

ELF Atochem or Atochem Chemicals  
 2901 Taylor Way **FILED** Project # 8053

JUN 24 1987 FSN 1220

ACCEPTANCE OF SERVICE

SUPERIOR COURT CLERK  
 THURSTON COUNTY, WASH

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

STATE OF WASHINGTON,  
 DEPARTMENT OF ECOLOGY,  
 )  
 )  
 ) Plaintiff,  
 )  
 ) v.  
 )  
 ) PENNWALT CORPORATION, INC.,  
 )  
 ) Defendant.

No. 87 2 01199 )  
 CONSENT DECREE

TABLE OF CONTENTS

		<u>Page</u>
0	INTRODUCTION . . . . .	2
1	I. JURISDICTION . . . . .	3
1	II. PARTIES BOUND . . . . .	4
2	III. STATEMENT OF PURPOSE . . . . .	4
2	IV. STATEMENT OF FACTS . . . . .	5
3	V. WORK TO BE PERFORMED . . . . .	6
3	VI. DESIGNATED PROJECT COORDINATORS . . . . .	9
4	VII. ACCESS . . . . .	9
4	VIII. PERFORMANCE . . . . .	10
5	IX. DATA REPORTING/AVAILABILITY, SAMPLING . . . . .	11
5	X. PROGRESS REPORTS . . . . .	12
6	XI. CONFIDENTIAL INFORMATION . . . . .	13
6	XII. RETENTION OF RECORDS . . . . .	13
7	XIII. INDEMNIFICATION . . . . .	14
7	XIV. RESOLUTION OF DISPUTES . . . . .	14
8	XV. ENDANGERMENT . . . . .	15
8	XVI. EXTENSION OF SCHEDULES . . . . .	16
9	XVII. AMENDMENT OF DECREE . . . . .	18
9	XVIII. STIPULATED PENALTIES . . . . .	19
0	XIX. OTHER ACTIONS . . . . .	20
0	XX. COMPLIANCE WITH APPLICABLE LAWS . . . . .	21
1	XXI. COVENANT NOT TO SUE AND SATISFACTION OF DECREE . . . . .	21
1	XXII. TRANSFER OF INTEREST IN PROPERTY . . . . .	23
2	XXIII. RESERVATION OF RIGHTS . . . . .	24
2	XXIV. EFFECTIVE DATE . . . . .	25
	ATTACHMENT 1 (The "Site")	

KENNETH O. EIKENBERRY, ATTORNEY GENERAL

Assistant Attorney General

Wa. Telephone

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 PENNWALT CORPORATION, INC.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

6  
7 By [Signature]  
8 Its Vice President  
9 Date 6/23/87

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

10 DATED this 24th day of June, 1987.

11  
12  
13 [Signature]  
14 JUDGE

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1 I.

2 JURISDICTION

3 A. This Court has jurisdiction over the subject matter and  
4 over the parties pursuant to chapter 90.48 RCW.

5 B. This Consent Decree (Decree) is issued pursuant to the  
6 authority vested in the State of Washington, Department of Ecology  
7 (Ecology) by:

8 Chapter 90.48 RCW, the Water Pollution Control Act.

9 On the basis of the results of the testing and analysis  
10 described in the Statement of Facts, infra, and Ecology files and  
11 records, Ecology has determined that the disposal or management  
12 practices at Pennwalt Corporation have given rise to a release of  
13 pollutants, the release is causing ground water contamination and  
14 surface water contamination, and the release will continue to  
15 cause contamination of ground water and surface water unless the  
16 release is abated or mitigated. Ecology has also determined:

17 1. Pennwalt Corporation is responsible for the site  
18 under chapter 90.48 RCW, the Water Pollution Control Act.

19 2. The actions to be taken pursuant to this Decree are  
20 reasonable and necessary to protect the public health and/or  
21 welfare and/or the environment;

22 3. A reasonable time for beginning and completing the  
23 actions required by this Decree has been provided for; and

24 4. Pennwalt Corporation has agreed to undertake the actions  
25 specified in the Decree.

