

FILED

Pennwalt
Log Sheet
FSN 1219

JUN 24 1987

ACCEPTANCE OF SERVICE

CLERK'S STAMP

SUPERIOR COURT CLERK
THURSTON COUNTY, WASH

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

1- STATE OF WASHINGTON,)
 2 DEPARTMENT OF ECOLOGY,)
 3)
 4 Plaintiff,)
 5)
 6 v.)
 7 PENNWALT CORPORATION, INC.,)
 8 Defendant.)

87 2 01193

No. DE 86-S159
CONSENT DECREE

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KENNETH O EIKENBERRY, ATTORNEY GENERAL

Assistant Attorney General

Wa. Telephone

1 I.

2 JURISDICTION

3 A. This Court has jurisdiction over the subject matter and
4 over the parties pursuant to RCW 90.48.037 and RCW 70.105.120.

5 B. The State of Washington Department of Ecology ("Ecology")
6 asserts authority for this Consent Decree (the "Decree") under the
7 following statutes:

8 Chapter 90.48 RCW, the Water Pollution Control Act;

9 Chapter 70.105 RCW, Hazardous Waste Management;

10 Chapter 70.105A RCW, Hazardous Waste Fees Act;

11 42 U.S.C. 6901 et seq., Resource Conservation and
12 Recovery Act (RCRA);

13 42 U.S.C. 9601 et seq., Comprehensive Environmental
14 Response, Compensation and Liability Act ("CERCLA"),
15 as amended by the Superfund Amendment and
16 Reauthorization Act ("SARA").

17 C. The parties reserve their rights to object to the
18 jurisdiction of Ecology under these statutes, but for purposes of
19 entry into and performance under the Decree, agree to perform
20 their obligations under the Decree.

21 D. On the basis of the results of the testing and analysis
22 described in the Statement of Facts, infra, and Ecology files and
23 records, Ecology has determined that past practices at a former
24 log sort yard located at 3009 Taylor Way, Tacoma, Washington (the
25 "Site") may have given rise to a release of metals into surface
26

1 water runoff, and that the release may be causing surface water
2 contamination and may continue to cause contamination of surface
-3 water. Metals contamination of soils and ground water has not yet
4 been investigated at the Site.

5 E. Ecology has also determined that:

6 1. The following parties are persons potentially
7 responsible for any releases of hazardous substances from the
8 Site, within the meaning of CERCLA and SARA:

9 a. Pennwalt Corporation ("Pennwalt") is the
10 current owner of property located on the southern bank of the
11 Hylebos Waterway at 3009 Taylor Way, Tacoma, Washington (the
12 "Site").

13 b. Pennwalt purchased the Site in April 1957 from
14 Milwaukee Boom Company, which subsequently merged with Foss Tug &
15 Barge Co.

16 c. Balfour Guthrie & Co., Ltd., leased the Site
17 from July 1, 1964 through December 31, 1966 and operated a log
18 sort business on the Site.

19 d. Goodwin-Johnson (1960) Ltd., through its
20 subsidiary, Johnson-Byers, Inc., leased the Site from Pennwalt
21 from January 1, 1967 through December 31, 1977 and operated a log
22 sort business on the Site.

23 e. West Coast Orient Lumber Mills assumed the
24 lease on October 24, 1977 from Johnson-Byers, Inc. and operated a
25 log sort business on the Site from that date until October 31,
26

1 1978. However, on August 23, 1978, West Coast Orient Lumber Mills
2 filed for Chapter 11 bankruptcy.

-3 In 1978, Mitsui U.S.A., a creditor of West Coast Orient
4 Lumber Mills ("W.C.O.L.M."), formed a wholly owned subsidiary,
5 named West Coast Lumber Operations Company ("W.C.L.O. Co.").
6 W.C.L.O. Co. took over the lease from W.C.O.L.M. on November 1,
7 1978 and continued to lease the site through November 1, 1983.
8 W.C.L.O. Co. changed its name to Portac, Inc. on August 15, 1983.

9 f. Dunlap Towing Company subleased the Site from
10 W.C.L.O. Co. and/or Portac, Inc. from January 1, 1979 through
11 November 1, 1983, and operated a log sort business on the Site.

12 g. Echo Lumber Company leased the Site from
13 Pennwalt from August 1, 1984 through September 1986, and operated
14 a log chipping and processing business on the Site.

15 h. American Smelting and Refining Co. ("ASARCO")
16 generated slag waste material ("ASARCO Slag") which was disposed
17 of on the Site between 1964 and 1986.

18 i. B & L Trucking Company transported ASARCO Slag
19 to the Site for disposal between 1964 and 1986.

20 j. L-Bar Products, Inc., or its predecessor(s),
21 handled the ASARCO Slag for ASARCO, had the exclusive right of
22 distribution of the ASARCO Slag, and distributed the ASARCO Slag
23 to the Site through an agreement with B & L Trucking Company.

