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mgr John Keeling
Hansville Landfill

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DAVID W. PETERSON
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STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

KITSAP COUNTY, a political subdivision
of the State of Washington, and WASTE
MANAGEMENT OF WASHINGTON,
INC., a Washington corporation,

Defendants.

NO. 95-2-03005-1

AMENDED CONSENT DECREE

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AMENDED CONSENT DECREE

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I. INTRODUCTION

A. Pursuant to Section XV of the Consent Decree Re: Hansville Landfill in Kitsap County, Washington (Site), entered by this Court on October 4, 1995 (the 1995 Decree), Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants Kitsap County and Waste Management of Washington, Inc. (Defendants), hereby stipulate to amend the 1995 Decree. Waste Management of Washington, Inc., is the successor by merger to Kitsap County Sanitary Landfill, Inc., a Defendant in the 1995 Decree. Waste Management of Washington, Inc., is hereby substituted in this Amended Consent Decree for Kitsap County Sanitary Landfill, Inc.

B. The mutual objective of the State of Washington and the Defendants under these amendments to the 1995 Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Individually, Ecology and each Defendant is a Party, collectively, they are the Parties. This Consent Decree (Decree) requires Defendants to perform the remedial action(s) at the Hansville Landfill in Kitsap County, Washington, in accordance with the Cleanup Action Plan (CAP) attached as Exhibit B to this Decree.

Ecology has determined that these actions are necessary to protect human health and the environment.

C. The Complaint in this action was filed with the Kitsap County Superior Court on October 4, 1995. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. The Parties resolved the issues raised by Ecology's Complaint through the entry of the 1995 Decree by this Court.

D. The Defendants and Ecology will file a stipulation with the Court documenting the closure of the 1995 Decree and the survival of the Contribution Protection and Covenant Not to Sue under the 1995 Decree prior to entry of this Decree.

1 E. By signing this Decree, the Parties agree to its entry and agree to be bound by
2 its terms.

3 F. By entering into this Decree, the Parties do not intend to discharge non-settling
4 parties from any liability they may have with respect to matters alleged in the Complaint. The
5 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
6 sums expended under this Decree.

7 G. This Decree shall not be construed as proof of liability or responsibility for any
8 releases of hazardous substances or cost for remedial action nor an admission of any facts;
9 provided, however, that Defendants shall not challenge the authority of the Attorney General
10 and Ecology to enforce this Decree.

11 H. The Court is fully advised of the reasons for entry of this Decree, and good
12 cause having been shown:

13 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

14 **II. JURISDICTION**

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

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

22 C. Ecology has determined that a release or threatened release of hazardous
23 substances has occurred at the Site that is the subject of this Decree.
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1 D. Ecology has given notice to Defendants of Ecology's determination that
2 Defendants are PLPs for the Site, as required by RCW 70.105D.020(21) and WAC
3 173-340-500.

4 E. The actions to be taken pursuant to this Decree are necessary to protect public
5 health and the environment.

6 F. This Decree has been subject to public notice and comment.

7 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
8 hazardous substances at the Site in compliance with the cleanup standards established under
9 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

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

12 III. PARTIES BOUND

13 This Decree shall apply to and be binding upon the Parties to this Decree, their
14 successors and assigns. The undersigned representative of each party hereby certifies that he
15 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
16 comply with this Decree. Defendants agree to undertake all actions required by the terms and
17 conditions of this Decree. No change in ownership or corporate status shall alter any
18 Defendant's responsibility under this Decree. Defendants shall provide a copy of this Decree
19 to all prime contractors retained to perform work required by this Decree, and shall ensure that
20 all work undertaken by its agents, contractors, and subcontractors complies with this Decree.

21 IV. DEFINITIONS

22 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and WAC 173-
23 340-200 shall control the meanings of the terms in this Decree.

24 A. Landfill: Refers to the solid waste disposal area, the demolition waste disposal
25 area, and the septage disposal area located on the Landfill Property.

1 B. Landfill Property: Refers to the area encompassed by the Landfill property
2 boundary, including the Landfill, the Recycling and Garbage Facility, and all other facilities
3 within the property boundary located at 7791 NE Ecology Road, Section 9, Township 27
4 North, Range 2 East, approximately 4.5 miles south of the community of Hansville on the
5 northern most reach of the Kitsap Peninsula.

6 C. Site: Refers to the Landfill Property plus the extent of contamination of
7 groundwater and surface water impacts from the Hansville Landfill on Port Gamble S'Klallam
8 tribal property. The Site is more particularly described in Exhibit A to this Decree which is a
9 detailed site diagram. The Site constitutes a facility under RCW 70.105D.020(5).

10 D. Parties: Refers to the State of Washington, Department of Ecology, Kitsap
11 County, a municipal corporation organized under the laws of the State of Washington, and
12 Waste Management of Washington, Inc., a Washington corporation.

13 E. Defendants: Refers to Kitsap County and Waste Management of Washington,
14 Inc.

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

18 V. FINDINGS OF FACTS

19 Ecology makes the following findings of fact without any express or implied
20 admissions of such facts by Defendants.

21 A. Kitsap County owns the property currently known as the Hansville Landfill, the
22 Landfill Property. Exhibit B contains a map showing the location of the Landfill Property and
23 the Site.

