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**STATE OF WASHINGTON  
LINCOLN COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LINCOLN COUNTY; JOE AND TINA  
CLARK; and JEROME CLARK,

Defendant.

NO. 05-2-00143-8

**AMENDMENT NO. 1 TO  
CONSENT DECREE  
(SOUTH WILBUR PETROLEUM  
CONTAMINATION SITE)**

This amendment to the Consent Decree entered in this case is issued pursuant to the authority of RCW 70.105D, the Model Toxics Control Act (MTCA).

**I. STATEMENT OF CURRENT CONDITIONS**

A. The Consent Decree was entered by this Court on August 31, 2005. The Decree was a negotiated settlement between the Washington State Department of Ecology (Ecology), Lincoln County (County), and individual defendants Joe Clark, Tina Clark, and Jerome Clark (collectively “the Clarks”).

B. The Decree provides that the County is responsible for implementing all tasks set forth in the Scope of Work and Schedule (Exhibit C), with the Clarks responsible for performing certain specified tasks on property owned by the Clarks at the time of Decree entry.

C. The County has completed all remedial actions required under Section VI (Work to be Performed) of the Decree, except for groundwater monitoring which is ongoing.

1 D. The periodic review completed in April 2012 documented that contaminants of  
2 concern in groundwater were not decreasing site wide at an appropriate rate, and that  
3 additional remedial actions should be evaluated for feasibility. The County evaluated other  
4 groundwater treatment options and determined that remedial technologies exist that can  
5 improve the restoration time frame given the site-specific conditions.

6 E. Ecology and the County have agreed to amend the Decree to require the  
7 development and implementation of these remedial technologies. The County's additional  
8 obligations in the amended Decree do not affect the obligations of the Clarks under the original  
9 Decree, nor do they impose any additional obligations on the Clarks.

10 F. Ecology has, concurrent with public notice and comment on this amendment to  
11 the Decree, provided for public notice and comment on certain additions to the Cleanup Action  
12 Plan for the South Wilbur Petroleum Contamination Site, which is Exhibit B to this Decree.  
13 Specifically, these additions are:

14 1. Section 1.4 is amended to add the following bullet:

- 15 • Periodic Review, South Wilbur Petroleum Contamination Site (Ecology,  
16 2012)

17 2. Table 3 is amended to add the following:

18 Ch. 173-218 WAC Underground Injection Control

19 3. Section 6.0 is amended to add the following paragraph:

20 In addition, based on the recommendations of Ecology's April 2012  
21 Periodic Review, supplemental work will take place to assist in achievement of  
22 groundwater cleanup levels. Chemical and biological oxidants designed  
23 specifically to accelerate natural attenuation of petroleum constituents will be  
24 introduced into the shallow subsurface. Application methods for oxidants must  
25 be compatible with the low permeability environment and should be able to  
26 place oxidants in contact with residual source areas below buildings.

1 Ecology has amended the Cleanup Action Plan to include these additions. The amended  
2 Cleanup Action Plan is attached to this amendment. The amended Cleanup Action Plan  
3 substitutes for and replaces Exhibit B to the original Decree.

## 4 **II. AMENDMENT TO CONSENT DECREE**

5 Based on the foregoing, Ecology and the County stipulate and agree that the Decree  
6 should be amended, pursuant to the provisions of Section XXI (Amendment of Decree), as  
7 follows:

8 A. All of the terms of the Consent Decree remain in effect unless expressly  
9 amended herein.

10 B. Section I (Introduction), paragraph A shall be amended to add a new paragraph  
11 as follows:

12 (6) Placement of chemical and biological oxidants into the shallow  
13 subsurface through lance injections, infiltration galleries, or equivalent subsurface  
14 delivery techniques.

15 C. Section V (Statement of Facts), shall be amended to add four new paragraphs as  
16 follows:

17 18. Lincoln County completed the remedial action requirements of Section VI  
18 (Work to be Performed) of the original consent decree, except for groundwater monitoring  
19 which is ongoing, consistent with the terms of the decree.

20 19. Lincoln County prepared a Cleanup Action Report dated March 2006  
21 documenting the final remedial action.

22 20. The periodic review completed in April 2012 documented that contaminants of  
23 concern in groundwater were not decreasing site wide at an appropriate rate, and that  
24 additional remedial actions should be evaluated for feasibility.

25 21. Lincoln County completed an evaluation of feasible remedial technologies in  
26 November 2012 as required by the periodic review. That evaluation determined that remedial

1 technologies existed that could improve the restoration time frame given the site-specific low  
2 flow conditions.

