



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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE WASHINGTON WATER POWER COMPANY

Defendant.

No. 94-2-05788-4

CONSENT DECREE

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology), and The Washington Water Power Company (WWP or
5 Defendant) is to provide for remedial action at the Washington
6 Water Power Central Steam Plant Site where there has been a
7 release or threatened release of hazardous substances. This
8 Decree requires the Defendant to undertake the following
9 remedial action(s):

- 10 (1) Complete the remedial investigation (RI);
11 (2) Complete a feasibility study (FS); and
12 (3) Negotiate with respect to a Cleanup Action.

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

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

23 C. In signing this Decree, Defendant agrees to its entry
24 and agrees to be bound by its terms.

25 D. By entering into this Decree, the parties do not
26 intend to discharge nonsettling parties from any liability they

1 may have with respect to matters alleged in the complaint. The
2 parties retain the right to seek reimbursement, in whole or in
3 part, from any liable persons for sums expended under this
4 Decree.

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

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

14 II. JURISDICTION

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

18 B. Authority is conferred upon the Washington State
19 Attorney General by RCW 70.105D.040(4)(a) to agree to a
20 settlement with any potentially liable person if, after public
21 notice and hearing, Ecology finds the proposed settlement would
22 lead to a more expeditious cleanup of hazardous substances. RCW
23 70.105D.040(4)(b) requires that such a settlement be entered as
24 a consent decree issued by a court of competent jurisdiction.
25
26

1 C. Ecology has determined that a release or threatened
2 release of hazardous substances has occurred at the Site which
3 is the subject of this Decree.

4 D. Defendant has accepted status as a potentially liable
5 person for the Site, as set forth in RCW 70.105D.020(8).

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

9 F. Defendant has agreed to undertake the actions
10 specified in this Decree and consents to the entry of this
11 Decree under the MTCA.

12 III. PARTIES BOUND

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

1 IV. DEFINITIONS

2 Except for as specified herein, all definitions in WAC 173-
3 340-200 apply to the terms in this Decree.

4 A. Site: The Site, referred to as the Central Steam
5 Plant, is located within Section 19, T. 25 N., R. 43 E.W.M.,
6 Spokane, Washington. The Site is more particularly described in
7 Exhibit A to this Decree which is a detailed site diagram. The
8 Site is a "facility" within the meaning of the Model Toxics
9 Control Act (MTCA), RCW 70.105D.020(3).

10 B. Parties: Refers to the Washington State Department of
11 Ecology and The Washington Water Power Company.

12 C. Defendant: Refers to The Washington Water Power
13 Company.

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

19 V. STATEMENT OF FACTS

20 Ecology makes the following finding of facts without any
21 express or implied admissions by Defendant.

22 A. The Site, referred to as Washington Water Power Central
23 Steam Plant, is located within Section 19, T. 25 N., R. 43
24 E.W.M., Spokane County, Washington. The Site, further
25 identified in Exhibit A of this Decree, is located within the
26 city of Spokane business district. As illustrated in Exhibit A,

1 the Site is generally bounded by Lincoln Street on the west,
2 Post Street on the east, First Avenue on the north, and by an
3 alley to the south. The site boundary may change depending on
4 information collected in the remedial investigation.

5 B. The Central Steam Plant was built in 1915 and was
6 designed to burn coal to produce steam and electric power. In
7 the late 1930s, equipment was installed that allowed the plant
8 to burn sawdust and wood shavings. In the mid-1960's sawdust
9 and coal were phased-out as fuels and all plant boilers were
10 converted from coal to a petroleum product by 1970. Any waste
11 associated with the burning of coal, sawdust, and wood shavings
12 at the plant has not been identified on site. Reportedly, small
13 amounts of diesel were added to the petroleum product that was
14 used as fuel at the steam plant. PCB containing oil was burned
15 on one occasion. WWP owned and operated the Central Steam Plant
16 from 1916 through 1986.