1 Pennwalt disagrees with all of the above (except No. 4), but  
2 agrees not to contest the state's jurisdiction regarding this  
3 Decree.

4 II.

5 PARTIES BOUND

6 This Decree shall apply to and be binding upon Pennwalt  
7 Corporation and Ecology, their agents, successors, and assignees  
8 and upon all persons, contractors, and consultants acting under or  
9 for either Pennwalt Corporation or Ecology or both. Pennwalt  
10 Corporation agrees both to undertake all actions required of it by  
11 the terms and conditions of this Decree and not to contest state  
12 jurisdiction regarding this Decree.

13 III.

14 STATEMENT OF PURPOSE

15 In agreeing to entry of this Decree, the mutual objective of  
16 Ecology and Pennwalt Corporation (Pennwalt) is to provide a frame-  
17 work for an investigation and any cleanup which may be necessary  
18 of property owned and operated by Pennwalt near Tacoma, Washington,  
19 and to prevent or mitigate the release of pollutants from the Site  
20 and/or contamination of the waters of the state. To accomplish  
21 this objective and to resolve the matter constructively and with-  
22 out litigation, Pennwalt consents to the actions required by this  
23 Decree. Ecology understands that Pennwalt's consent to the Decree  
24 does not constitute an admission by Pennwalt of any allegation,  
25 fact, or liability associated with the matters described herein,  
or of Ecology's authority over the company or the Site.

27 CONSENT DECREE

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IV.

STATEMENT OF FACTS

A. The project area in this matter (the "Site") is known as the Pennwalt Corporation, Inorganic Division Tacoma Plant, and is situated near Tacoma, Washington. The approximate location and boundaries of the Site are depicted by the diagram that is Attachment 1 to this Decree.

Pennwalt owns property and operates a business at the Site. The street address of Pennwalt at the Site is 2901 Taylor Way, Tacoma, Washington.

B. From 1981 to the present, Pennwalt has conducted several investigations at and in the vicinity of the Site, the specific purpose of which was to locate sources of suspected contamination in the vicinity of the Site. Those investigations have documented ground water contamination at the Site.

C. Based on the above facts, Ecology has determined the release and threat of release of pollutants from the Site requires action to protect the public health and welfare and the environment. Ecology has also determined, in order to protect public health or welfare or the environment, it is necessary that remedial measures and action be taken to abate the release or threat of release of pollutants from the Site into the environment.

D. Pennwalt reserves the right to contest the above-stated facts and does not, by signing this Decree, waive its right to challenge their accuracy.

V.

WORK TO BE PERFORMED

A. Upon entry of this Decree by Ecology, Pennwalt shall implement and complete the following actions according to the listed time schedules:

1. Ground Water Sampling and Analysis Plan. This plan shall consist of two rounds of ground water sampling. Round one shall be conducted in the dry season and round two shall be conducted in the wet season. The parameters to be studied are those identified based upon information contained in the following four (4) documents:

a. Hydrogeologic and Engineering Evaluations of Waste Management Facilities. AWARE Inc., November 1981.

b. Ecology Memorandum dated March 9, 1982, titled Pennwalt Corporation Class II survey, June 2-3, 1981.

c. Ecology Report by Art Johnson, Bill Yake, and Dale Norton dated February 1984, titled "A Summary of Priority Pollutant Data for Point Sources and Sediment in Inner Commencement Bay: A Preliminary Assessment of Data and Considerations for Future Work."

d. Pennwalt's National Pollutant Discharge Elimination System ("NPDES") permit application dated December 1980.

These identified parameters will be sampled and analyzed for in all three (3) aquifers (upper, middle, and lower) associated with the Site.

1           Following completion of the work referenced in this part,  
2 Pennwalt shall submit to Ecology a report of its findings. The  
3 report shall consist of a summary of test results and shall  
4 recommend appropriate remedial actions (including schedules) to  
5 mitigate ground water contamination at the Site if any. Upon  
6 receiving Ecology's written approval of the plan(s) referenced  
7 above or Ecology's modifications of the plan(s), Pennwalt shall  
8 implement the plan(s) in accordance with the schedule specified  
9 therein. If Ecology and Pennwalt do not agree to any plan(s),  
10 the dispute shall be resolved in accordance with the dispute  
11 resolution procedures specified in paragraph XIV.