24 B. The Landfill was actively used as a landfill from 1962 until 1989, and it served
25 as a disposal area for mixed municipal solid waste, demolition waste, and septage for the
26

1 central and northern portions of Kitsap County. A drop box facility has operated at the
2 Landfill Property from 1989 to the present.

3 C. Kitsap County Sanitary Landfill, Inc., operated the Landfill by lease agreement
4 most recently dated August 27, 1979, ending on May 16, 1994. Kitsap County Sanitary
5 Landfill, Inc., was later known as Olympic View Sanitary Landfill, Inc. Olympic View
6 Sanitary Landfill, Inc., was merged into Waste Management of Washington Inc., on December
7 26, 2001. Waste Management of Washington, Inc. was the successor of the merger, and was
8 neither a party to any lease, nor operator of the Landfill.

9 D. Hazardous substances—vinyl chloride, 1,1-dichloroethane, and arsenic—were
10 identified at the Landfill Property by Parametrix, Inc., in data collected from onsite monitoring
11 wells in 1993. (*Hansville Landfill Groundwater, Surface Water, and Landfill Gas Monitoring*
12 *Program, 1993 Annual Report*, Parametrix Inc., April 1994.) In addition, the following
13 leachate indicator parameters were detected in downgradient monitoring wells at levels that
14 were statistically elevated with respect to water quality in the upgradient monitoring well:
15 barium, iron, manganese, specific conductance, chloride, total organic carbon, chemical
16 oxygen demand, nitrate nitrogen, nitrite nitrogen, sulfate (*1993 Annual Monitoring Report*,
17 *Hansville Landfill*, CH2M HILL, Inc., April 1994).

18 E. The Hansville Landfill is located on a 73-acre +/- parcel adjacent to the eastern
19 property boundary of the Port Gamble S'Klallam Reservation. The primary groundwater flow
20 direction is west and southwest. Potential receptors that may be affected by the release of
21 these hazardous substances include drinking water sources, surface waters, and fisheries
22 resources.

23 F. Three separate disposal areas have been used at the Landfill. The primary
24 disposal area was a 13-acre municipal landfill in the central portion of the Site that accepted
25 municipal solid waste. In the northeastern portion of the Site, a 4-acre demolition landfill
26

1 | accepted construction, demolition, and land clearing waste. Septage waste was disposed of in
2 | this area prior to demolition debris. The third disposal area was a 1/3-acre septage lagoon
3 | located between the two landfills.

4 | G. In November 1988, a temporary cover was placed over much of the Landfill.
5 | By late 1989, passive gas collection systems were installed in both the municipal and
6 | demolition landfills and in the adjacent native soils. The gas collection system consisted of a
7 | network of slotted pipe connected to a flare on the surface. The slotted pipes were placed
8 | below the cover material in gravel trenches. By December 1990, a permanent cover was
9 | installed over each of the three disposal areas. The cover includes a high density polyethylene
10 | (HDPE) geomembrane, HDPE geonet composite, 18 inches of native sand, and six inches of
11 | topsoil. Covers were placed over each of the three disposal areas. In 1991-92, an active gas
12 | extraction system was installed. In 1993, the gas collection system was modified to separate
13 | the perimeter gas wells from the in-refuse gas wells to provide more efficient landfill gas
14 | collection within the refuse. By June 1993, methane concentrations in the perimeter wells had
15 | declined to non-combustible levels, so it became necessary to close the perimeter wells to
16 | ensure that the flare had enough high quality gas to burn continuously and efficiently.
17 | Additional modifications to the gas system were completed June 8, 1994. These modifications
18 | separated the perimeter gas extraction well flow from the in-refuse gas extraction well and
19 | trench flow. The two gas streams entered the flare at different points. Additional
20 | modifications were made in 1995 because methane concentrations in the perimeter wells were
21 | consistently non-detectable. In 2003, a downsized flare was installed to accommodate the
22 | reduced gas flows typical of an older closed landfill

23 | H. To monitor leachate migration from the Landfill, six monitoring wells (MW-1
24 | through MW-6) were installed. Selected wells have been sampled periodically since 1982.
25 | Five gas probes (GP-1 through GP-5) were installed to monitor the migration of gases away
26 |

1 from the Landfill. In addition, three surface water stations were monitored. Prior to
2 commencing the remedial investigation (RI), three additional groundwater monitoring wells
3 (two in 1988, one in 1990), one additional gas migration probe (1994), and one additional
4 surface water monitoring station were added to the environmental monitoring program.
5 During and after the RI, groundwater and surface water were monitored quarterly.

6 I. In 1995, the Defendants and Ecology entered into a Consent Decree (Kitsap
7 County Superior Court No. 95-2-03005-1). The 1995 Decree required the Defendants to
8 perform a Remedial Investigation and Feasibility Study (RI/FS) of the Hansville Landfill. The
9 RI/FS's purpose was to delineate the nature and extent of contamination in groundwater,
10 surface water, soil, and sediment at the Site; the extent of landfill gas migration at the Site; and
11 recommend a clean up action.

