

Colbert
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U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
OLYMPIA

FEB 28 1989

James M. Hansen, Clerk
Deputy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON; et al.,
Plaintiff,
v.
COUNTY OF SPOKANE; et al.,
Defendant,

NO. C-89-033-RJM

MEMORANDUM

The consent decree tendered by the parties is being entered contemporaneously herewith. It would appear that the federal government's response to the various comments submitted by the public together with the supplemental material filed just prior to the hearing adequately addresses the concerns expressed. The purpose of this memorandum is to discuss comments offered by several persons appearing at the hearing conducted on February 27, 1989.

Much to the credit of Whitworth Water District, the District has no intention of attempting to delay commencement of clean-up operations. The District is justifiably left in a quandary as to its role, if any, in supplying water to the affected area in the future, but as counsel recognizes, this unsettled issue presents questions of state law which would best be resolved by the state courts or through legislative action if and when the need arises.

1 Mrs. Hooks addressed the speed with which this matter has
2 progressed and questioned whether the consent decree was a fait
3 accompli. It is true that the hearing was scheduled on a crash
4 basis in contemplation of a change in state law effective March
5 1, 1989. It is also true that it was a fait accompli in the
6 sense that the subject matter is a consent decree, with the
7 operative word being "consent." However, after reviewing the
8 file subsequent to the hearing, including the recently-filed
9 supplemental material, the Court is satisfied that it has had an
10 ample opportunity to assess the merits of the decree as required
11 by relevant case law. Citizens For A Better Environment v.
12 Gorsuch, 718 F.2d 1117, 1126 (D.C. Cir. 1983), cert. denied sub
13 nom. Union Carbide Corp. v. Natural Resources Defense Council,
14 Inc., 467 U.S. 1219 (1984) and authorities cited therein; see
15 also, United States v. Hooker Chemicals & Plastics Corp., 540 F.
16 Supp. 1067, 1072 (W.D. N.Y. 1982).

17 Mrs. Garrison spoke to the inadequacy of the decree in
18 restoring home values in the affected area. The core problem is
19 the uncertainty of future contamination. It is entirely
20 possible, if not probable, that additional wells will be impacted
21 as time goes on as the result of further migration of
22 contaminants. It is also possible that demands on the aquifer
23 may render some wells unusable. Any knowledgeable purchaser
24 would naturally take those factors into consideration in
25 determining what price to offer, or in deciding whether to buy at
26 all, for that matter.

MEMORANDUM -- 2

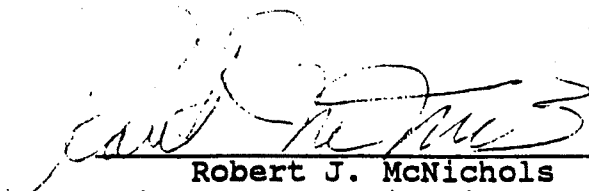
1 In the best of all worlds, the County might have chosen to
2 commit the capital necessary to provide for expansion of
3 Whitworth Water District facilities to service the entire area.
4 It chose not to do so, and instead has committed to furnish an
5 "alternative" water supply, albeit of a highly flexible nature.
6 See Supplemental Memorandum Etc. at Exhibit F filed on February
7 24, 1989. The Court cannot view the County's decision to treat
8 each affected well on a case-by-case basis as unreasonable or
9 unfair, facing, as it does, precisely the same uncertainties as
10 do the home owners. Not every contingency is foreseeable, and it
11 would be a onerous burden to expect the parties to provide for
12 that which cannot be predicted, or to expend public funds to
13 solve an inchoate problem which may never become a reality.