12           2.    Surface Impoundment Sampling and Analysis Plan.    This  
13 sampling and analysis plan shall include both sludge and super-  
14 natant. Tests shall be performed for pH, volatile organics and  
15 Total Metals (arsenic, barium, cadmium, chromium, lead, mercury,  
16 selenium, silver, and copper) in the following surface impound-  
17 ments:

- 18                   (1) Chlorate pond;
- 19                   (2) Asbestos pond;
- 20                   (3) Taylor Lake;
- 21                   (4) Cell Room Pond;
- 22                   (5) Taylor Lake Moat;
- 23                   (6) Waggoner's Wallow.

24           3.    Surface Water Quality Sampling and Analysis Plan.  
25 Surface water samples shall be analyzed for pH, volatile organics  
26



1 and Total Metals (arsenic, barium, cadmium, chromium, lead,  
2 mercury, selenium, silver, and copper).

3 4. Soil Sampling and Analysis Plan for Soils in the Pennite  
4 and Wypenn Areas. This plan shall include an analysis of soils  
5 for arsenic at the Pennite Site and polyaromatic hydrocarbons at  
6 the Wypenn Site.

7 B. Each of the aforementioned sampling and analysis plans  
8 shall be submitted to Ecology within sixty (60) days of the date  
9 of entry of this Decree. Each plan shall contain an implementa-  
10 tion schedule. Upon receiving Ecology's written approval of the  
11 plan(s) or Ecology's modifications of the plan(s), Pennwalt shall  
12 implement the plan(s) in accordance with the schedule specified  
13 therein. If Ecology and Pennwalt do not agree to any plan(s), the  
14 dispute shall be resolved in accordance with the dispute resolu-  
15 tion procedures specified in paragraph XIV.

16 C. Pennwalt shall also submit to Ecology within twenty  
17 (20) days of entry of this Decree a work plan for an engineering  
18 report which will identify alternatives for mitigating arsenic  
19 contamination in the uppermost aquifer. Within sixty (60) days  
20 from the date of approval of the work plan, an engineering report  
21 which identifies alternatives for mitigating arsenic contamination  
22 in the uppermost aquifer shall be submitted to Ecology. This  
23 report shall also recommend one or more of these alternatives  
24 including schedules for implementation of the recommended alterna-  
25 tive(s). If the recommended alternative, or the recommended alter-

1 native as modified by Ecology, is agreed to, Pennwalt shall imple-  
2 ment the alternative according to the schedule contained in the  
3 engineering report. If Ecology and Pennwalt do not agree to the  
4 recommended alternative, the dispute shall be resolved in accord-  
5 ance with the dispute resolution procedure provided for in para-  
6 graph XIV.

7 VI.

8 DESIGNATED PROJECT COORDINATORS

9 On or before the entry of this Decree, Ecology and Pennwalt  
10 shall each designate a project coordinator. Each project coordi-  
11 nator shall be responsible for overseeing the implementation of  
12 this Decree. The Ecology project coordinator will be Ecology's  
13 designated representative at the Site. To the maximum extent  
14 possible, communications between Pennwalt Corporation and Ecology,  
15 and all documents, including reports, approvals, and other corres-  
16 pondence concerning the activities performed pursuant to the terms  
17 and conditions of this Decree, shall be directed through the pro-  
18 ject coordinators.

19 Either party may change its respective project coordinator  
20 by notifying the other party, in writing, at least ten (10) calendar  
21 days prior to the change.