12 J. In July 2007, the Defendants completed the Remedial Investigation Report (RI)
13 for the Site. The following is a summary of the results of the RI assessment of Landfill
14 impacts:

- 15 • Groundwater: arsenic, bis(2-ethylhexyl)phthalate, copper, lead, manganese, nickel,
16 nitrate, silver, vinyl chloride, and zinc exceeded screening criteria and were
17 evaluated further in the Feasibility Study (FS). Vinyl chloride and manganese in
18 the upper aquifer were found at highest concentrations adjacent to the waste
19 disposal areas at the Landfill. Concentrations of these chemicals decrease
20 downgradient, to the west and southwest, and beyond the property boundary, where
21 groundwater from the upper aquifer discharges to surface water. Although the
22 highest detected concentrations of arsenic occur in the monitoring wells
23 immediately adjacent to all three disposal areas, arsenic also occurs naturally in the
24 upper aquifer.

- Landfill Gas: on-site and off-site exposure pathways are effectively eliminated by the active landfill gas extraction and flaring system. The landfill gas is combusted and destroyed within the landfill gas flare. Continued operation of this system (until landfill gas is depleted) will keep this exposure pathway incomplete. The active landfill gas collection and flaring system has also been effective in removing gas that previously migrated into the surrounding soils, as confirmed by gas pressure and gas sampling data from multi-depth perimeter gas probes. Landfill gas was not found to be migrating beyond the property boundary.
- Surface Water: groundwater in the upper aquifer that is hydraulically downgradient of the waste disposal areas at the Landfill discharges to Middle Creek and its tributaries, Creek B, and possibly to Creek A, and is the source of base flow to those streams. Chemicals that exceeded screening criteria at the discharge to stream headwaters or at downstream sampling stations were arsenic, copper, vinyl chloride, and zinc.
- Sediment: surface water in the streams downgradient of the Landfill is in contact with sediments in the stream beds. The following chemicals in sediment exceeded screening criteria: antimony, arsenic, chromium, manganese, nickel, and silver.

For a more detailed description of the RI's analysis and findings, refer to the 2007 Hansville Landfill Remedial Investigation/Feasibility Study, Remedial Investigation Report, Parametrix, July 2007.

K. In June 2009, the Defendants completed the Final FS Report for the Site. The FS presented a risk assessment of the chemicals identified in the RI as indicator hazardous substances, evaluate cleanup action alternatives, and recommend a preferred remedial alternative. For a more detailed description of the FS's risk assessment and evaluation of

1 remedial alternatives, refer to the Final Feasibility Study Report, Hansville Landfill Remedial
2 Investigation/Feasibility Study, Remedial Investigation Report, Parametrix, June 2009.

3 **VI. WORK TO BE PERFORMED**

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

7 A. The final FS was completed in June 2009. Based on the information in the RI
8 and FS reports, a draft CAP was prepared (attached in Exhibit B). The Defendants shall
9 perform all tasks set forth in the final CAP and implement the CAP in accordance with the
10 CAP's schedule.

11 B. Defendants agree not to perform any remedial actions outside the scope of this
12 Decree unless the Parties agree to modify the CAP to cover these actions. All work conducted
13 by Defendants under this Decree shall be done in accordance with Chapter 173-340 WAC
14 unless otherwise provided herein.

15 **VII. DESIGNATED PROJECT COORDINATORS**

16 A. The project coordinator for Ecology is:

17 Name: John Keeling
18 Address: Department of Ecology-NWRO
3190 160th Avenue SE
19 Bellevue, WA 98008-5452
Telephone: (425) 649-7052

20 B. The project coordinator for Defendant Kitsap County is:

21 Name: Keli McKay-Means
22 Address: Kitsap County
614 Division Street MS-27
23 Port Orchard, WA 98366
Telephone: (360) 337-5665

24 C. The project coordinator for Defendant Waste Management of Washington, Inc.,
25 is:

1 Name: Charles Luckie
2 Address: Waste Management of Washington, Inc.
 9300 SW Barney White Road
 Port Orchard, WA 98367-7462
3 Telephone: (360) 415-2754

4 D. Each project coordinator shall be responsible for overseeing the implementation
5 of this Decree. Ecology's project coordinator will be Ecology's designated representative for
6 the Site. To the maximum extent possible, communications between Ecology and Defendants
7 and all documents, including reports, approvals, and other correspondence concerning the
8 activities performed pursuant to the terms and conditions of this Decree shall be directed
9 through the project coordinators. The project coordinators may designate, in writing, working
10 level staff contacts for all or portions of the implementation of the work to be performed
11 required by this Decree.

12 E. Any Party may change its respective project coordinator. Written notification
13 shall be given to the other Parties at least ten (10) calendar days prior to the change.

14 VIII. PERFORMANCE

15 A. All geologic and hydrogeologic work performed pursuant to this Decree shall
16 be under the supervision and direction of a geologist licensed in the State of Washington or
17 under the direct supervision of an engineer registered in the State of Washington, except as
18 otherwise provided for by Chapters 18.220 and 18.43 RCW.

19 B. All engineering work performed pursuant to this Decree shall be under the
20 direct supervision of a professional engineer registered in the State of Washington, except as
21 otherwise provided for by RCW 18.43.130.