24 k. Any other generator, transporter, owner or
25 operator potentially responsible for contamination of the Site;
26 and

1 III.

2 STATEMENT OF PURPOSE

3 In agreeing to entry of the Decree, the mutual objective of
4 Ecology and the PRPs is to provide a framework for a remedial
5 investigation and feasibility study (RI/FS) in accordance with the
6 National Contingency Plan, and mitigate to the extent necessary to
7 protect public health and welfare or the environment the release
8 of metals contamination originating from surface water runoff at
9 the Site. To accomplish this objective and to resolve the matter
10 constructively and without litigation, the PRPs intend to be
11 legally bound by the covenants set forth herein, and the PRPs
12 consent to the actions required by the Decree. Ecology under-
13 stands that consent to performing the actions required by the
14 Decree and its execution hereof do not constitute an admission by
15 any PRP of any allegation, fact, or liability associated with the
16 matters described herein, or of Ecology's authority; and Ecology
17 shall not assert otherwise.

18 IV.

19 STATEMENT OF FACTS

20 A. The site is situated near Commencement Bay, in Tacoma,
21 Washington. The approximate location and boundaries of the Site
22 are depicted in Attachment A to the Decree. The Site consists of
23 a 17.5 acre log sorting yard located on the southern bank of
24 Hylebos Waterway, at 3009 Taylor Way, Tacoma, Washington, 98421.
25 The Site is bounded on the east by Kaiser Ditch and the west by
26

1 the East Channel Ditch, both of which empty directly into Hylebos
2 Waterway.

3 B. The Site is owned by Pennwalt. Pennwalt purchased the
4 property from Milwaukee Boom Co. on April 1, 1957. From July 1,
5 1964 through December 31, 1966, Balfour Guthrie & Co., Ltd.,
6 leased the Site. From January 1, 1967 through December 31, 1977,
7 Goodwin-Johnson (1960) Ltd., through its subsidiary, Johnson-Byers,
8 Inc., leased the west twelve (12) acres of the Site from Pennwalt.

9 West Coast Orient Lumber Mills assumed the lease on October 24,
10 1977 from Johnson-Byers, Inc. and operated a log sort business on
11 the Site from that date until October 31, 1978. However, on
12 August 23, 1978, West Coast Orient Lumber Mills filed for Chapter 11
13 bankruptcy.

14 In 1978, Mitsui U.S.A., a creditor of West Coast Orient
15 Lumber Mills ("W.C.O.L.M."), formed a wholly owned subsidiary,
16 named West Coast Lumber Operations Company ("W.C.L.O. Co.").
17 W.C.L.O. Co. took over the lease from W.C.O.L.M. on November 1,
18 1978 and continued to lease the site through November 1, 1983.
19 W.C.L.O. Co. changes its name to Portac, Inc. on August 15, 1983.

20 Dunlap Towing Company subleased the Site from W.C.L.O. Co.
21 and/or Portac, Inc. from January 1, 1979 through November 1, 1983,
22 and operated a log sort business on the Site. Echo Lumber Company
23 leased the property from Pennwalt from August 1, 1984 through
24 September 1986 as a log chipping and processing area.

1 C. Between 1981 and 1985, Ecology conducted studies at and
2 in the vicinity of the Site, the specific purpose of which was to
3 locate the sources of suspected contamination.

4 1981: Ecology sampled surface water runoff at the Site
5 and found metals contamination levels several
6 orders of magnitude above United States Environ-
7 mental Protection Agency (EPA) 1976 Quality Criteria
8 for Water: zinc 120,000* ppb; arsenic 140,000 ppb;
9 lead 81,000 ppb; nickel 4,400 ppb; and copper
10 90,000 ppb.

11
12 * Values are for Total Metals analysis

13
14 1983-84: Ecology survey (Norton and Johnson, Assessment
15 of Log Sort Yards as Sources of Metals to Commence-
16 ment Bay Waterways) again found metals in site
17 runoff: zinc 1,425 ppb and 315 ppb, copper 183 ppb
18 and 342 ppb, arsenic 3,800 ppb and 2,680 ppb, and
19 lead 171 ppb and 267 ppb in Site runoff.

20 The Norton and Johnson study theorized that the
21 cause of the contamination was the use of ASARCO
22 slag as yard ballast. According to this theory, as
23 slag became pulverized by heavy equipment, metals
24 within the slag were mobilized in a combined acidic
25 extraction by woodwaste decomposition products and
26 stormwater.

1 Norton and Johnson documented the existence of at
2 least 1,000 tons of ASARCO slag on the Site.

3 1985: The Commencement Bay Nearshore/Tideflats Remedial
4 Investigation (RI) determined sediments at the head
5 of Hylebos Waterway to be one of the most heavily
6 contaminated areas in Commencement Bay. The RI
7 further identified the Site as a significant sort
8 yard contributor of metals to these Hylebos sedi-
9 ments and a potential source of phenol, 4-methyl-
10 phenol, isopimaradiene, and metals to Kaiser and
11 East Channel ditches.

12 Both the Ecology (1983-84) survey and the RI
13 documented the potential for significant contami-
14 nant migration from the Site to the Hylebos Water-
15 way via ground water discharge. Norton and Johnson
16 estimated 40 percent of precipitation falling on
17 the log sorting yards left the properties as
18 surface water and 60 percent of precipitation
19 entered ground water, mobilizing metals as the
20 water migrated through the slag. Data are not
21 currently available to estimate the magnitude of
22 metals input to the Hylebos Waterway via this
23 route.