22 VII.

23 ACCESS

24 Subject to the provisions of paragraph XII, Ecology or any  
25 Ecology authorized representative shall have the authority, at  
26

1 all reasonable times and after registering at the Pennwalt plant  
2 office front desk, 2901 Taylor Way, Tacoma, to enter and freely  
3 move about all property at the Site at all reasonable times for  
4 the purposes of, inter alia: inspecting records, operation logs,  
5 and contracts related to the Site; reviewing the progress in  
6 carrying out the terms of this Decree; conducting such tests as  
7 Ecology or the project coordinator may deem necessary; using a  
8 camera, sound recording, or other documentary type equipment to  
9 record work done pursuant to this Decree; and verifying the data  
10 submitted to Ecology by Pennwalt. Ecology shall split any samples  
11 taken during an inspection unless Pennwalt fails to make available  
12 a Pennwalt representative for the purpose of splitting samples.  
13 Pennwalt shall permit such persons to inspect and copy all records,  
14 files, photographs, documents, and other writings, including all  
15 sampling and monitoring data, in any way pertaining to work under-  
16 taken pursuant to this Decree. All parties with access to the Site  
17 pursuant to this paragraph shall comply with approved health and  
18 safety plans. Pennwalt's consent to access under this part does  
19 not grant access to any property or items located outside the  
20 boundaries of the Site.

21 VIII.

22 PERFORMANCE

23 All response work performed pursuant to this Decree shall be  
24 under the direction and supervision, as necessary, of a qualified  
25 professional engineer, certified hydrogeologist, or equivalent,

1 with experience and expertise in hazardous waste site investigation  
2 cleanup. Pennwalt shall notify Ecology as to the identity of such  
3 engineer(s) or hydrogeologist(s), and of any contractors and sub-  
4 contractors to be used in carrying out the terms of this Decree, in  
5 advance of their involvement at the Site.

6 IX.

7 DATA REPORTING/AVAILABILITY, SAMPLING

8 Pennwalt shall make the results of all sampling, laboratory  
9 reports, and/or test results generated by Pennwalt, or on Pennwalt's  
10 behalf, with respect to the implementation of this Decree available  
11 to Ecology and shall submit these results in progress reports  
12 (except where such data has been or will be submitted in a report  
13 required by paragraph V) as described in paragraph X of this Decree.  
14 Ecology will make available to Pennwalt the results of any sampling  
15 and/or tests or other data similarly generated by Ecology.

16 At the request of Ecology, Pennwalt shall allow split or  
17 duplicate samples to be taken by Ecology and/or its authorized  
18 representatives, or any samples collected by Pennwalt pursuant to  
19 the implementation of this Decree. Pennwalt shall notify Ecology  
20 five (5) working days in advance of any ground water or soil  
21 sample collection activity and one (1) working day prior to any  
22 surface water or stormwater sampling. Ecology shall allow split  
23 or duplicate samples to be taken by Pennwalt or its authorized  
24 representatives of any samples collected by Ecology pursuant to  
25 the implementation of this Decree. Subject to the provisions of  
26

1 Paragraph VII, Ecology shall notify Pennwalt five (5) working days  
2 prior to any ground water or soil sample collection activity and  
3 one (1) working day prior to any surface water or stormwater  
4 sampling.

5 X.

6 PROGRESS REPORTS

7 Pennwalt shall submit to Ecology written bimonthly progress  
8 reports which describe the actions it has taken during the pre-  
9 vious two months to implement the requirements of this Decree.  
10 Progress reports shall also describe the activities scheduled to  
11 be taken during the next two months. All progress reports shall  
12 be submitted by the tenth day of the month in which they are due  
after the effective date of this Decree. The progress reports  
14 shall include a detailed statement of the manner and extent to  
15 which the requirement and time schedules set out in the Decree are  
16 being met. Unless otherwise specified, progress reports and any  
17 other documents submitted pursuant to this Decree shall be sent by  
18 certified mail, return receipt requested, to Ecology's project  
19 coordinator.

20 Pennwalt shall submit informal progress reports to Ecology  
21 along with the daily monitoring reports it is required to submit  
22 to Ecology under its NPDES permit.

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27 CONSENT DECREE

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1 XI.