22 C. All construction work performed pursuant to this Decree shall be under the
23 direct supervision of a professional engineer or a qualified technician under the direct
24 supervision of a professional engineer. The professional engineer must be registered in the
25 State of Washington, except as otherwise provided for by RCW 18.43.130.

1 D. Any documents submitted containing geologic, hydrologic, or engineering work
2 shall be under the seal of an appropriately licensed professional as required by Chapter 18.220
3 RCW or RCW 18.43.130.

4 E. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
5 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
6 of this Decree, in advance of their involvement at the Site.

7 IX. ACCESS

8 Ecology or any Ecology-authorized representative shall have full authority to enter and
9 freely move about the Landfill Property at all reasonable times for the purposes of, *inter alia*:
10 inspecting records, operation logs, and contracts related to the work being performed pursuant
11 to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree;
12 conducting such tests or collecting such samples as Ecology may deem necessary; using a
13 camera, sound recording, or other documentary type equipment to record work done pursuant
14 to this Decree; and verifying the data submitted to Ecology by Defendants. Defendants shall
15 make all reasonable efforts to secure access rights for those properties within the Site not
16 owned or controlled by Defendants where remedial activities or investigations will be
17 performed pursuant to this Decree. Ecology or any Ecology authorized representative shall
18 give reasonable notice before entering any Landfill Property owned or controlled by
19 Defendants unless an emergency prevents such notice. Any person who accesses the Site
20 pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology
21 employees and their representatives shall not be required to sign any liability release or waiver
22 as a condition of Site property access.

23 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

24 A. With respect to the implementation of this Decree, Defendants shall make the
25 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
26 available to Ecology. Defendants must submit data to Ecology using Ecology's Environmental

1 Information Management (EIM) database. Defendants must also submit data and statistical
2 analysis to Ecology in their native formats. Pursuant to WAC 173-340-840(5), all sampling
3 data shall be submitted to Ecology in both printed and electronic formats in accordance with
4 Section XI (Progress Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal
5 Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

6 B. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
7 representative to take split or duplicate samples of any samples collected by Defendants
8 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
9 in advance, or as soon as possible, of any such sample collection or remedial action at the Site.
10 Ecology shall, upon request, allow Defendants and/or their authorized representatives to take
11 split or duplicate samples of any samples collected by Ecology pursuant to the implementation
12 of this Decree, provided that doing so does not interfere with Ecology's sampling. Without
13 limitation on Ecology's rights under Section IX (Access), Ecology shall notify Defendants
14 prior to any sample collection activity unless an emergency prevents such notice.

15 C. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
16 shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific
17 analyses to be conducted, unless otherwise approved by Ecology.

18 XI. PROGRESS REPORTS

19 Defendants shall submit to Ecology written quarterly Progress Reports as part of the
20 Quarterly Monitoring Reports that describe the actions taken during the previous quarter to
21 implement the requirements of this Decree. The Progress Reports shall include the following:

- 22 A. A list of on-site activities that have taken place during the quarter;
23 B. Detailed description of any deviations from required tasks not otherwise
24 documented in project plans or amendment requests;

1 C. Description of all deviations from the CAP (Exhibit B) during the current
2 quarter and any planned deviations in the upcoming quarter;

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

5 E. All raw data (including laboratory analyses) received by Defendants during the
6 past quarter and an identification of the source of the sample; and

7 F. A list of deliverables for the upcoming quarter if different from the schedule.

8 All Progress Reports shall be submitted within sixty (60) days after the end of the
9 quarter in which they are due after the effective date of this Decree. Unless otherwise
10 specified, Progress Reports and any other documents submitted to Ecology's project
11 coordinator pursuant to this Decree may be submitted by regular mail or electronically as
12 directed by Ecology's project coordinator.

13 XII. RETENTION OF RECORDS

14 During the pendency of this Decree, and for ten (10) years from the date this Decree is
15 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall
16 preserve records that are adequate for documenting the implementation of this Decree,
17 including factual information or data; relevant decision documents; and any other relevant,
18 site-specific documents or information. Defendants shall insert a similar record retention
19 requirement into all contracts with prime contractors retained to perform work required by this
20 Decree. Upon request of Ecology, Defendants shall make all records available to Ecology and
21 allow access for review within a reasonable time. Nothing in this Decree is intended by either
22 Defendant to waive any right it might have under applicable law to limit disclosure of
23 documents protected by the attorney work product and/or attorney-client privilege.

1 **XIII. TRANSFER OF INTEREST IN PROPERTY**

2 A. No voluntary conveyance or relinquishment of title, easement, leasehold, or
3 other interest in any portion of the Site shall be consummated by Defendants without provision
4 for continued operation and maintenance of any containment system, treatment system, and/or
5 monitoring system installed or implemented pursuant to this Decree.

6 B. Prior to Defendant's transfer of any interest in all or any portion of the Site, and
7 during the effective period of this Decree, Defendants shall provide a copy of this Decree to
8 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,
9 at least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said transfer.
10 Upon transfer of any interest, Defendants shall restrict uses and activities to those consistent
11 with this Consent Decree and notify all transferees of the restrictions on the use of the
12 property.

13 **XIV. RESOLUTION OF DISPUTES**

14 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
15 other decision or action by Ecology's project coordinator, or an itemized billing statement
16 under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
17 procedure set forth below.