24 D. Based on the above facts, Ecology has determined the
25 release and threat of release of contaminated substances from the
26

1 | Site requires further study and may require remedial measures to
2 | protect the public health and welfare or the environment.

3 | V.

4 | WORK TO BE PERFORMED

5 | A. Focused Feasibility Study

6 | 1. Work Plan for a Focused Feasibility Study. The
7 | PRPs have submitted to Ecology a work plan for a Focused Feasibility
8 | Study.

9 | 2. Focused Feasibility Study. Following review and
10 | written approval of the work plan by Ecology, the PRPs shall
11 | complete the Focused Feasibility Study. The intent of the Focused
12 | Feasibility Study shall be to determine a methodology (called an
13 | interim remedial alternative) to abate or minimize, to the extent
14 | necessary to protect public health or welfare or the environment,
15 | the release of metals contamination in surface runoff from the
16 | Site. The Focused Feasibility Study shall select and recommend,
17 | with justification, the most appropriate remedial alternative (see
18 | Attachment B). This Focused Feasibility Study will be carried out
19 | consistent with the National Contingency Plan and will be designed
20 | to constitute an integral part of the overall Feasibility Study
21 | covered in Part V.B.4.

22 | 3. Selection and Implementation of Approved Interim
23 | Remedial Alternative.

24 | (a) Following submission of the Focused
25 | Feasibility Study Final Report referenced in paragraph V.D.2.a.,
26 | the PRPs and Ecology shall meet within a reasonable time to

1 discuss this report. If Ecology and the PRPs mutually agree to
2 the recommended remedial alternative, the PRPs shall submit
-3 engineering plans and specifications for performance of the
4 recommended remedial alternative. If Ecology and the PRPs do not
5 agree to the recommended remedial alternative, the dispute shall
6 be resolved in accordance with the dispute resolution procedures
7 specified in Part XIII hereof.

8 (b) Following written approval by Ecology of
9 engineering plans and specifications for implementation, the PRPs
10 shall initiate and complete the work specified in the engineering
11 plans and specifications.

12 B. Remedial Investigation/Feasibility Study:

13 1. Work Plan for Remedial Investigation. The PRPs
14 shall prepare and submit to Ecology a Work Plan for an overall
15 Remedial Investigation ("RI") of the Site, to be carried out
16 consistent with the National Contingency Plan. The Work Plan
17 shall consist of a statement of work and detailed explanation of
18 the standards, procedures, technology, and schedules which the
19 PRPs will implement to conduct a remedial investigation of poten-
20 tial metals contamination of the ground water and soils at the
21 Site. The Work Plan shall also include mechanisms to establish
22 whether phenol, 4-methylphenol, and isopimaradiene are sort yard
23 woodwaste degradation products entering Kaiser and East Channel
24 ditches from the Site. When the Work Plan referenced above is
25 approved by Ecology, it shall become a part of this Decree.

1 2. Remedial Investigation (RI). Following review and
2 written approval of the Work Plan by Ecology, the PRPs shall
3 complete the RI. The RI shall be conducted in accordance with
4 applicable federal, state, and local laws, including the National
5 Contingency Plan and EPA's "Guidance on Remedial Investigations
6 under CERCLA," EPA/540/G-85-002 (June 1985; or current edition at
7 the time the work plan is submitted to Ecology for approval).

8 3. Work Plan for Feasibility Study. The PRPs shall
9 submit to Ecology a Work Plan for a Feasibility Study ("FS") to
10 identify and evaluate remedial alternatives necessary to protect
11 public health or welfare or the environment.

12 4. Feasibility Study. Following review and written
13 approval of the Feasibility Study Work Plan by Ecology, the PRPs
14 shall complete the Feasibility Study. The Feasibility Study will
15 be conducted in accordance with the applicable federal, state, and
16 local laws and regulations including the National Contingency Plan
17 and "EPA's Guidance on Feasibility Studies Under CERCLA," EPA/540/
18 G-85-002 (June 1985; or current edition at the time the work plan
19 is submitted to Ecology for approval).

20 C. Schedules

21 1. The PRPs have prepared and submitted to Ecology for
22 review and approval a work plan for a Focused Feasibility Study.

23 2. Ecology shall approve or modify the work plan by
24 June 19, 1987. Provided that by June 19, 1987 the PRPs receive
25 notice that the work plan is approved or agree to the work plan as
26

1 modified by Ecology, the PRPs shall complete the Focused Feasi-
2 bility Study no later than September 18, 1987. If Ecology and the
3 PRPs do not agree to a work plan, the dispute shall be resolved in
4 accordance with the dispute resolution procedures specified in
5 Part XIII.

6 3. Ecology and the PRPs shall determine whether they
7 can mutually agree on an interim remedial alternative no later
8 than October 16, 1987. If Ecology and the PRPs do not agree to the
9 recommended remedial alternative, the dispute shall be resolved in
10 accordance with the dispute resolution procedures specified in
11 Part XIII.