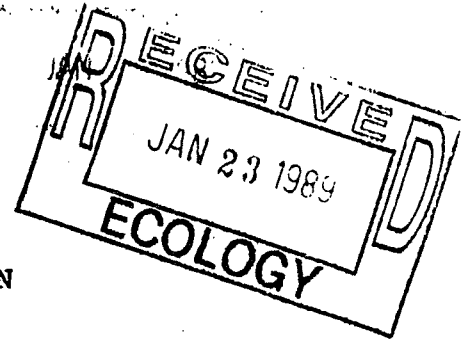
14 Then too, one has to consider the alternative. The Court
15 has no authority to modify the decree or to require the parties
16 to do anything they have not agreed to. All the Court can do is
17 approve the decree, or reject it. Were it rejected, and this
18 matter proceeded to litigation, the area residents would be
19 looking at literally years of delay and would be risking the
20 always-present danger that the outcome would not be as beneficial
21 as is this settlement.

22 With respect to the technical aspects of the decree, the
23 Court must repose a high degree of confidence in the expertise of
24 the "watch dog" agencies which were so closely involved in
25 negotiations. Securities and Exchange Comm'n v. Randolph, 736
26 F.2d 525, 529 (9th Cir. 1984).

1 Because the decree, viewed in its entirety, seems a rational
2 response to a problem which has now plagued North Spokane for
3 almost a decade, is not unfair to those who will benefit
4 thereunder, and hastens the governmental objective of reclaiming
5 the environment, it will be approved. United States v. Seymour
6 Recycling Corp., 554 F. Supp. 1334, 1337 (S.D. Ind. 1982).

7 DONE BY THE COURT this 28th day of February, 1989.

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11 Robert J. McNichols
12 United States District Judge
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY
AND THE UNITED STATES OF
AMERICA ON BEHALF OF THE
U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Plaintiff,

v.

COUNTY OF SPOKANE AND
KEY TRONIC CORPORATION,

Defendants.

C-89-033-RJM

MEMORANDUM REGARDING LODGING
OF CONSENT DECREE

On January 9, 1989, the United States and the State of Washington lodged with the Court a decree settling this case. This decree has been signed by defendants, and has been approved by the United States and the State of Washington.

Pursuant to 42 U.S.C. §9622(d)(2) and 28 C.F.R. §28.7, the decree cannot be entered by the Court until there has been an opportunity for public comment on it. Accordingly, once the decree has been lodged, the United States must publish in the Federal Register a notice of the lodging of the decree. The public is then given 30 days to comment on the decree. Once the 30 day comment period has expired, the governments can then move for entry of the

MEMORANDUM - 1

CONSDECREE/R.1

1 decree. If the governments move for entry of the decree, they must
2 provide to the Court a response to any public comments received.

3 Accordingly, the governments request that the Court defer
4 signing the decree in this case until after expiration of the public
5 comment period. After expiration of the comment period, the
6 governments will move for entry of the decree, if appropriate in
7 light of public comment, and will inform the Court of any public
8 comments and the governments' responses to those comments.

9 The parties anticipate moving for entry of the consent decree
10 prior to March 1, 1989. Expeditious action on this matter will be
11 necessary to avoid any unnecessary procedural delay that could be
12 associated with the effectiveness of the state Model Toxics Control
13 Act (Initiative 97), which replaces Ch. 70.105B RCW on that date.
14 The parties believe that the settlement embodied in this decree is
15 consistent with the terms of both Ch. 70.105B and the substantive
16 provisions of the Model Toxics Control Act.

17 DATED this 7th day of January, 1989.

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19 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

20
21 UNITED STATES OF AMERICA; and
THE STATE OF WASHINGTON;

22 Plaintiffs,

23 v.

24 COUNTY OF SPOKANE; and
25 KEY TRONIC CORPORATION;

26 Defendants.

C-89-033-RJI

Civil Action No.

COMPLAINT

COMPLAINT - 1

1
2 The United States of America, on behalf of the
3 Administrator of the United States Environmental Protection
4 Agency ("EPA"), and the State of Washington, allege as follows:

5 STATEMENT OF THE CASE

6 1. This is a civil action instituted pursuant to
7 Section 106 of the Comprehensive Environmental Response,
8 Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9606, as
9 amended by the Superfund Amendments and Reauthorization Act of
10 1986 ("SARA"), Pub. L. No. 99-499, § 106, 100 Stat. 1613 (1986),
11 for equitable relief concerning an imminent and substantial
12 endangerment to human health and to the environment at a site
13 located near Spokane, Washington (the "Site"). This action also
14 is brought pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C.
15 §§ 9604 and 9607, to recover response costs incurred and to be
16 incurred by the United States in connection with the Site.