18 1. Upon receipt of Ecology's project coordinator's written decision, or the
19 itemized billing statement, Defendants have fourteen (14) days within which to notify
20 Ecology's project coordinator in writing of its objection to the decision or itemized
21 statement.

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

1 3. Defendants may then request regional management review of the
2 decision. This request shall be submitted in writing to the Northwest Region Toxics
3 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's
4 project coordinator's written decision.

5 4. Ecology's Regional Section Manager shall conduct a review of the
6 dispute and shall endeavor to issue a written decision regarding the dispute within thirty
7 (30) days of Defendant's request for review.

8 5. If Defendants find Ecology's Regional Section Manager's decision
9 unacceptable, Defendants may then request final management review of the decision.
10 This request shall be submitted in writing to the Toxics Cleanup Program Manager
11 within seven (7) days of receipt of the Regional Section Manager's decision.

12 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
13 the dispute and shall endeavor to issue a written decision regarding the dispute within
14 thirty (30) days of either Defendant's request for review of the Regional Section
15 Manager's decision. The Toxics Cleanup Program Manager's decision shall be
16 Ecology's final decision on the disputed matter.

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

24 C. The Parties agree to only utilize the dispute resolution process in good faith and
25 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

1 | Where any Party utilizes the dispute resolution process in bad faith or for purposes of delay,
2 | the other party may seek sanctions.

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

6 | **XV. AMENDMENT OF DECREE**

7 | A. The project coordinators may agree to minor changes to the work to be
8 | performed without formally amending this Decree. Minor changes will be documented in
9 | writing by Ecology.

10 | B. Substantial changes to the work to be performed shall require formal
11 | amendment of this Decree. This Decree may only be formally amended by a written
12 | stipulation among the Parties that is entered by the Court, or by order of the Court. Such
13 | amendment shall become effective upon entry by the Court. Agreement to amend the Decree
14 | shall not be unreasonably withheld by any party.

15 | C. Defendants shall submit a written request for amendment to Ecology for
16 | approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner
17 | after the written request for amendment is received. If the amendment to the Decree is a
18 | substantial change, Ecology will provide public notice and opportunity for comment. Reasons
19 | for the disapproval of a proposed amendment to the Decree shall be stated in writing. If
20 | Ecology does not agree to a proposed amendment, the disagreement may be addressed through
21 | the dispute resolution procedures described in Section XIV (Resolution of Disputes).

22 | **XVI. EXTENSION OF SCHEDULE**

23 | A. An extension of schedule shall be granted only when a request for an extension
24 | is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
25 |
26 |

1 deadline for which the extension is requested, and good cause exists for granting the extension.

2 All extensions shall be requested in writing. The request shall specify:

- 3 1. The deadline that is sought to be extended;
- 4 2. The length of the extension sought;
- 5 3. The reason(s) for the extension; and
- 6 4. Any related deadline or schedule that would be affected if the extension
7 were granted.

8 B. The burden shall be on the Defendant requesting the extension to demonstrate to
9 the satisfaction of Ecology that the request for such extension has been submitted in a timely
10 fashion and that good cause exists for granting the extension. Good cause may include, but is
11 not limited to:

- 12 1. Circumstances beyond the reasonable control and despite the due
13 diligence of Defendants including delays caused by unrelated third parties or Ecology,
14 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
15 documents submitted by Defendants; or
- 16 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
17 storm, or other unavoidable casualty; or
- 18 3. A disputed issue has been submitted in good faith by either Defendant
19 for review pursuant to Section XIV (Resolution of Disputes) and Ecology agrees that
20 the resolution of the disputed issue impacts the deadline sought to be extended; or
- 21 4. Endangerment as described in Section XVII (Endangerment).

22 However, neither increased costs of performance of the terms of this Decree nor
23 changed economic circumstances shall be considered circumstances beyond the reasonable
24 control of Defendants.

1 C. Ecology shall act upon any written request for extension in a timely fashion.
2 Ecology shall give Defendant written notification of any extensions granted pursuant to this
3 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
4 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
5 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
6 granted.

7 D. An extension shall only be granted for such period of time as Ecology
8 determines is reasonable under the circumstances. Ecology may grant schedule extensions
9 exceeding ninety (90) days only as a result of:

10 1. Delays in the issuance of a necessary permit which was applied for in a
11 timely manner; or

12 2. Other circumstances deemed exceptional or extraordinary by Ecology;
13 or

14 3. Endangerment as described in Section XVII (Endangerment).

15 XVII. ENDANGERMENT

16 A. In the event Ecology determines that any activity being performed at the Site is
17 creating or has the potential to create a danger to human health or the environment, Ecology
18 may direct Defendants to cease such activities for such period of time as it deems necessary to
19 abate the danger. Defendants shall immediately comply with such direction.

20 B. In the event either Defendant determines that any activity being performed at
21 the Site is creating or has the potential to create a danger to human health or the environment,
22 that Defendant may cease such activities. The Defendant making such determinations shall
23 notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24)
24 hours after making such determination or ceasing such activities. Upon Ecology's direction,
25 that Defendant shall provide Ecology with documentation of the basis for the determination or
26

1 cessation of such activities. If Ecology disagrees with Defendants' cessation of activities, it
2 may direct Defendants to resume such activities.