2 CONFIDENTIAL INFORMATION

3 Pennwalt may assert that documents or information provided  
4 pursuant to the Decree are confidential, if appropriate, pursuant  
5 to RCW 43.21A.160. Such an assertion shall be adequately substan-  
6 tiated when the confidentiality claim is made. Analytical data  
7 shall not be claimed as confidential. All information submitted  
8 by or on behalf of Pennwalt to Ecology with a claim of confiden-  
9 tiality shall be treated as confidential and not made available to  
10 the public until after Ecology has made a final determination  
11 regarding the claim of confidentiality and notified Pennwalt in  
12 writing of such determination and, if Pennwalt appeals the deter-  
13 mination, until after all appeals have been exhausted. If no such  
14 claim accompanies the information when it is submitted to Ecology,  
15 it may be made available to the public by Ecology without further  
16 notice to Pennwalt.

17 XII.

18 RETENTION OF RECORDS

19 Pennwalt shall preserve, during the pendency of this Decree  
20 and for six (6) years from the date of execution of this Decree,  
21 all records, reports, documents, and underlying data in its pos-  
22 session, or in the possession of its employees, agents, or con-  
23 tractors relevant to the implementation of this Decree despite any  
24 document retention policy to the contrary. Upon request of Ecology,  
25 Pennwalt Corporation shall make all non-archived records available  
26 to Ecology within two (2) working days and allow access for review.

27 CONSENT DECREE

1 All archived records shall be made available to Ecology within a  
2 reasonable period of time.

3 XIII.

4 INDEMNIFICATION

5 Pennwalt Corporation agrees to indemnify and save and hold  
6 Ecology, its agents and employees harmless from any and all claims  
7 or causes of action for death or injuries to persons or for loss  
8 or damage to property arising from or on account of acts or omis-  
9 sions of Pennwalt Corporation, its officers, employees, agents, or  
10 contractors in entering into and implementing this Decree; provided,  
11 however, that Pennwalt Corporation shall not indemnify Ecology nor  
12 save nor hold its employees and agents harmless from any claims or  
13 causes of action arising out of the acts or omissions of Ecology,  
14 or the employees and agents of Ecology in implementing the activi-  
15 ties pursuant to this Decree.

16 XIV.

17 RESOLUTION OF DISPUTES

18 If Pennwalt objects to any Ecology notice of disapproval,  
19 proposed modification, or decision made pursuant to this Decree, it  
20 shall notify Ecology in writing of its objections within fifteen  
21 (15) working days of receipt of such notice. Thereafter, the  
22 parties shall confer in an effort to resolve the dispute. If  
23 agreement cannot be reached on the dispute within fifteen (15)  
24 working days after receipt by Ecology of such objections, Ecology  
25 shall promptly provide a written statement of its decision to  
26 Pennwalt.

1 If Ecology's final written decision is unacceptable to  
2 Pennwalt, Pennwalt has the right to submit the dispute to the Court  
3 for resolution. Ecology and Pennwalt agree that one judge should  
4 retain jurisdiction over this case and such judge shall, as  
5 necessary, resolve any dispute arising under the Decree. Ecology  
6 and Pennwalt agree to only utilize the dispute resolution process  
7 in good faith and agree to expedite, to the extent possible, the  
8 dispute resolution process whenever it is used.

9 XV.

10 ENDANGERMENT

11 In the event Ecology determines or concurs in a determination  
12 by another local, state, or federal agency that activities imple-  
13 menting or in noncompliance with this Decree, or any other circum-  
14 stances or activities, are creating or have the potential to create  
15 a danger to the health or welfare of the people on the Site or in  
16 the surrounding area or to the environment, Ecology may order  
17 Pennwalt to stop further implementation of this Decree for such  
18 period of time as needed to abate the danger or may petition this  
19 Court for an order pursuant to Part XIV of this Decree. During any  
20 stoppage of work under this part, Pennwalt's obligations with  
21 respect to the work ordered to be stopped shall be suspended and  
22 the time periods for performance of that work, as well as the time  
23 period for any other work dependent upon the work which stopped,  
24 shall be extended, pursuant to Part XVI of this Decree, for such  
25 period of time as Ecology determines is reasonable under the cir-  
26 cumstances.