17 In addition, this action is brought by the State of
18 Washington pursuant to Chapter 70.105B, Revised Code of
19 Washington ("RCW"), and ch. 90.48 RCW.

20 Pursuant to 28 U.S.C. § 2201, the United States also
21 seeks a declaratory judgment that the defendants shall be liable
22 for any response costs incurred by the United States in the
23 future with respect to the site, including the cost of monitoring
24 the Site.

25 JURISDICTION AND VENUE
26

1 2. This Court has jurisdiction over the subject matter
2 of this case pursuant to Section 113(b) of CERCLA, as amended, 42
3 U.S.C. § 9613(b), 28 U.S.C. §§ 1331, 1345 and 1345, ch. 70.105
4 RCW and ch. 90.48 RCW. Venue is proper in this district pursuant
5 to Section 113(b) of CERCLA, as amended, 42 U.S.C. § 9613(b), and
6 28 U.S.C. § 1391(b) because the claims herein arose in this
7 district.

8 COMPONENTS OF THE SITE

9 3. The Colbert Landfill is a Spokane County-owned
10 sanitary landfill that was operated from 1968 through 1986. The
11 Colbert area is in northeastern Washington, in Spokane County,
12 approximately 15 miles north-northeast of Spokane, Washington.

13 4. The landfill covers 40 acres and is located about 2.5
14 miles north of the Town of Colbert and half a mile east of U.S.
15 Highway 2 in the northwest quadrant of the intersection of Elk-
16 Chattaroy, Yale, and Big Meadows Roads. It is situated in the
17 southeast corner of Section 3, Township 27 North, Range 43 East,
18 W.M. The Landfill received both municipal and commercial wastes
19 up to 1986. It is now filled to capacity, and is no longer
20 receiving waste.

21 5. The remedial action site, the area of potential
22 impact surrounding and including the landfill, extends north of
23 the landfill about a half mile, west about a mile to the Little
24 Spokane river, east a similar distance, and south approximately
25 five miles to the Peone Creek. The total area is approximately
26 6,800 acres, which includes parts of Sections 2, 3, 10, 11, 14,

1 15, 16, 21, 22, 23, 26, 27, 28, 33, 34, and 35 of the same
2 township and range cited in paragraph 3 above.

3 DEFENDANTS

4 6. Defendant County of Spokane, Washington, has operated
5 the Colbert Landfill for the entire period that it was an active
6 landfill, during which time hazardous substances were disposed of
7 there.

8 7. Defendant Key Tronic is a manufacturer of keyboards
9 for typewriters and computers, and it is organized under the laws
10 of the State of Washington, with its principal place of business
11 in Spokane, Washington. Key Tronic, by contract, agreement or
12 otherwise arranged for disposal, or arranged with a transporter
13 for transport for disposal, of hazardous substances owned or
14 possessed by Key Tronic at the Site. Specifically, Key Tronic
15 arranged for the disposal or transport for disposal of
16 approximately 35,000 gallons of various chlorinated organic
17 solvents, which included 1,1,1-Trichloroethane ("TCA") and
18 methylene chloride ("MC"), at the Colbert landfill. The site
19 contains both of these substances.

20 RELEASES AND THREATENED RELEASES

21 8. Hazardous substances have been or may be released
22 from the Site.

23 9. The hazardous substances that have been, are being
24 or may be released from the Site include, but are not limited to,
25 1,1,1-Trichloroethane, 1,1-Dichloroethane, trichloroethylene,
26 tetrachloroethylene, and methylene chloride. Alluvial ground

1 water under most of the Site is contaminated, and the
2 contamination extends beyond the boundaries of the Site.

3 10. Some of the hazardous substances released at the
4 site have serious adverse health effects, including
5 carcinogenicity and mutagenicity.

6 11. The substances found at the Site may reach
7 receptors (e.g., people, animals and plants) by migrating through
8 the alluvial groundwater.