17 C. Seven concrete underground storage tanks were
18 constructed at the facility, referred to as tanks A, B, C, D, F,
19 G, and H. The tank locations are shown in Exhibit A. Tanks A
20 and B have a storage capacity of approximately 75,000 gallons
21 each and were constructed on the west side of the steam plant in
22 1966. Tanks C and D also have a storage capacity of
23 approximately 75,000 gallons each and were constructed in 1972
24 immediately south of Tanks A and B. Tanks F, G, and H were
25 constructed on the east side of the steam plant in 1975 and have
26 a capacity of approximately 100,000 gallons each. In addition,

1 Tank E, a 15,000 gallon steel diesel fuel storage tank, is also
2 located at the Site.

3 D. Tanks A, B, C, and D were the operating tanks that
4 supplied petroleum to the boilers. The larger storage tanks
5 (Tanks F, G, and H) were used to store the petroleum. Fuel was
6 unloaded directly to Tanks A and B between 1966 and 1975 and to
7 Tanks C and D between 1972 and 1975. Once constructed, tanks F,
8 G, and H were used as the storage tanks for fuel unloading. The
9 fuel was transferred from the storage tanks (F, G, and H) to the
10 operating tanks (A, B, C, and D) on an as-needed basis for plant
11 operation. In April 1982, fuel in Tanks F, G and H was
12 transferred to Tanks A, B, C and D and Tanks F, G and H were
13 taken out of service.

14 E. In May 1982, steam plant workers noticed that petroleum
15 was seeping through small cracks in the steam plant basement
16 wall into the sump for the elevator shaft. Weekly monitoring of
17 the Lincoln Street tanks detected a drop in the surface of
18 approximately 1.5 inches in Tank C over a period of 20 days.
19 The contents of Tank C were transferred into Tanks A and B and
20 use of Tank C was discontinued. Tanks F, G, and H were emptied
21 in 1982, and were hydrocleaned in 1985.

22 F. WWP reported the release to Ecology in June 1982. On
23 July 26, 1982, Ecology issued Order No. DE 82-438 to WWP to
24 investigate and mitigate the release. Investigations in
25 response to the leakage of petroleum from the underground
26 storage tanks were conducted in 1982 - 1984. Data from these

1 investigations confirmed that a release of "hazardous
2 substances", as defined in RCW 70.105D.020(5), to the soil had
3 occurred on the Site. Petroleum is a hazardous substance as
4 defined in WAC 173-340-200. In April 1984, Ecology determined
5 that all requirements of the Order had been fulfilled, and the
6 decision was made to discontinue monitoring.

7 The reports are found in the following references:

8 Hart Crowser, 1983, Final Report Bunker C Oil Seepage
9 Study, The Washington Water Power Company, Spokane Steam
Plant, February 4, 1983.

10 Hart Crowser, 1984, Hydrogeologic Evaluation of Monitoring
11 Data, December 1982 to February 1984 Spokane Steam Plant,
March 9, 1984.

12 G. The Central Steam Plant was closed by WWP in December
13 1986. Tanks A, B, D, and E were emptied in 1987, and Tanks A
14 B, C, D, and E were hydrocleaned in early 1988.

15 H. In 1991 WWP began to conduct additional investigations
16 to determine if the petroleum product had migrated. The
17 independent remedial investigations conducted from 1982 to
18 present included drilling 39 soil borings, the installation of
19 monitoring wells in 13 of the soil borings, collecting soil and
20 ground water samples and conducting chemical analyses on those
21 samples, conducting a geophysical survey, and tank integrity
22 assessments. Data from these studies confirmed the presence of
23 petroleum product containing PAHs in soil and petroleum product
24 in ground water, and that the contamination had migrated since
25 the original studies conducted in 1982 - 1984. The
26

1 concentrations of PAHs in one soil sample were above Method A
2 cleanup levels.

3 These studies are found in the following references:

4 ReTec, 1993, Status Report on Site Investigation Central
5 Steam Plant Facility, Spokane, Washington, December 1993.

6 ReTec, 1994, Work Plan for an Independent Remedial
7 Investigation, The Central Steam Plant Site, Spokane,
8 Washington, February 1994.

9 ReTec, 1994, Groundwater Elevation Data, Groundwater
10 Contour Map, Hydrocarbon Occurrence, Monitoring Well
11 Evaluation Survey Data, Soil Boring Logs, Groundwater
12 Analysis Results, Soil Analytical Results, February 7,
13 1994.