12 4. Provided agreement is reached on the interim
13 remedial alternative by October 16, 1987, the PRPs shall submit
14 engineering plans and specifications for the interim remedial
15 alternative to Ecology for review and approval no later than
16 November 27, 1987.

17 5. Ecology shall review, approve, and/or modify the
18 engineering plans and specifications submitted pursuant to
19 Part V.C.4. within twenty (20) working days following their
20 submittal by the PRPs. In the event that agreement cannot be
21 reached, the dispute shall be resolved in accordance with dispute
22 resolution procedure specified in Part XIII.

23 6. Provided agreement is reached on the engineering
24 plans and specifications submitted pursuant to Part V.C.5., the
25 PRPs shall initiate the approved interim remedial alternative

1 within twenty (20) working days following Ecology's written
2 approval of the engineering plans and specifications.

-3 7. The PRPs shall prepare and submit, within forty
4 (40) working days of the entry of this Decree, to Ecology for
5 review and written approval, a work plan for an overall Remedial
6 Investigation (RI). Following approval by Ecology, the PRPs shall
7 complete the work plan in accordance with the schedule set forth
8 in the RI work plan.

9 8. Within forty (40) working days following receipt of
10 written approval of the final RI report, the PRPs shall submit to
11 Ecology a work plan for a feasibility study (FS). Following
12 Ecology's review and written approval of the Feasibility Study
13 Work Plan, the PRPs shall complete the FS in accordance with the
14 schedule set forth in the FS work plan.

15 D. Reporting

16 1. Progress Reports

17 The PRP coordinator shall submit to Ecology written quarterly
18 progress reports which describe the actions the PRPs have taken
19 during the previous three months to implement the requirements of
20 this Decree. Progress reports shall also describe generally the
21 activities scheduled to be taken during the next quarter. All
22 progress reports shall be submitted by the fifteenth day of the
23 month following the completed reporting period. The progress
24 reports shall include a detailed statement of the manner and
25 extent to which the requirements and time schedules set out in the
26

1 Decree are being met. Unless otherwise specified, progress
2 reports and any other documents submitted pursuant to this Decree
3 shall be sent by certified mail, return receipt requested, and
4 addressed to Ecology's project coordinator.

5 2. Final Reports

6 (a) Subject to Part V.C., the PRPs shall submit a
7 Focused Feasibility Study Final Report to Ecology by September 18,
8 1987. The report will discuss interrelationships between task
9 findings and surface water hydrology, levels of contamination in
10 surface water, surface water contaminant routes and loading
11 assessments, and an evaluation of interim remedial action alter-
12 natives. The report will identify and evaluate potential interim
13 remedial alternatives to mitigate, to the extent necessary to
14 protect public health and welfare or the environment, the release
15 of metals contamination originating from surface water runoff at
16 the Site. The Focused Feasibility Study shall also select and
17 recommend, with justification, the most appropriate interim
18 remedial alternative to mitigate the release of metals contamina-
19 tion from surface water runoff at the Site.

20 (b) Subject to Part V.C., the PRPs shall submit a
21 report detailing engineering plans and specifications standards
22 and procedures for the approved interim remedial alternative to
23 Ecology no later than November 27, 1987.

24 (c) Within twenty (20) working days following
25 completion of the approved interim remedial alternative, the PRPs
26

1 shall submit to Ecology a final report on the interim remedial
2 alternative.

-3 (d) Within forty (40) working days following
4 completion of the RI, and in accordance with the schedule set
5 forth in the RI work plan, the PRPs shall submit to Ecology a
6 final report on the RI.

7 (e) Within forty (40) working days following
8 completion of the FS, and in accordance with the schedule set
9 forth in the FS work plan, the PRPs shall submit a final report on
10 the FS.

11 E. Incorporation of Submittals

12 Upon Ecology's approval of the above-referenced Focused
13 Feasibility Study Final Report, interim remedial alternative
14 engineering plans and specifications, and remedial investigation
15 and Feasibility Study Work Plan, they shall become part of this
16 Decree.

17 F. Maintenance of Containment, Treatment, or Monitoring
18 Systems

19 The PRPs shall maintain the integrity of any containment
20 system, treatment system, or monitoring system which is required
21 pursuant to this Decree.

22 G. Delays by Ecology

23 In the event of any delay by Ecology in meeting its deadlines
24 under this Decree, the deadlines for performance of all subsequent
25 work by Pennwalt that is dependent upon Ecology's meeting its
26

1 deadline shall be extended by a period equivalent to the period
2 of Ecology's delay.

3 VI.

4 DESIGNATED PROJECT COORDINATORS

5 On or before the entry of this Decree, Ecology and the PRPs
6 (collectively) shall each designate one project coordinator. The
7 project coordinators shall be responsible for overseeing imple-
8 mentation of this Decree. The Ecology project coordinator will be
9 Ecology's designated representative for the Site. All communica-
10 tions between the PRPs and Ecology and all documents, including
11 reports, approvals, and other correspondence concerning the
12 activities performed pursuant to the terms and conditions of the
13 Decree, shall be directed through the project coordinators.