9 12. Consistent with 40 C.F.R. § 300.68(i), EPA issued a
10 Record of Decision ("ROD") for the Site on September 29, 1987.
11 The ROD describes the cost-effective remedial alternative that
12 effectively mitigates and minimizes threats to and provides
13 adequate protection of public health and welfare and the
14 environment to be implemented at the Site. The selected remedial
15 alternative includes, among other measures, the provision of an
16 alternative drinking water supply to each residence whose
17 domestic water supply is affected by the constituents of concern;
18 the installation of additional monitoring wells to define the
19 plume boundaries; the preliminary selection of types of treatment
20 system to be constructed; and the construction of extraction
21 wells, treatment systems and discharge structures. The remedial
22 alternative is designed to minimize the future health and
23 environmental effects of the hazardous substances found at the
24 Site.

25 EXPENDITURES BY THE SUPERFUND
26

1 13. The United States has expended and will continue to
2 expend funds to investigate, monitor, survey, test, and otherwise
3 gather information to identify (1) the existence and extent of a
4 release or threatened release of hazardous substances from the
5 Site; (2) the source and nature of the hazardous substances
6 involved; and (3) the extent of the danger that such release or
7 threatened release may present to the public health or welfare or
8 the environment. In addition, the United States has expended and
9 will continue to expend funds for planning, legal and other
10 activities necessary or appropriate to plan and direct response
11 actions, to recover the costs of response actions, and for
12 enforcement purposes. As of September 30, 1988, the United
13 States has expended \$1.0 million on such response actions, which
14 expenditures are not inconsistent with the National Contingency
15 Plan, 40 C.F.R. Part 300.

16 14. The State of Washington, Department of Ecology has
17 expended costs to identify, eliminate or minimize the threat or
18 potential threat posed by hazardous substances at the Colbert
19 Landfill Site. In addition, the State of Washington will
20 continue to incur costs associated with oversight and
21 implementation of remedial action at the Site. As of June 23,
22 1988, the State of Washington has incurred costs of \$386,541,
23 including interest.

24 FIRST CLAIM FOR RELIEF - UNITED STATES

25 Section 106(a) of the Comprehensive Environmental Response,
26 Compensation and Liability Act, 42 U.S.C. 9606(a)

1 15. The allegations of paragraphs 1 through 14 are
2 realleged and incorporated herein by reference.

3 16. Section 106(a) of the Comprehensive Environmental
4 Response, Compensation and Liability Act, 42 U.S.C. § 9606(a),
5 provides:

6 [W]hen the President determines that there may be
7 an imminent and substantial endangerment to the public
8 health or welfare or the environment because of an actual
9 or threatened release of a hazardous substance from a
10 facility, he may require the Attorney General of the
11 United States to secure such relief as may be necessary to
abate such endangerment. The President may also, after
notice to the affected State, take other action under this
Section including, but not limited to, issuing such orders
as may be necessary to protect public health and welfare
and the environment.

12 The President has delegated his authority under Section 106 to
13 the Administrator of EPA. Exec. Order No. 12,580, § 4(d)(1), 52
14 Fed. Reg. 2923 (1987).

15 17. "Hazardous substance" is defined in Section 101(14)
16 of CERCLA, 42 U.S.C. 9601(14), to include --

17 (A) any substances designated pursuant to section
18 311(b)(2)(A) of the Federal Water Pollution Control Act,
19 (B) any element, compound, mixture, solution, or
20 substance designated pursuant to section 102 of this
21 Act, (C) any hazardous waste having the characteristics
22 identified under or listed pursuant to section 3001 of
23 the Solid Waste Disposal Act (but not including any
24 waste the regulation of which under the solid waste
25 Disposal Act has been suspended by Act of Congress),
26 (D) any toxic pollutant listed under section 307(a) of
the Federal Water Pollution Control Act, (E) any
hazardous air pollutant listed under section 112 of the
Clean Air Act, and (F) any imminently hazardous chemical
substance or mixture with respect to which the
Administrator has taken action pursuant to section 7 of
the Toxic Substances Control Act.