14 I. Other studies conducted at the Site are found in the
15 following references:

16 RZA-AGRA, 1993, Analytical Test Results on Groundwater
17 Monitoring Well MW-10, November 29, 1993.

18 RZA-AGRA, 1993, Review of Washington Water Power Data,
19 Central Steam Plant-Bunker C Release, Spokane, Washington,
20 December 20, 1993.

21 These reports were prepared for Mr. Young K. Choi of the
22 Travelodge Motel and not for WWP.

23 J. The remedial investigations conducted by WWP to date
24 were appropriate and necessary and constitute remedial actions
25 as defined in RCW 70.105D.020(11).

26 K. On December 28, 1993, WWP entered into an agreement
with Ecology and voluntarily requested negotiations for a
Consent Decree. As owners of property where a release or
potential release of hazardous substances has occurred or may
occur, WWP accepted status as a potentially liable person under
the Model Toxic Control Act.

1 L. In order to address the petroleum released for the
2 Central Steam Plant, WWP has agreed to enter into a Consent
3 Decree with Ecology.

4 VI. WORK TO BE PERFORMED

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

9 A. WWP shall conduct and complete a remedial investigation.
10 The work plan for the remedial investigation is shown in Exhibit
11 B, which is by this reference made a part hereof as though set
12 out in full.

13 B. Upon completion of the remedial investigation, WWP sh
14 conduct a feasibility study, which is described in the work
15 plan, Exhibit B, which is by this reference made a part hereof
16 as though set out in full. The feasibility study report shall
17 include a recommended cleanup alternative.

18 C. The remedial investigation and feasibility study
19 described in VIA. and VIB. above shall be conducted according to
20 the schedule. The schedule for this work is shown in Exhibit B,
21 which is by this reference made a part hereof as though set out
22 in full. Ecology shall endeavor to review all draft submittals
23 in that schedule and comment to WWP on such draft submittals
24 within 30 days of receipt.

25 D. WWP and Ecology agree to negotiate in good faith in a
26 effort to implement a cleanup action based upon results of the

1 remedial investigation and feasibility study. Ecology will
2 prepare a Cleanup Action Plan which will describe site specific
3 actions and specific cleanup standards, in accordance with WAC
4 173-340-360. In its selection of cleanup actions, Ecology shall
5 consider the recommended cleanup alternative described in the
6 Remedial Investigation and Feasibility Study Report. Ecology
7 shall provide a copy of its preliminary draft cleanup action
8 plan to WWP for comment. WWP shall have thirty (30) days to
9 provide comment to Ecology on the preliminary draft cleanup
10 action plan prior to Ecology finalizing the draft cleanup action
11 plan for public comment. In preparing its draft cleanup action
12 plan for public comment, Ecology shall consider WWPs comments.
13 WWP and Ecology will negotiate the implementation of the Cleanup
14 Action as described in that plan. Failure to agree on that
15 Cleanup Action shall not constitute a violation of this Decree
16 and shall not be subject to dispute resolution under Section
17 XIV.

18 E. Defendant agrees not to perform any remedial actions
19 outside the scope of this decree unless the parties agree to
20 amend the scope of work to cover these actions. All work
21 conducted under this decree shall be done in accordance with ch.
22 173-340 WAC unless otherwise provided herein.

23 VII. DESIGNATED PROJECT COORDINATORS

24 The project coordinator for Ecology is:

25 Patti Y. Carter
26 Site Manager
Department of Ecology

1 4601 N. Monroe, Suite 202
2 Spokane, Washington 99205-1295.

3 The project coordinator for Defendant is:

4 Douglas K. Pottratz
5 Environmental Compliance Administrator
6 The Washington Water Power Company
7 P.O. Box 3727
8 Spokane, Washington 99220-3727

9 Each project coordinator shall be responsible for
10 overseeing the implementation of this Decree. The Ecology
11 project coordinator will be Ecology's designated representative
12 at the Site. To the maximum extent possible, communications
13 between Ecology and the Defendant and all documents, including
14 reports, approvals, and other correspondence concerning the
15 activities performed pursuant to the terms and conditions of
16 this Decree, shall be directed through the project coordinators.
17 The project coordinators may designate, in writing, working
18 level staff contacts for all or portions of the implementation
19 of the remedial work required by this Decree. The project
20 coordinators may agree to minor modifications to the work to be
21 performed without formal amendments to this Decree. Minor
22 modifications will be documented in writing by Ecology.