14 Ecology hereby designates Fran Stefan as its project
15 coordinator. Her address is:

16 Fran Stefan
17 Commencement Bay Contaminated Site Manager
18 Southwest Regional Office
19 Washington State Department of Ecology
20 7272 Cleanwater Lane, LU-11
21 Olympia, Washington 98504-6811

22 The PRPs hereby designate Sam Balamoun as their project
23 coordinator.

24 Either party may change its respective project coordinator by
25 notifying the other party, in writing, at least ten (10) working
26 days prior to the change.

1 VII.

2 ACCESS

3 Subject to the provisions of Part XI, Ecology or any Ecology-
4 authorized representative shall have the authority, at all reason-
5 able times, and after registering in writing at the Pennwalt plant
6 office front desk at 2901 Taylor Way, Tacoma, to enter and freely
7 move about the Site for the purpose of inspecting records, opera-
8 tion logs, and contracts related to the performance of work on the
9 Site; reviewing the progress and carrying out the terms of the
10 Decree; using a camera, sound recording, or other documentary-type
11 equipment to record work done pursuant to the Work Plan; and
12 verifying the data submitted to Ecology by the PRPs. Ecology
13 shall split any samples taken by Ecology during an inspection
14 unless Pennwalt fails to make available a Pennwalt representative
15 for the purpose of splitting such samples. The PRPs shall permit
16 such persons to inspect and copy all records, files, photographs,
17 documents, and other writings (including all sampling and monitor-
18 ing data) that are on the Site and are in any way related to work
19 undertaken pursuant to the Decree.

20 Pennwalt's consent to access under this part does not grant
21 access to any property or items located outside the boundaries of
22 the Site. If Pennwalt leases the Site, Ecology will take any
23 reasonable steps necessary to minimize disruption of the use of
24 the site by Pennwalt's lessee(s).

1 VIII.

2 PERFORMANCE

3 All work performed pursuant to the Decree shall be under the
4 direction and supervision, as necessary, of a qualified profes-
5 sional engineer(s), certified hydrogeologist(s), or person(s) with
6 equivalent expertise or experience, who have been designated by
7 the PRPs. The PRP coordinator shall identify such engineer(s),
8 hydrogeologist(s), or other such persons used in carrying out the
9 terms of this Decree to Ecology, in advance of their involvement
10 at the Site.

11 IX.

12 DATA REPORTING/AVAILABILITY, SAMPLING

13 The PRPs shall submit reports summarizing the data collected
14 during implementation of the studies required in Part V above to
15 Ecology's project coordinator. The PRPs shall submit these
16 results in progress reports, as described in Part V of the Decree.

17 The PRPs shall, upon request, make available to Ecology all
18 sampling, laboratory reports, and/or test results that are gene-
19 rated by the PRPs or on their behalf as required by the Decree,
20 and that have been received by the PRPs. Ecology shall make
21 available to the PRPs the results of any sampling and/or tests or
22 other data generated by Ecology relating to the Decree.

23 The PRPs shall allow split or duplicate samples to be taken
24 by Ecology and/or its authorized representatives of any samples
25 required by the Decree. The PRPs shall notify Ecology five (5)
26

1 working days prior to any ground water and soil sampling and one
2 (1) working day prior to any surface water, storm water, or
3 woodwaste sampling. Ecology shall allow split or duplicate
4 samples to be taken by the PRPs and/or their authorized representa-
5 tives of any samples collected by Ecology pursuant to the imple-
6 mentation of this Decree. Subject to the access provisions in
7 Part VII herein, Ecology shall notify the PRPs five (5) working
8 days prior to any ground water and soil sampling and one (1) work-
9 ing day prior to any surface water, stormwater, or woodwaste
10 sampling.

11 X.

12 CONFIDENTIAL INFORMATION

13 The PRPs may assert that documents or information provided
14 pursuant to the Decree are confidential, if appropriate, pursuant
15 to RCW 43.21A.160. Such an assertion shall be adequately sub-
16 stantiated when the confidentiality claim is made. Analytical
17 data shall not be claimed as confidential. All information
18 submitted by or on behalf of the PRPs to Ecology with a claim of
19 confidentiality shall be treated as confidential and not made
20 available to the public until after Ecology has made a final
21 determination regarding the claim of confidentiality and notified
22 Pennwalt in writing of such determination and, if the PRPs appeal
23 the determination, until after all appeals have been exhausted.
24 If no such claim accompanies the information when it is submitted
25 to Ecology, it may be made available to the public by Ecology
26 without further notice to Pennwalt.

1 XI.

2 RETENTION OF RECORDS

3 Unless otherwise required by law, the PRPs shall preserve,
4 during the pendency of the Decree and for six (6) years from the
5 date of entry of the Decree, all records, reports, documents, and
6 underlying data generated by their employees, agents, or con-
7 tractors and required by the Decree, despite any corporate docu-
8 ment retention policy to the contrary. If such reports, documents
9 and underlying data are not in archives, the PRPs shall, upon
10 request from Ecology, make them available to Ecology within two
11 (2) working days and allow access for review. If such reports,
12 documents, and underlying data are in archives, they shall be made
13 available to Ecology within a reasonable period of time.