18 18. "Release" is defined in Section 101(22) of CERCLA,
26 42 U.S.C. 9601(22), as --

1 [A]ny spilling, leaking, pumping, pouring, emitting,
2 emptying, discharging, injecting, escaping, leaching,
3 dumping, or disposing into the environment.

4 19. "Facility" is defined in Section 101(9) of CERCLA,
5 42 U.S.C. § 9601(9), to include --

6 (A) any lagoon, . . . landfill, . . . or (B)

7 [a]ny site or area where a hazardous substance has been
8 deposited, stored, disposed of, or placed, or otherwise
9 come to be located.

10 20. The substances identified in paragraphs 7, 9, 10 and
11 11, above, are hazardous substances within the meaning of
12 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), 40 C.F.R. Table
13 302.4.

14 21. The substances identified in paragraphs 7, 9, 10 and
15 11, above have been and are being released into the soil,
16 groundwater and surface water at and around the Site and future
17 releases are threatened within the meaning of 42 U.S.C. §
18 9601(22).

19 22. The Site is a "facility" within the meaning of 42
20 U.S.C. § 9601(9).

21 23. The Administrator has determined that there may be
22 an imminent and substantial endangerment to the public health or
23 welfare or the environment because of actual or threatened
24 releases of hazardous substances from the Site within the meaning
25 of 42 U.S.C. § 9606.

26 24. The endangerment presented by the release or
threatened release of hazardous substances from the Site is
indivisible, as the hazardous substances found at the Site are

1 commingled within the Landfill and the groundwater beneath and
2 adjacent to the Site, so that all of the hazardous substances
3 contribute to the endangerment.

4 25. Defendants are within the classes of persons
5 described as liable parties in Sections 107(a)(1), 107(a)(2) and
6 107(a)(3) of CERCLA, 42 U.S.C. §§ 9607(a)(1), 9607(a)(2) and
7 9607(a)(3).

8 26. Defendants are jointly and severally liable for
9 remedying the releases and threatened releases and consequences
10 thereof.

11 SECOND CLAIM FOR RELIEF - UNITED STATES

12 Sections 104 and 107(a) of the
13 Comprehensive Environmental Response,
14 Compensation and Liability Act,
42 U.S.C. §§ 9604 and 9607(a)

15 27. The allegations of paragraphs 1 through 26 are
16 hereby incorporated by reference and made a part hereof.

17 28. Section 104 of CERCLA, 42 U.S.C. § 9604 and 9607(a)
(Supp. IV 1980), provides in pertinent part:

18 104(a)(1) - Whenever (A) any hazardous substance is
19 released or there is a substantial threat of such a
20 release into the environment, or (B) there is a release
21 or substantial threat of release into the environment of
22 any pollutant or contaminant which may present an
23 imminent and substantial danger to the public health or
24 welfare, the President is authorized to act, consistent
25 with the national contingency plan, to remove or arrange
26 for the removal of, and provide for remedial action
relating to such hazardous substance, pollutant, or
contaminant at any time (including its removal from any
contaminated natural resource), or take any other
response measure consistent with the national contin-
gency plan which the President deems necessary to
protect the public health or welfare or the environment,
...

1 104(b) - Whenever the President is authorized to act
2 pursuant to subsection (a) of this section, or whenever
3 the President has reason to believe that a release has
4 occurred or is about to occur, or that illness, disease
5 or complaints thereof may be attributable to exposure to
6 a hazardous substance, pollutant, or contaminant and
7 that a release may have occurred or be occurring, he may
8 undertake such investigations, monitoring, surveys,
9 testing, and other information gathering as he may deem
10 necessary or appropriate to identify the existence and
11 extent of the release or threat thereof, the source and
12 nature of the hazardous substances, pollutants or
13 contaminants involved, and the extent of danger to the
14 public health or welfare or to the environment. In
15 addition, the President may undertake such planning,
16 legal, fiscal, economic, engineering, architectural, and
17 other studies or investigations as he may deem necessary
18 or appropriate to plan and direct response actions, to
19 recover the costs thereof, and to enforce the provisions
20 of this Act.