3 D. Section VI (Work to be Performed), first paragraph under heading, shall be  
4 amended as follows:

5 The reference to “Cleanup Action Plan (Exhibit B)” shall be changed to “Cleanup  
6 Action Plan (Exhibit B), as amended on [insert date].”

7 E. Section VI (Work to be Performed), paragraph 1, shall be amended as follows:

8 The reference to “Cleanup Action Plan (Exhibit B)” shall be changed to “Cleanup  
9 Action Plan (Exhibit B), as amended on [insert date].”

10 F. Section VI (Work to be Performed), paragraph 2, shall be amended as follows:

11 Both references to “Scope of Work and Schedule (Exhibit C)” shall be changed to  
12 “Scope of Work and Schedule, as amended (Exhibit C).”

13 G. Section VII (Designated Project Coordinators), shall be amended as follows:

14 The project coordinator for the Defendants shall be changed from Bob Breshears to  
15 Rick Becker at the same location.

### 16 **III. AMENDMENT TO SCOPE OF WORK AND SCHEDULE (EXHIBIT C)**

17 A. Exhibit C is amended by adding the following Sections D and E to the Scope of  
18 Work.

#### 19 **D. Supplemental Remedial Action Plan**

20 PLP shall prepare a Supplemental Remedial Action Plan that outlines the  
21 additional work needed to achieve cleanup levels in groundwater within an appropriate  
22 restoration time frame. This work includes the addition of chemical and biological  
23 oxidants into the subsurface using lance injection techniques, infiltration galleries, or  
24 equivalent subsurface delivery techniques. This Plan shall conform to the requirements  
25 of WAC 173-340-400(4) as applicable to the additional work and shall, at a minimum,  
26 include a detailed description of the oxidants to be used, their quantities, an explanation

1 of how they will work to decrease contaminant levels, maps showing the injection and  
2 treatment gallery locations, rationales for their locations, the nature of and schedule for  
3 appropriate monitoring, and a schedule for implementation. In addition, the  
4 Supplemental Remedial Action Plan shall include:

- 5 1. A Supplemental Sampling and Analysis Plan, should it be  
6 determined that sampling needs are in variance with existing  
7 approved plans.
- 8 2. A Supplemental Health and Safety Plan, prepared specific to the  
9 issues related to the Supplemental Remedial Action Plan.
- 10 3. A Supplemental Compliance Monitoring Plan, or revisions to the  
11 original compliance monitoring plan, prepared to address the  
12 additional or changed monitoring needs for the new remedial  
13 actions.

14 E. Supplemental Remedial Action Report

15 PLP shall submit a final remedial action report after completion of the  
16 supplemental work, except confirmational monitoring. The report shall include, but not  
17 be limited to:

- 18 • All aspects of completed work, including final design documents
- 19 • Any compliance monitoring data gathered
- 20 • Final maps showing the areas receiving work under the supplemental  
21 remedial action

22 B. Exhibit C is amended by adding the following to the Schedule:

23 <b>Effective Date of Amended Consent Decree</b>	<b>Start</b>
24 Draft Supplemental Remedial Action Plan and Schedule of Work to be Performed	30 days after start
25 Final Supplemental Remedial Action Plan and Schedule of Work to be Performed	30 days after Ecology approval of 26 draft

1	Begin implementation of Supplemental plans	15 days after approval of work plans
2	Remedial Action following Supplemental Remedial Action Plan and Schedule of Work to be Performed	As approved in Supplemental Remedial Action Plan and Schedule of Work to be Performed
3		
4	Draft Supplemental Remedial Action Report	As approved in Supplemental Remedial Action Plan
5	Final Supplemental Remedial Action Report	30 days after Ecology approval of Draft
6		
7	Groundwater Monitoring and Reports	Quarterly until Ecology determines that groundwater cleanup levels have been attained

8  
9 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

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11 \_\_\_\_\_  
JAMES J. PENDOWSKI  
Program Manager  
Toxics Cleanup Program

ANDREW A. FITZ, WSBA #22169  
Senior Counsel  
Attorneys for Plaintiff

12  
13 Date: \_\_\_\_\_

Date: \_\_\_\_\_

14 LINCOLN COUNTY

LINCOLN COUNTY PROSECUTING  
ATTORNEY

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16 \_\_\_\_\_  
SCOTT HUTSELL  
Board of County Commissioners

JEFFREY S. BARKDULL, WSBA #18690  
Attorney for Defendant

17  
18 Date: \_\_\_\_\_

Date: \_\_\_\_\_

19  
20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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22 \_\_\_\_\_  
JUDGE  
Lincoln County Superior Court