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

26 VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under
the direction and supervision, as necessary, of a professional

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

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10 IX. ACCESS

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

23 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

24 With respect to the implementation of this Decree,
25 Defendant shall make the results of all sampling, laboratory
26 reports, and/or test results generated by it, or on its behalf

1 available to Ecology and shall submit these results in
2 accordance with Section XI of this Decree.

3 In accordance with WAC 173-340-840(5), ground water
4 sampling data shall be submitted in an electronic format
5 agreeable to Ecology's site coordinator. These submittals shall
6 be provided to Ecology in accordance with Section XI of this
7 Decree.

8 Unless informed otherwise by Ecology, Defendant shall make
9 every effort to provide/allow split samples to be taken by
10 Ecology and/or its authorized representatives of any samples
11 collected by Defendant pursuant to the implementation of this
12 Decree. Duplicate samples shall be provided only if sample
13 quantity is impossible to split for a valid sample. Defendant
14 shall notify Ecology seven (7) days in advance of any sample
15 collection or work activity undertaken pursuant to this Decree
16 on or off the site. Ecology shall, upon request, allow split or
17 duplicate samples to be taken by Defendant or its authorized
18 representatives of any samples collected by Ecology pursuant to
19 the implementation of this Decree provided it does not interfere
20 with the Department's sampling. Without limitation on Ecology's
21 rights under Section IX, Ecology shall endeavor to notify
22 Defendant prior to any sample collection activity. Ecology
23 sampling shall be conducted in compliance with WAC 173-340-800.

24 XI. PROGRESS REPORTS

25 Defendant shall submit to Ecology written monthly progress
26 reports which describe the actions taken during the previous

1 month to implement the requirements of this Decree. The
2 progress shall include the following:

3 A. A list of on-site and off-site activities that have
4 taken place pursuant to this Consent Decree during the month;

5 B. Detailed description of any deviations from required
6 tasks not otherwise documented in project plans or amendment
7 requests;

8 C. Description of all deviations from the schedule
9 (Exhibit B) during the current month and any planned deviations
10 in the upcoming month;

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

13 E. All relevant data (including laboratory analysis
14 summaries) received by the Defendant during the past month and
15 an identification of the source of the sample;

16 F. A list of deliverables for the upcoming month if
17 different from the schedule; and

18 After the effective date of this Decree, all progress
19 reports shall be submitted by the tenth day of the month
20 following the reporting period for which they are required.
21 Unless otherwise specified, progress reports and any other
22 documents submitted pursuant to this Decree shall be sent by
23 certified mail, return receipt requested; personal service;
24 express courier; or by facsimile with a confirmation copy via
25 the U.S. Postal Service to Ecology's project coordinator.
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XII. RETENTION OF RECORDS

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

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XIII. TRANSFER OF INTEREST IN PROPERTY

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest held by WWP in any portion of the Site shall be consummated without provision for continued operation and maintenance of any containment system, treatment system, and monitoring system installed or implemented pursuant to this Decree.

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

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

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

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

16 XV. AMENDMENT OF CONSENT DECREE

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

22 Defendant shall submit any request for an amendment to
23 Ecology for approval. Ecology shall indicate its approval or
24 disapproval in a timely manner after the request for amendment
25 is received. If the amendment to the Decree is substantial,
26 Ecology will provide public notice and opportunity for comment.

1 Reasons for the disapproval shall be stated in writing. If
2 Ecology does not agree to any proposed amendment, the
3 disagreement may be addressed through the dispute resolution
4 procedures described in Section XIV of this Decree.

5 XVI. EXTENSION OF SCHEDULE

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

13 An extension shall only be granted for such period of time
14 as Ecology determines is reasonable under the circumstances. A
15 requested extension shall not be effective until approved by
16 Ecology (or the Court acting pursuant to Section XIV.C).
17 Ecology shall act upon any written request for extension in a
18 timely fashion. It shall not be necessary to formally amend
19 this Decree pursuant to Section XV when a schedule extension is
20 granted.

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

26

1 (1) Circumstances beyond the reasonable control and
2 despite the due diligence of Defendant including delays caused
3 by unrelated third parties or Ecology, such as (but not limited
4 to) delays by Ecology in reviewing, approving, or modifying
5 documents submitted by Defendant; or

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

8 (3) Endangerment as described in Section XVII.