14 XII.

15 INDEMNIFICATION

16 Each PRP individually agrees to indemnify and save and hold
17 Ecology, its agents and employees harmless from any and all claims
18 or causes of action for death or injuries to persons or for loss
19 or damage to property arising from or on account of acts or omis-
20 sions of said PRP, its officers and employees, in entering into
21 and implementing the Decree; provided, however, that the PRPs
22 shall not indemnify Ecology or save or hold its agents or employees
23 harmless from any claims or causes of action arising out of the
24 acts or omissions of Ecology, or its agents or employees, in
25 implementing the activities pursuant to the Decree.

1 XIII.

2 RESOLUTION OF DISPUTES

3 The PRP coordinator shall notify each PRP, in writing, of any
4 Ecology notice of disapproval, proposed modification, or decision
5 made pursuant to this Decree within five (5) working days of the
6 coordinator's receipt of the same from Ecology. If the PRPs
7 object to any Ecology notice of disapproval, proposed modifi-
8 cation, or decision made pursuant to this Decree, the PRP coordi-
9 nator shall notify Ecology in writing of the objections within
10 fifteen (15) working days of receipt of notification from Ecology
11 of such disapproval, proposed modification, or decision. There-
12 after, the parties shall confer to resolve the dispute. If agree-
13 ment cannot be reached within fifteen (15) working days after
14 receipt by Ecology of any such objection, Ecology shall provide a
15 written statement of decision. If Ecology's final written deci-
16 sion is unacceptable to the PRPs, they have the right to submit
17 the dispute to the Court for resolution. Ecology and the PRPs
18 agree that one judge should retain jurisdiction over this case and
19 such judge shall, as necessary, resolve any dispute arising under
20 the Decree. Ecology and the PRPs agree to only utilize the
21 dispute resolution process in good faith and agree to expedite, to
22 the extent possible, the dispute resolution process whenever it is
23 used.

1 whether the PRPs should proceed with implementation of the Decree
2 or whether the work stoppage should be continued until the danger
-3 is abated. The PRPs shall notify either Ecology field personnel
4 on-site or the Ecology project manager as soon as is possible, but
5 no later than twenty-four (24) hours after such stoppage, and
6 provide Ecology with documentation of its analysis in reaching
7 this determination. If Ecology disagrees with the PRPs' deter-
8 mination, it may require the PRPs to resume implementation of the
9 Decree. If Ecology concurs in the work stoppage, the PRPs'
10 obligations shall be suspended and the time periods for perform-
11 ance of that work, as well as the time period for any other work
12 dependent upon the work which was stopped, shall be extended,
13 pursuant to Part XV of the Decree, for such period of time as
14 Ecology determines is reasonable under the circumstances, but at a
15 minimum no less than the time period during which work under the
16 Decree is suspended.

17 Any disagreements pursuant to this part shall be resolved
18 through the dispute resolution procedures. Unless otherwise
19 specified, all other notification of Ecology pursuant to the
20 Decree shall be made to Ecology's project coordinator.

21 XV.

22 EXTENSIONS OF SCHEDULES

23 A. Extensions shall be granted only when requests for
24 extensions are submitted in a timely fashion and good cause exists
25 for granting the extension. All extensions shall be requested in
26

1 writing. The request shall specify the reason(s) the extension is
2 needed. Extensions shall only be granted for such period of time
-3 as Ecology determines is reasonable under the circumstances. A
4 requested extension shall not be effective until approved by
5 Ecology in writing. Ecology shall act upon all written requests
6 for extension in a timely fashion.

7 B. The burden shall be on the PRPs to demonstrate that the
8 request for the extension has been submitted in a timely fashion
9 and that good cause exists for granting the extension. Good cause
10 may include, but not be limited to, the following:

- 11 1. Circumstances beyond the reasonable control and despite the
12 due diligence of the PRPs, including delays of any kind caused
13 by unrelated third parties or by Ecology, such as (but not
14 limited to) delays by Ecology in reviewing, approving, or
15 modifying documents submitted by the PRPs;
- 16 2. Delays which are directly attributable to any changes in
17 permit terms or conditions or refusal to grant a permit
18 needed to implement the requirements of this Decree, if the
19 PRPs filed a timely application for the necessary permit;
- 20 3. Acts of God, fire, flood, blizzard, extreme temperatures,
21 work slowdown, or stoppage, strikes, extraordinary and
22 unanticipated delay or default of third parties under con-
23 tract with the PRPs with respect to the obligations under-
24 taken hereunder, or other unavoidable casualty; and

1 4. Endangerment as described in Part XIV.

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

5 C. In addition, Ecology may extend the time schedules
6 contained in the Decree if an extension is needed as a result of:

7 1. Delays in the issuance of a necessary permit which was timely
8 applied for; or

9 2. Judicial review of the issuance, non-issuance, or reissuance
10 of a necessary permit; or

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

13 4. Endangerment as described in Part XIV.