3 C. If Ecology concurs with or orders a work stoppage pursuant to this Section,
4 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology
5 determines the danger is abated, and the time for performance of such activities, as well as the
6 time for any other work dependent upon such activities, shall be extended, in accordance with
7 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
8 reasonable under the circumstances.

9 D. Nothing in this Decree shall limit the authority of Ecology, its employees,
10 agents, or contractors to take or require appropriate action in the event of an emergency.

11 XVIII. COVENANT NOT TO SUE

12 A. Covenant Not to Sue: In consideration of Defendants' compliance with the
13 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
14 actions against Defendants regarding the release or threatened release of hazardous substances
15 covered by this Decree.

16 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
17 and those hazardous substances that Ecology knows are located at the Site as of the date of
18 entry of this Decree. This Decree does not cover any other hazardous substance or area.
19 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

20 This Covenant Not to Sue shall have no applicability whatsoever to:

- 21 1. Criminal liability;
- 22 2. Liability for damages to natural resources; and
- 23 3. Any Ecology action, including cost recovery, against PLPs not a party to
24 this Decree.

1 If factors not known at the time of entry of the settlement agreement are discovered and
2 present a previously unknown threat to human health or the environment, the Court shall
3 amend this Covenant Not to Sue.

4 B. Reopeners: Ecology specifically reserves the right to institute legal or
5 administrative action against Defendants to require them to perform additional remedial
6 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050
7 under the following circumstances:

8 1. Upon Defendants' failure to meet the requirements of this Decree,
9 including, but not limited to, failure of the remedial action to meet the cleanup
10 standards identified in the Cleanup Action Plan (CAP) (Exhibit B);

11 2. Upon Ecology's determination that remedial action beyond the terms of
12 this Decree is necessary to abate an imminent and substantial endangerment to human
13 health or the environment;

14 3. Upon the availability of new information regarding factors previously
15 unknown to Ecology, including the nature or quantity of hazardous substances at the
16 Site, and Ecology's determination, in light of this information, that further remedial
17 action is necessary at the Site to protect human health or the environment; or

18 4. Upon Ecology's determination that additional remedial actions are
19 necessary to achieve cleanup standards within the reasonable restoration time frame set
20 forth in the CAP.

21 C. Except in the case of an emergency, prior to instituting legal or administrative
22 action against either Defendant pursuant to this Section, Ecology shall provide Defendants
23 with fifteen (15) calendar days notice of such action.
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1 **XIX. CONTRIBUTION PROTECTION**

2 With regard to claims for contribution against Defendants, the Parties agree that
3 Defendants are entitled to protection against claims for contribution for matters addressed in
4 this Decree as provided by RCW 70.105D.040(4)(d).

5 **XX. LAND USE RESTRICTIONS**

6 The Defendants shall cause to be recorded a Restrictive Covenant affecting the Landfill
7 Property. Defendants shall record a Restrictive Covenant of similar form and substance as that
8 Restrictive Covenant provided in Exhibit D attached hereto with the office of the Kitsap
9 County Auditor within ten (10) days of the completion of the remedial action. The Restrictive
10 Covenant shall restrict future uses of the Landfill Property. Defendants shall provide Ecology
11 with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

12 **XXI. FINANCIAL ASSURANCES**

13 Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and adequate
14 financial assurance mechanisms to cover all costs associated with the operation and
15 maintenance of the remedial action at the Site, including institutional controls, compliance
16 monitoring, and corrective measures.

17 Within sixty (60) days of the effective date of this Decree, Defendants shall submit to
18 Ecology for review and approval an estimate of the costs that it will incur in carrying out the
19 terms of this Decree, including operation and maintenance, and compliance monitoring.
20 Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendants
21 shall provide proof of financial assurances sufficient to cover all such costs in a form
22 acceptable to Ecology.

23 Defendants shall adjust the financial assurance coverage and provide Ecology's project
24 coordinator with documentation of the updated financial assurance for:
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1 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of
2 this Decree; or if applicable, the modified anniversary date established in accordance with this
3 Section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the
4 financial test or corporate guarantee is used; and

5 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
6 approval of a modification or revision to the CAP that result in increases to the cost or
7 expected duration of remedial actions. Any adjustments for inflation since the most recent
8 preceding anniversary date shall be made concurrent with adjustments for changes in cost
9 estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the
10 anniversary date established under this Section to become the date of issuance of such revised
11 or modified CAP.

12 XXII. INDEMNIFICATION

13 To the extent allowed by law, Defendants agree to indemnify and save and hold the
14 State of Washington, its employees, and agents harmless from any and all claims or causes of
15 action for death or injuries to persons or for loss or damage to property to the extent arising
16 from or on account of acts or omissions of said Defendant, its officers, employees, agents, or
17 contractors in entering into and implementing this Decree. However, neither Defendant shall
18 indemnify the State of Washington nor save nor hold its employees and agents harmless from
19 any claims or causes of action to the extent arising out of the negligent acts or omissions of the
20 State of Washington, or the employees or agents of the State, in entering into or implementing
21 this Decree.