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

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

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

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

20 (3) Endangerment as described in Section XVI.

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

24 XVII. ENDANGERMENT

25 In the event Ecology determines that activities
26 implementing or in noncompliance with this Decree, or any other

1 circumstances or activities, are creating or have the potential
2 to create a danger to the health or welfare of the people on the
3 Site or in the surrounding area or to the environment, Ecology
4 may order Defendant to stop further implementation of this
5 Decree for such period of time as needed to abate the danger or
6 may petition the Court for an order as appropriate. During any
7 stoppage of work under this section, the obligations of
8 Defendant with respect to the work under this Decree which is
9 ordered to be stopped shall be suspended and the time periods
10 for performance of that work, as well as the time period for any
11 other work dependent upon the work which is stopped, shall be
12 extended, pursuant to Section XVI of this Decree, for such
13 period of time as Ecology determines is reasonable under the
14 circumstances.

15 In the event Defendant determines that activities
16 undertaken in furtherance of this Decree or any other
17 circumstances or activities are creating an endangerment to the
18 people on the Site or in the surrounding area or to the
19 environment, Defendant may stop implementation of this Decree
20 for such period of time necessary for Ecology to evaluate the
21 situation and determine whether Defendant should proceed with
22 implementation of the Decree or whether the work stoppage should
23 be continued until the danger is abated. Defendant shall notify
24 Ecology's project coordinator as soon as possible, but no later
25 than twenty-four (24) hours after such stoppage of work, and
26 thereafter provide Ecology with documentation of the basis for

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

12 XVIII. OTHER ACTIONS

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

18 (1) Where Defendant fails, after notice, to comply with
19 any requirement of this Decree; or

20 (2) In the event or upon the discovery of a release or
21 threatened release not addressed by this Decree; or

22 (3) Upon Ecology's determination that action beyond the
23 terms of this Decree is necessary to abate an emergency
24 situation which threatens public health or welfare or the
25 environment; or
26

1 (4) Upon the occurrence or discovery of a situation beyond
2 the scope of this Decree as to which Ecology would be empowered
3 to perform any remedial action or to issue an order and/or
4 penalty, or to take any other enforcement action. This Decree
5 is limited in scope to the geographic Site described in Exhibit
6 A and to those contaminants which Ecology knows to be at the
7 Site when this Decree is entered.

8 Ecology will not, however, bring an action against WWP to
9 recover remedial action costs paid to and received by Ecology
10 under this Consent Decree. In addition, Ecology will not take
11 additional enforcement actions against WWP to require those
12 remedial actions required by this Consent Decree, provided WWP
13 complies with this Consent Decree.

14 Ecology reserves all rights regarding the injury to,
15 destruction of, or loss of natural resources resulting from the
16 release or threatened release of hazardous substances from the
17 Washington Water Power Central Steam Plant site.

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

21 XIX. INDEMNIFICATION

22 Defendant agrees to indemnify and save and hold the State
23 of Washington, its employees, and agents harmless from any and
24 all claims or causes of action for death or injuries to persons
25 or for loss or damage to property arising from or on account of
26 acts or omissions of Defendant, its officers, employees, agents,

1 or contractors in entering into and implementing this Decree.
2 However, the Defendant shall not indemnify the State of
3 Washington nor save nor hold its employees and agents harmless
4 from any claims or causes of action arising out of the negligent
5 acts or omissions of the State of Washington, or the employees
6 or agents of the State, in implementing the activities pursuant
7 to this Decree.

8 XX. COMPLIANCE WITH APPLICABLE LAWS

9 All actions carried out by Defendant pursuant to this
10 Decree shall be done in accordance with all applicable federal,
11 state, and local requirements, including requirements to obtain
12 necessary permits.