14 Ecology shall give the PRPs written notice in a timely
15 fashion of any extensions granted pursuant to the Decree.

16 XVI.

17 AMENDMENT OF DECREE AND MODIFICATION OF WORK PLAN

18 A. The Decree may only be amended by a written stipulation
19 between Ecology and the PRPs that is entered by the Court.
20 Agreement to amend shall not be unreasonably withheld by any party
21 to the Decree.

22 B. The PRP coordinator shall submit any request for
23 modifications to the work plans to Ecology for approval. Ecology
24 shall indicate its approval or disapproval within ten (10) days
25 after the request for modification is received. Reasons for any
26

1 disapproval shall be stated in writing. If Ecology does not agree
2 with any of the proposed modifications, the disagreement shall be
3 addressed through the dispute resolution procedures described in
4 Part XIII of the Decree.

5 Ecology shall notify the PRP coordinator in writing of any
6 Ecology request for modifications to the work plans and the basis
7 for such request. If the PRPs do not agree with the requested
8 modifications, the disagreement shall be addressed through the
9 dispute resolution procedures described in Part XIII of the
10 Decree.

11 XVII.

12 STIPULATED PENALTIES

13 A. For each day the PRPs fail to make a submittal to
14 Ecology under the Decree, or fail to comply with any time schedule
15 contained in this Decree, or any other time schedule approved by
16 Ecology pursuant to this Decree, or otherwise fail to comply with
17 the Decree, it is stipulated and agreed that the PRPs, collec-
18 tively, shall, at Ecology's discretion, be obligated to pay a
19 civil penalty into the General Fund of the Treasury of the State
20 of Washington, of One Thousand Dollars (\$1,000) per day of such
21 failure. Allocation among the PRPs of any penalty assessed under
22 this part shall be made by the PRPs.

23 B. The PRPs shall not be liable for payment under this part
24 if any PRP or the PRP coordinator has submitted to Ecology a
25 timely request for an extension of schedules under Part XVI of
26 this Decree, and such request has been granted.

1 C. Upon determination by Ecology that the PRPs have failed
2 to comply with the Decree, Ecology shall immediately give written
-3 notice to the PRP coordinator of the failure, specifying the
4 provision of the Decree which has not been complied with and
5 specifying the amount of the civil penalty due pursuant to
6 Sub-Part A above. The PRPs shall pay the civil penalty within
7 sixty (60) days of receipt of notification from Ecology that
8 payment is due.

9 D. Payments required by this part shall accrue from the
10 date on which submittal was to have been made. Payments required
11 by this part shall cease to accrue when the PRPs deliver the
12 required submittal to Ecology.

13 E. Any disagreement over the factual basis for issuance of
14 a penalty under this section shall be resolved through the
15 Decree's dispute resolution clause. Any penalty issued pursuant
16 to this section shall not be appealable to the Pollution Control
17 Hearings Board.

18 XVIII.

19 COMPLIANCE WITH APPLICABLE LAWS

20 All actions carried out by the PRPs pursuant to this Decree
21 shall be done in accordance with all applicable federal, state,
22 and local requirements, including requirements to obtain necessary
23 permits.

1 XIX.

2 COVENANT NOT TO SUE AND SATISFACTION OF THE DECREE

3 The provisions of this Decree shall be deemed satisfied upon
4 PRPs' receipt of written certification from Ecology that the
5 program outlined in this Decree, as amended by any modifications
6 made pursuant to Part XVIII of this Decree, has been completed.
7 Ecology's failure to certify completion is subject to the provi-
8 sions of Part XIII. Upon successful termination and satisfaction
9 of the requirements of this Decree, the work completed shall be
10 characterized by Ecology as being consistent with the National
11 Contingency Plan, 40 CFR Part 300.68, and such certification by
12 Ecology shall be a part of this Decree.

13 In consideration of the PRPs' performance of the terms and
14 conditions of this Decree, Ecology agrees that during the period
15 of performance of the terms and conditions of this Decree compli-
16 ance with this Decree shall stand in lieu of any and all admini-
17 strative, legal, and equitable remedies available to Ecology to
18 respond to any release or threatened release of hazardous substances
19 at the Site. Nothing in this Decree shall preclude Ecology from
20 exercising any administrative, legal, or equitable remedies
21 available to it to require, during the time period covered by this
22 Decree, additional actions by the PRPs to be taken to remedy the
23 following circumstances: (1) the presence of hazardous substances
24 not evident on the effective date of this Decree; or (2) a threat
25 or potential threat to the public health and welfare or the
26 environment not evident on the effective date of this Decree.

1 Ecology reserves the right to bring an action against the
2 PRPs pursuant to chapter 70.105A RCW and section 107 of 42 U.S.C.
-3 § 9601 et seq., for recovery of all response costs incurred by
4 Ecology in responding to the release or threatened release of
5 hazardous substances from the Site, and in performing all response
6 measures, including oversight costs, that, in the view of Ecology,
7 are associated with conditions at the Site.

