East, Willamette Meridian, lying North of Taylor Way, as said Taylor Way was laid out and established April 15, 1941; and also that portion of the West 800.00 feet of the southeast quarter of the northwest quarter of said Section 36, lying South of the southwesterly line of Hylebos Creek Waterway extended, which extension bears South 48° 14' 46" East. Said property, as depicted on the Record of Survey, volume 0436, page 2365, auditor's number 8707280239, filed in Pierce County, Washington.

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Exhibit 3

Kaiser Aluminum
Affecting Atodhem Property (Formerly Fenwalk Property)
Permanent Easement For Stormwater Pipeline

LEGAL DESCRIPTION OF PERMANENT EASEMENT AREA

A strip of land, 40.00 feet in width, lying within the following described property:

That portion of the West 800.00 feet of the northeast quarter of the southwest quarter of Section 36, Township 21 North, Range 3 East, Willamette Meridian, lying North of Taylor Way, as said Taylor Way was laid out and established April 15, 1941, and also that portion of the West 800.00 feet of the southeast quarter of the northwest quarter of said Section 36, lying South of the southwesterly line of Kylebos Creek Waterway extended, which extension bears South 48° 14' 46" East. Said property, as depicted on the Record of Survey, volume 0436, page 2365, auditor's number 8707280239, filed in Pierce County, Washington.

Said 40.00 foot strip of land lying 12.50 feet northerly and westerly and 27.50 feet southerly and easterly of the following described line:

Commencing at the southeast corner of the above described property, thence North 49° 19' 33" West, 426.75 feet, along the northerly right of way line of Taylor Way to the True Point of Beginning; thence North 61° 28' 55" East, 93.61 feet, thence South 49° 19' 33" East, 193.58 feet, thence North 40° 40' 21" East, 75.33 feet, to a point 52.50 feet West of the East line of said property; thence North 01° 34' 39" East, 620.40 feet parallel to and 52.50 feet West of the East line of said property, to a point on the North line of the northeast quarter of the southwest quarter of said section 36; thence North 01° 17' 52" East, 273.53 feet, to a point on the southwesterly line of Kylebos Waterway and the Terminus Point of the herein described line. Said Terminus Point bears North 48° 15' 35" West, 68.98 feet, from the northeast corner of said property.

side lines to be lengthened or shortened to intersect at angle points and terminate at property lines.

Containing an area of 1.15 acres, more or less.

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Exhibit 4

**Kaiser Aluminum
Affecting Atocham Property (Formerly Pennwalt Property)
Permanent Easement For Stormwater Pipeline**

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

A strip of land, 60.00 feet in width, being coincident to and westerly of the above-described permanent easement (see Ex. 3)

Containing an area of 1.72 acres, more or less.

Prepared by CH2M HILL

[Handwritten Signature]
LARRY GREENLICK

Revision
Date

5/23/91

Revised by CH2M HILL



Date

1/3/92

Reviewed by CH2M HILL

Date

1/3/92

at/1x001/kaiser2

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Phase I Area REF T21N SF 31 0932021980
 ATOCHEM
 DR 8934481980

- ① N 61° 28' 55" E 93.61'
- ② S 49° 19' 39" E. 193.58'
- ③ N 40° 40' 21" E 75.33'
- ④ N 01° 34' 59" E 620.40'
- ⑤ N 01° 17' 52" E 273.53'