21 29. Section 107 (a) of CERCLA, 42 U.S.C. § 9607 (a),
22 provides in pertinent part:

23 107(a) - Notwithstanding any other provision or rule of
24 law, and subject only to the defenses set forth in sub-
25 section (b) of this section --

26 (1) the owner and operator of a vessel . . . or a
facility,

(2) any person who at the time of disposal of any
hazardous substance owned or operated any facility
at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or
otherwise arranged for disposal or treatment, or
arranged with a transporter for transport for
disposal or treatment, of hazardous substances owned
or possessed by such person, by any other party or
entity, at any facility owned or operated by another
party or entity and containing such hazardous
substances, and

(4) any person who accepts or accepted any hazardous
substances for transport to disposal or treatment
facilities or sites selected by such person, from
which there is a release, or threatened release which
causes the incurrence of response costs, of a
hazardous substance, shall be liable for --

1 (A) all costs of removal or remedial action
2 incurred by the United States Government or a
3 State . . . not inconsistent with the national
4 contingency plan;

5 30. The President has delegated his authority under
6 Section 104(a) and (b) of CERCLA, 42 U.S.C. § 9604(a) and (b), to
7 the Administrator of EPA. Exec. Order No. 12,580, § 1(g), 52
8 Fed. Reg. 2923 (1987).

9 31. The United States has incurred and will continue to
10 incur costs in connection with activities relating to the Site
11 under Section 104 of CERCLA, 42 U.S.C. § 9604, including costs of
12 investigation, clean-up, and removal and remedial action at the
13 facility. These response costs were incurred and will be
14 incurred in a manner not inconsistent with the National
15 Contingency Plan.

16 32. Defendants are jointly and severally liable under
17 CERCLA for all response costs incurred by the United States in
18 connection with the Site.

19 THIRD CLAIM FOR RELIEF - STATE OF WASHINGTON

20 33. The allegations of paragraphs 1 through 32 are
21 realleged and incorporated herein by reference.

22 34. Pursuant to Section 107(a)(4)(A) of CERCLA, 42
23 U.S.C. § 9607(a)(4)(A), as set forth in paragraph 29 above, the
24 defendants are jointly and severally liable for all response
25 costs incurred by the State of Washington in connection with the
26 Site.

FOURTH CLAIM FOR RELIEF - STATE OF WASHINGTON

1 35. The allegations of paragraphs 1 through 34 are
2 realleged and incorporated herein by reference.

3 36. RCW 70.105B.040 provides in pertinent part:

4 (1) Except as provided in subsection (3) of this
5 section, the following persons are liable with
6 respect to a facility:

7 (a) The owner or operator of the facility;

8 (b) Any person who owned or operated the facility
9 at the time of disposal or release of the hazardous
10 substance;

11 (c) Any person who owned or possessed a hazardous
12 substance and who by contract, agreement, or
13 otherwise arranged for disposal or treatment of the
14 hazardous substance at the facility, or arranged with
15 a transporter for transport for disposal or treatment
16 of the hazardous substance at the facility, or
17 otherwise generated hazardous waste disposed of or
18 treated at the facility;

19 . . .

20 (2) Each person who is liable under this section is
21 strictly liable, jointly and severally, for all
22 remedial action costs at or associated with the
23 facility and for all natural resource damages
24 resulting from the releases or threatened releases
25 of hazardous substances. The attorney general, at
26 the request of the department, may recover all costs
and damages from persons liable for them.

37. RCW 70.105B.030 provides in pertinent part:

(1) The department may exercise the following powers
in addition to any other powers granted by law:

(a) The department may conduct, provide for
conducting, or require potentially liable persons to
conduct remedial actions to remedy a release or
threatened release of a hazardous substance.

38. RCW 70.105B.020(4) defines "facility" as:

(4) "Facility" means (a) any building, structure,
installation, equipment, pipe or pipeline (including
any pipe into a sewer or publicly owned treatment
works), well, pit, pond, lagoon, impoundment, ditch,

1 landfill, storage container, motor vehicle, rolling
2 stock, vessel, or aircraft, or (b) any site or area
3 where a hazardous substance, other than a consumer
4 product in consumer use, has been deposited, stored,
5 disposed of, or placed, or otherwise come to be
6 located.