8 Nothing in this Decree shall preclude Ecology from asserting
9 a cross-claim, third-party claim, counterclaim, or contribution
10 claim against the PRPs in the event that Ecology is sued over any
11 matter related to the Site.

12 Nothing herein shall waive Ecology's right to enforce this
13 Decree under chapter 90.48 RCW or any and all other applicable
14 state and federal laws. Nothing herein shall waive Ecology's
15 right to take any action authorized by chapter 90.48 RCW or any
16 and all other applicable state and federal laws should the PRPs
17 fail to maintain compliance with this Decree.

18 XX.

19 TRANSFER OF INTEREST IN PROPERTY

20 Prior to transfer of any legal or equitable interest in all
21 or any portion of the property, Pennwalt shall serve a copy of
22 this Decree upon any prospective purchaser, lessee, transferee,
23 assignee, or other successor in interest of the property and, at
24 least five (5) working days prior to any transfer, shall notify
25 Ecology of said contemplated transfer. In the event Pennwalt
26

1 shall transfer possession of the property to any such purchaser,
2 lessee, transferee, assignee, or other successor in interest, the
-3 terms and provisions of the Decree shall become binding upon such
4 purchaser, lessee, transferee, assignee, or successor in interest.
5 Within thirty (30) days after entry of the Decree, Pennwalt
6 Corporation shall cause to be recorded in the appropriate registry
7 of deeds a notice and a copy of this Decree with the deeds for its
8 property, and shall verify to Ecology that such recording has been
9 completed.

10 XXI.

11 RESERVATION OF RIGHTS

12 The execution and performance of this Decree is not an
13 admission by any of the PRPs of liability on any issue dealt with
14 in the Decree. Each PRP's performance under the Decree is under-
15 taken without waiver of or prejudice to any claims or defenses
16 whatsoever that may be asserted in the event of further litigation
17 relating to the Site. The execution of or the performance of this
18 Decree is not an agreement by any PRP to take any action at the
19 Site, other than those actions required by this Decree, or to
20 undertake any action recommended in any report, other than the
21 focused feasibility study, submitted pursuant to this Decree.

22 Nothing in this Decree shall constitute or be construed as a
23 release from any claim, cause of action, or demand in law or
24 equity which may be asserted against any person, firm, partner-
25 ship, or corporation not a signatory to the Decree for any
26

1 liability it may have to any PRP arising out of or relating in any
2 way to (1) the generation, storage, treatment, handling, trans-
3 portation, release, or disposal of any contaminants found at,
4 taken to, or taken from the Site; (2) any costs or damages arising
5 out of compliance with this Decree; or (3) any other costs or
6 damages whatsoever.

7 Nothing in the Decree shall waive or restrict any right of
8 contribution or indemnity that any PRP may have against any other
9 PRP or other responsible party for costs incurred in connection
10 with the work required by this Decree at the Site.

11 The PRPs expressly reserve all rights and defenses they may
12 have with respect to any claims or causes of action whatsoever
13 relating to the Site, except the right to contest the obligations
14 the PRPs have agreed to in the Decree. The PRPs expressly reserve
15 the right to claim that no harm has been or will be caused by the
16 presence of any of the chemical substances described in the
17 Decree.

18 Ecology reserves its rights to institute response activities
19 and subsequently pursue appropriate cost recovery and/or Ecology
20 reserves the right to issue orders or penalties to the PRPs
21 pursuant to available statutory authority, upon the occurrence or
22 discovery of a situation as to which Ecology would be empowered to
23 take any further response action including but not limited to an
24 immediate removal, planned removal, and/or interim remedial
25 action; or in the event of a release or threatened release not
26

1 addressed by this Decree; or upon the determination that action
2 beyond the terms of this Decree is necessary to abate an imminent
- 3 and substantial endangerment to the public health or welfare or
4 the environment that may be posed by this facility; or under any
5 other circumstances authorized by law. Ecology shall not penalize
6 the PRPs for any action or failure to act for which the PRPs have
7 been penalized under paragraph XVII. Pennwalt reserves the right
8 to contest any action taken pursuant to this Decree.

9 XXII.

10 NOTICE TO PRPs

11 All communications from Ecology to the PRPs required under
12 this Decree, including but not limited to reports, approvals, and
13 other correspondence concerning the activities performed pursuant
14 to the terms and conditions of the Decree, shall be made to the
15 following:

- 16 1. Pennwalt Corp.
17 c/o Mr. Samuel B. Balamoun
18 900 First Avenue
19 King of Prussia, PA 19406
- 20 2. Pennwalt Corporation
21 Inorganic Chemical Division
22 P.O. Box 1297
23 Tacoma, WA 98401

24 XXIV.

25 EFFECTIVE DATE

26 This Decree shall be effective upon the date that the Decree
27 is entered.

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

4
5 IT IS SO AGREED AND ORDERED.

6
7 PENNWALT CORPORATION, INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

8
9 By *[Signature]*
10 Its Vice President
11 Date 6/23/87

By *[Signature]*
Its Regional Manager
Date 6/24/87

12 DATED this 24th day of June, 1987.

13
14 *[Signature]*
15 JUDGE

16
17
18 COPY