13 XXI. REMEDIAL AND INVESTIGATIVE COSTS

14 The Defendant agrees to pay costs incurred by Ecology
15 pursuant to this Decree. These costs shall include work
16 performed by Ecology or its contractors for, or on, the Site
17 under Chapter 70.105D RCW both prior to and subsequent to the
18 issuance of this Decree for investigations, remedial actions,
19 and Decree preparation, negotiations, oversight, and
20 administration. Ecology costs shall include costs of direct
21 activities and support costs of direct activities as defined in
22 WAC 173-340-550(2). The Defendant agrees to pay the required
23 amount within ninety (90) days of receiving from Ecology the
24 itemized statement of costs that includes a summary of costs
25 incurred, an identification of involved staff, and the amount
26 time spent by involved staff members on the project. A general

1 statement of work performed will be provided upon request.
2 Itemized statements shall be prepared quarterly. Failure to pay
3 Ecology's costs within ninety (90) days of receipt of the
4 itemized statement will result in interest charges.

5 XXII. IMPLEMENTATION OF REMEDIAL ACTION

6 If Ecology determines that Defendant has failed without
7 good cause to implement the remedial action, Ecology may, after
8 notice to Defendant, perform any or all portions of the remedial
9 action that remain incomplete. If Ecology performs all or
10 portions of the remedial action because of the Defendant's
11 failure to comply with its obligations under this Decree,
12 Defendant shall reimburse Ecology for the costs of doing such
13 work in accordance with Section XXI, provided that Defendant is
14 not obligated under this section to reimburse Ecology for costs
15 incurred for work inconsistent with or beyond the scope of this
16 Decree.

17 XXIII. PUBLIC PARTICIPATION

18 Ecology shall maintain the responsibility for public
19 participation at the Site. However, Defendant shall cooperate
20 with Ecology and, if agreed to by Ecology, shall:

21 A. Prepare drafts of public notices and fact sheets at
22 important stages of the remedial action, such as the submission
23 of work plans, Remedial Investigation/Feasibility Study reports
24 and engineering design reports. Ecology will finalize
25 (including editing if necessary) and distribute such fact sheets
26

1 and prepare and distribute public notices of Ecology's
2 presentations and meetings;

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

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

13 D. In cooperation with Ecology, arrange and/or continue
14 information repositories to be located at Spokane Public Library
15 at 906 W. Main Avenue, Spokane, Washington; The Washington Water
16 Power Company at 1411 E. Mission, Spokane, Washington; and
17 Ecology's Eastern Regional Office at 4601 N. Monroe, Suite 202,
18 Spokane, Washington. At a minimum, copies of all public
19 notices, fact sheets, and press releases; all quality assured
20 ground water, surface water, soil sediment, and air monitoring
21 data; remedial actions plans, supplemental remedial planning
22 documents, and all other similar documents relating to
23 performance of the remedial action required by this Decree shall
24 be promptly placed in these repositories.

25

26

1 XXIV. DURATION OF DECREE

2 This Decree shall remain in effect and the remedial program
3 described in the Decree shall be maintained and continued until
4 the Defendant has received written notification from Ecology
5 that the requirements of this Decree have been satisfactorily
6 completed.

7 XXV. CLAIMS AGAINST THE STATE

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

18 XXVI. EFFECTIVE DATE

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

21 XXVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

22 This Decree has been the subject of public notice and
23 comment, and a public hearing, under RCW 70.105D.040(4)(a), as
24 outlined in Exhibit C, which is incorporated herein by
25 reference. As a result of this process, Ecology has found that
26 this Decree will lead to a more expeditious cleanup of hazardous

1 substances at the Site. Ecology has also determined that no
2 further public notice or hearing is required under RCW
3 70.105D.040(4)(a) or WAC 173-340-600(9)(e) prior to the entry of
4 this Decree.

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

10 SIGNED by the parties who also hereby waive further notice
11 of presentation for entry by the Court.

12
13 Mary E. Burg 10.31.94 W. Lester Bryan 11/2/94
14 MARY E. BURG Date W. LESTER BRYAN Date
Program Manager Senior Vice President
Toxics Cleanup Program The Washington Water Power Company
15
16 Thomas C. Morrill 10-31-94 Jerry K. Boyd 11/2/94
17 THOMAS C. MORRILL Date JERRY K. BOYD Date
Assistant Attorney General Attorney for WWP
18 USB4 # 18388 USB4 # 20194

19
20 THIS DECREE is approved and IT IS SO ORDERED this _____
21 day of _____, 1994.

22
23 _____
24 SUPERIOR COURT JUDGE
Spokane County Superior Court