7 39. RCW 70.105B.020(6) defines hazardous substances to
8 include:

9 (a) Any dangerous or extremely hazardous waste as
10 defined in RCW 70.105.010(5) and (6), or any
11 dangerous or extremely hazardous waste designated by
12 rule pursuant to chapter 70.105 RCW;

13 (b) Any hazardous substance as defined in RCW
14 70.105.010(14) or any hazardous substance as defined
15 by rule pursuant to chapter 70.105 RCW;

16 (c) Any substance that, on October 16, 1987, is a
17 hazardous substance under section 101(14) of
18 [CERCLA].

19 40. RCW 70.105B.020(10) defines a release as:

20 . . . any intentional or unintentional entry of any
21 hazardous substance into the environment, including
22 but not limited to the abandonment or disposal of
23 containers of hazardous substances.

24 41. The substances identified in paragraphs 7, 9, 10 and
25 11 above, are hazardous substances within the meaning of RCW
26 70.105B.020(6).

42. The substances identified in paragraphs 7, 9, 10 and
11 above, have been and are being "released" into the
environment and future releases are threatened within the meaning
of RCW 70.105B.020(10).

43. The Site is a "facility" within the meaning of RCW
70.105B.020(4).

44. The State of Washington, Department of Ecology, has
determined that remedial action is necessary to identify,

1 eliminate or mitigate any threat or potential threat to human
2 health or the environment with respect to the Colbert Landfill
3 Site.

4 45. The defendants have received notice of their
5 potential liability and have been provided an opportunity to
6 propose a settlement agreement providing for remedial action as
7 provided by RCW 70.105B.070(1).

8 46. The defendants are liable persons within the terms
9 of RCW 70.105B.040(1).

10 47. The defendants are jointly and severally liable for
11 conducting remedial action for releases to the Colbert Landfill
12 Site.

13 FIFTH CLAIM FOR RELIEF - STATE OF WASHINGTON

14 48. The allegations of paragraphs 1 through 47 are
15 realleged and incorporated herein by reference.

16 49. The releases of hazardous substances into
17 groundwaters as set forth in paragraph 9 constitutes pollution as
18 defined by RCW 90.48.020.

19 50. RCW 90.48.080 prohibits the discharge of material
20 which causes or tends to cause pollution of waters of the state.

21 51. Underground waters are waters of the state as
22 defined by RCW 90.48.020.

23 52. The defendants have violated RCW 90.48.080 by
24 causing or tending to cause pollution of waters of the State of
25 Washington.

26 PRAYER FOR RELIEF

1 Wherefore, plaintiffs, the United States of America and
2 the State of Washington, pray:

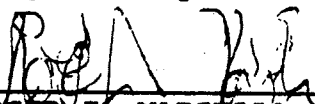
3 A. That defendants be ordered to implement the selected
4 remedial alternative set forth in the September 29, 1987, Record
5 of Decision for the Site.

6 B. That the Court order all defendants, jointly and
7 severally, to reimburse the United States and the State of
8 Washington for all response costs incurred and to be incurred by
9 the United States and the State of Washington in connection with
10 the Site, that are not inconsistent with the NCP;

11 C. That Defendants be declared to be jointly and
12 severally liable for future investigatory, enforcement and other
13 response costs incurred by the United States and the State of
14 Washington with respect to the Site, and all other expenses the
15 United States may incur which are not inconsistent with the
16 National Contingency Plan, 40 C.F.R. Part 300;

17 D. That the Court award plaintiffs their costs of suit
18 herein and any other relief as the Court finds just and appro-
19 priate.

20 Respectfully submitted,

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22 _____
23 ROGER J. MARZULLA
24 Assistant Attorney General
25 Land and Natural Resources Division
26 United States Department of Justice

JOHN E. LAMP
United States Attorney
Eastern District of Washington

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