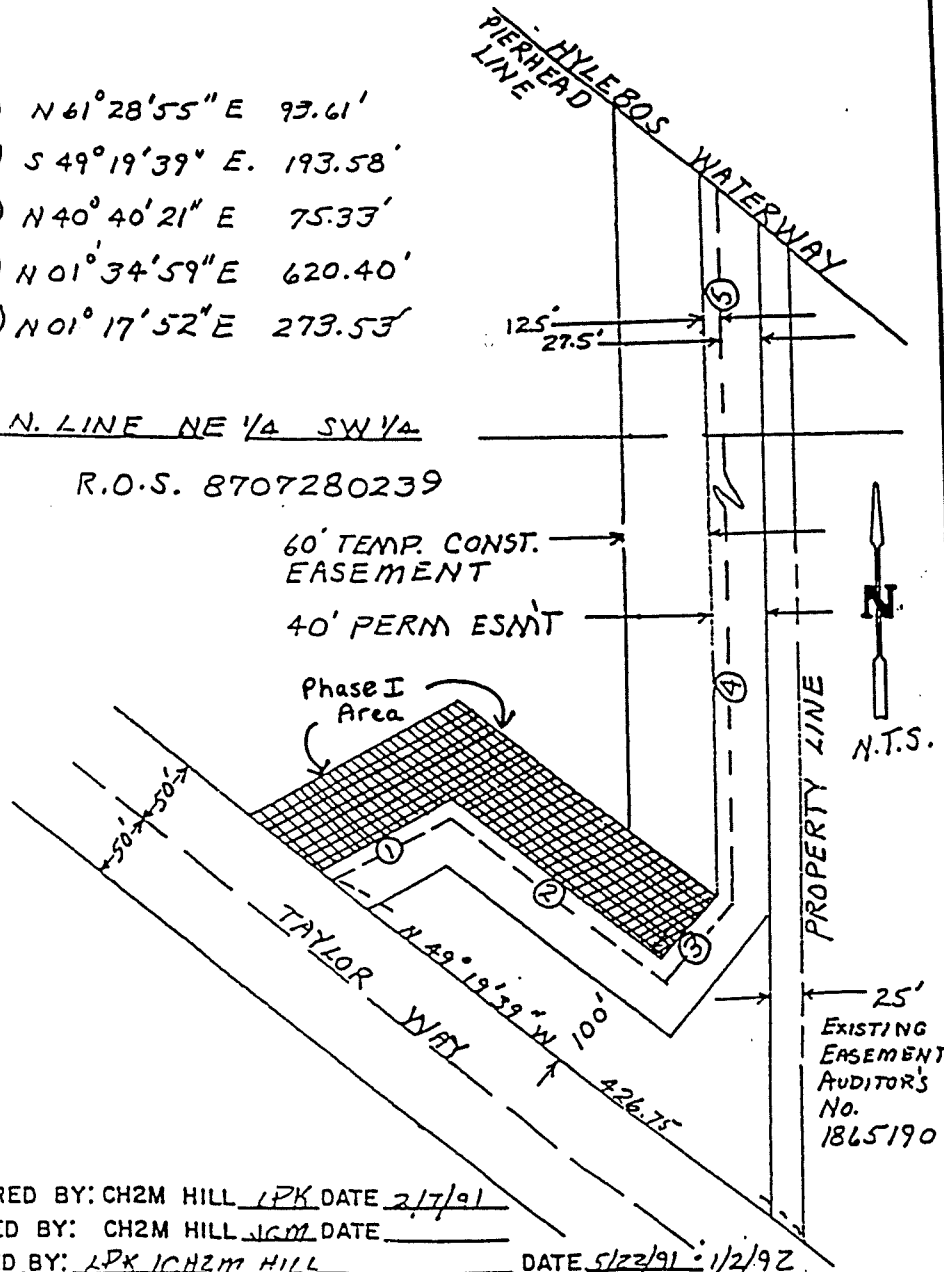
N. LINE NE 1/4 SW 1/4

R.O.S. 8707280239

60' TEMP. CONST. EASEMENT

40' PERM ESMT

Phase I Area



25'
 EXISTING
 EASEMENT
 AUDITOR'S
 No.
 1865190

PREPARED BY: CH2M HILL LPK DATE 2/7/91

CHECKED BY: CH2M HILL JGM DATE

REVISED BY: LPK / CH2M HILL

DATE 5/22/91 : 1/2/92

Exhibit 5

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