22 XXIII. COMPLIANCE WITH APPLICABLE LAWS

23 A. All actions carried out by Defendants pursuant to this Decree shall be done in
24 accordance with all applicable federal, state, and local requirements, including requirements to
25 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
26

1 federal, state or local requirements that the agency has determined are applicable and that are
2 known at the time of entry of this Decree have been identified in the CAP.

3 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural
4 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
5 requiring or authorizing local government permits or approvals. However, Defendants shall
6 comply with the substantive requirements of such permits or approvals. The exempt permits or
7 approvals and the applicable substantive requirements of those permits or approvals, as they
8 are known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).

9 Defendants have a continuing obligation to determine whether additional permits or
10 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
11 action under this Decree. In the event either Ecology or a Defendant determines that additional
12 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
13 remedial action under this Decree, it shall promptly notify the other Parties of this
14 determination. Ecology shall determine whether Ecology or one or both of the Defendants
15 shall be responsible to contact the appropriate state and/or local agencies. If Ecology so
16 requires, Defendants shall promptly consult with the appropriate state and/or local agencies
17 and provide Ecology with written documentation from those agencies of the substantive
18 requirements those agencies believe are applicable to the remedial action. Ecology shall make
19 the final determination on the additional substantive requirements that must be met by
20 Defendants and on how Defendants must meet those requirements. Ecology shall inform
21 Defendants in writing of these requirements. Once established by Ecology, the additional
22 requirements shall be enforceable requirements of this Decree. Defendants shall not begin or
23 continue the remedial action potentially subject to the additional requirements until Ecology
24 makes its final determination.

1 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
2 exemption from complying with the procedural requirements of the laws referenced in RCW
3 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for
4 the State to administer any federal law, the exemption shall not apply and Defendants shall
5 comply with both the procedural and substantive requirements of the laws referenced in RCW
6 70.105D.090(1), including any requirements to obtain permits.

7 XXIV. REMEDIAL ACTION COSTS

8 A. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this
9 Decree and consistent with WAC 173-340-550(2). These costs shall include the cost of work
10 performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW,
11 including remedial actions and Decree preparation, negotiation, oversight and administration.
12 These costs shall include work performed both prior to and subsequent to the entry of this
13 Decree. Ecology's costs shall include costs of direct activities and support costs of direct
14 activities as defined in WAC 173-340-550(2). Defendants shall pay the required amount
15 within (90) days of receiving from Ecology an itemized statement of costs that includes a
16 summary of costs incurred, an identification of involved staff, and the amount of time spent by
17 involved staff members on the project. A general statement of work performed will be
18 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC
19 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
20 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)
21 per annum, compounded monthly.

22 B. In addition to other available relief, pursuant to RCW 70.105D.055, Ecology
23 has authority to recover unreimbursed remedial action costs by filing a lien against real
24 property subject to the remedial actions.
25
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1 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

2 A. If Ecology determines that Defendants have failed without good cause to
3 implement the remedial action, in whole or in part, Ecology may, after notice to Defendants,
4 perform any or all portions of the remedial action that remain incomplete. If Ecology performs
5 all or portions of the remedial action because of Defendants' failure to comply with its
6 obligations under this Decree, Defendants shall reimburse Ecology for the costs of doing such
7 work in accordance with Section XXIV (Remedial Action Costs), provided that Defendants are
8 not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent
9 with or beyond the scope of this Decree.

10 B. Except where necessary to abate an emergency situation, Defendants shall not
11 perform any remedial actions at the Site outside those remedial actions required by this Decree,
12 unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section
13 XV (Amendment of Decree).

14 **XXVI. PERIODIC REVIEW**

15 As long as the remedial action, including groundwater monitoring, continues at the
16 Site, the Parties agree to review the progress of the remedial action at the Site, and to review
17 the data accumulated as a result of monitoring the Site as often as is necessary and appropriate
18 under the circumstances. At least every five (5) years after the initiation of the cleanup action
19 at the Site, the Parties shall meet to discuss the status of the Site and the need, if any, for
20 further remedial action at the Site. At least ninety (90) days prior to each periodic review,
21 Defendants shall submit a report to Ecology that documents whether human health and the
22 environment are being protected based on the factors set forth in WAC 173-340-420(4).
23 Ecology reserves the right to require further remedial action at the Site under appropriate
24 circumstances. This provision shall remain in effect for the duration of this Decree.

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1 Kingston, WA 98346
2 (360) 297-2670

3 2. Department of Ecology
4 Northwest Regional Office
5 3190 160th Avenue SE
6 Bellevue, WA 98008
7 (425) 649-7000

8 3. Kitsap County Public Works
9 8600 SW Imperial Way
10 Bremerton, WA 98312
11 (360) 337-5777

12 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
13 monitoring data; remedial actions plans and reports, supplemental remedial planning
14 documents, and all other similar documents relating to performance of the remedial action
15 required by this Decree shall be promptly placed in these repositories.

16 **XXVIII. DURATION OF DECREE**

17 The remedial program required pursuant to this Decree shall be maintained and
18 continued until Defendants have received written notification from Ecology that the
19 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
20 effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue)
21 and Section XIX (Contribution Protection) shall survive.

22 **XXIX. CLAIMS AGAINST THE STATE**

23 Defendants hereby agree that they will not seek to recover any costs accrued in
24 implementing the remedial action required by this Decree from the State of Washington or any
25 of its agencies; and further, that Defendants will make no claim against the State Toxics
26 Control Account or any local Toxics Control Account for any costs incurred in implementing
this Decree. Except as provided above, however, Defendants expressly reserve their respective
right to seek to recover any costs incurred in implementing this Decree from any other PLP.

This Section does not limit or address funding that may be provided under Chapter 173-322 WAC.


XXX. EFFECTIVE DATE

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

XXXI. WITHDRAWAL OF CONSENT


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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

Date: 8/1/11

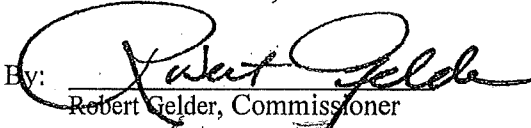
ROBERT M. MCKENNA
Attorney General

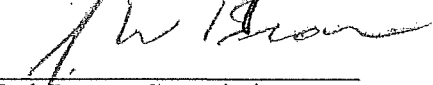

JOHN A. LEVEL, WSBA # 20439
Assistant Attorney General
(360) 586-6753

Date: 8/3/11

For Kitsap County

By: 
Charlotte Garrido, Chair

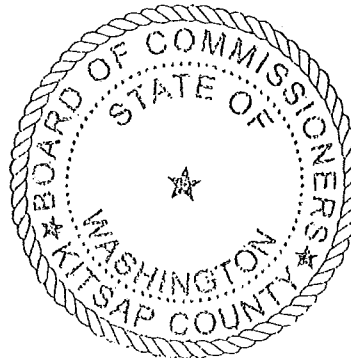
By: 
Robert Gelder, Commissioner

By: 
Josh Brown, Commissioner

Date: 7/11/11

ATTEST:

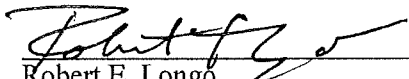
By: 
Dana Daniels, Clerk of the Board



1 RUSSELL D. HAUGE
2 Kitsap County Prosecuting Attorney

WASTE MANAGEMENT OF
WASHINGTON, INC.

3
4 Lisa Nickel, WSBA # 31221
5 Deputy Prosecuting Attorney
(360) 337-4974


Robert E. Longo
Vice President and Assistant Secretary
(480) 624-8473

6 Date: _____


Date: July 25, 2011

7
8
9 ENTERED this _____ day of _____ 2011.

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11 _____
12 JUDGE
13 Kitsap County Superior Court
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RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



Lisa Nickel, WSBA # 31221
Deputy Prosecuting Attorney
(360) 337-4974

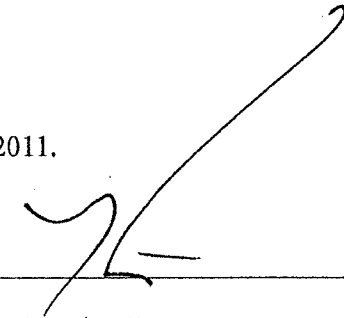
WASTE MANAGEMENT OF
WASHINGTON, INC.

Robert E. Longo
Vice President and Assistant Secretary
(480) 624-8473

Date: 7-13-11

Date: _____

ENTERED this 5 day of August 2011.



JUDGE
Kitsap County Superior Court

RECEIVED AND FILED
IN OPEN COURT

AUG - 5 2011

DAVID W. PETERSON
KITSAP COUNTY CLERK

STATE OF WASHINGTON
KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

KITSAP COUNTY, a political subdivision
of the State of Washington, and WASTE
MANAGEMENT OF WASHINGTON,
INC., a Washington corporation,

Defendants.

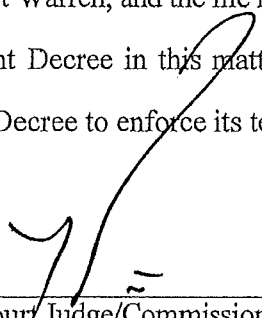
No. 95-2-03005-1

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 Declaration of Robert Warren, 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.

DATED this 5 day of August, 2011.



Superior Court Judge/Commissioner

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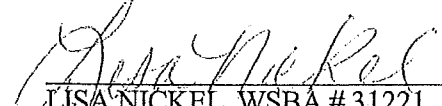
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1 Presented by:

2 ROBERT M. MCKENNA
3 Attorney General

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney

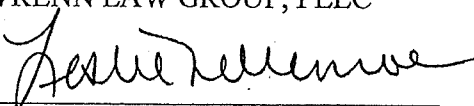
4 
5 JOHN A. LEVEL, WSBA # 20439
6 Assistant Attorney General
Attorneys for Plaintiff


LISA NICKEL, WSBA # 31221
Deputy Prosecuting Attorney
Attorney for Defendant Kitsap County

7 Date: 8/5/11

Date: 8-5-11

8
9 WRENN LAW GROUP, PLLC

10 
11 LESLIE NELLERMOE, WSBA #8758
12 Attorney for Defendant
Waste Management of Washington, Inc.

13 Date: 7/19/2011