1 In the event Pennwalt determines that activities undertaken  
2 in furtherance of this Decree or any other circumstances or activi-  
3 ties are creating an imminent and substantial endangerment to the  
4 people on the Site or in the surrounding area or to the environ-  
5 ment, Pennwalt may stop implementation of this Decree for such  
6 periods of time necessary for Ecology to evaluate the situation  
7 and determine whether Pennwalt should proceed with implementation  
8 of the Decree or whether the work stoppage should be continued  
9 until the danger is abated. Pennwalt shall notify either Ecology  
10 field personnel on-site or the project manager as soon as is pos-  
11 sible, but no later than twenty-four (24) hours after such stop-  
12 page of such stoppage, and provide Ecology with documentation of  
its analysis in reaching this determination. If Ecology disagrees  
14 with Pennwalt's determination, it may order Pennwalt Corporation  
15 to resume implementation of this Decree. If Ecology concurs in the  
16 work stoppage, Pennwalt's obligations shall be suspended and the  
17 time periods for performance of that work, as well as the time  
18 period for any other work dependent upon the work which was  
19 stopped, shall be extended, pursuant to Part XVI of this Decree,  
20 for such period of time as Ecology determines is reasonable under  
21 the circumstances. Any disagreements pursuant to this clause  
22 shall be resolved through the dispute resolution procedures.

23 XVI.

24 EXTENSIONS OF SCHEDULES

25 A. An extension shall be granted only when a request for  
an extension is submitted in a timely fashion and good cause exists

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

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

13 (1) Circumstances beyond the reasonable control and despite  
14 the due diligence of Pennwalt including delays of any kind caused  
15 by unrelated third parties or Ecology, such as (but not limited  
16 to) delays by Ecology in reviewing, approving, or modifying  
17 documents submitted by Pennwalt;

18 (2) Delays which are directly attributable to any changes in  
19 permit terms or conditions or refusal to grant a permit needed to  
20 implement the requirements of this Decree if Pennwalt filed a timely  
21 application for the necessary permit;

22 (3) Acts of God, fire, flood, blizzard, extreme temperatures,  
23 work slowdown, or stoppage, strikes, extraordinary and unantici-  
24 pated delay or default of third parties under contract with  
25 Pennwalt with respect to the obligations undertaken hereunder, or  
26 other unavoidable casualty; and

1 (4) Endangerment as described in Part XV. However, neither  
2 increased costs of performance of the terms of the Decree nor  
3 changed economic circumstances may be considered circumstances  
4 beyond the reasonable control of Pennwalt.

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  
8 timely applied for; or

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

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

(4) Endangerment as described in Part XV.

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

16 XVII.

17 AMENDMENT OF DECREE

18 This Decree may only be amended by a written stipulation  
19 between Pennwalt and Ecology that is entered by the Court. Such  
20 amendment shall become effective upon entry by the Court. Agree-  
21 ment to amend shall not be unreasonably withheld by any party to  
22 the Decree.

23 Pennwalt shall submit any request for modifications to the  
24 remedial program or project schedule to Ecology for approval.  
25 Ecology shall indicate its approval or disapproval of these within

1 ten (10) days after the request for modification is received.  
2 Reasons for the disapproval shall be stated in writing. If Ecology  
3 does not agree to any proposed modification, the disagreement  
4 shall be addressed through the dispute resolution procedures des-  
5 cribed in Part XIV of this Decree.

6 No guidance, suggestions, or comments by Ecology will be  
7 construed as relieving Pennwalt of its obligation to obtain formal  
8 approval as may be required by this Decree. No verbal communica-  
9 tion by Ecology shall relieve Pennwalt of the obligations speci-  
10 fied herein.

11 Ecology shall notify Pennwalt in writing of any Ecology  
12 proposal for modifications to the remedial program or project  
13 schedule and the basis for such proposal. Pennwalt shall there-  
14 after comply with such modifications, or if it does not agree with  
15 those modifications, the disagreement shall be addressed through  
16 the dispute resolution procedures described in paragraph XIV of  
17 this Decree.

18 XVIII.

19 STIPULATED PENALTIES

20 A. For each day Pennwalt fails to make a submittal to  
21 Ecology in accordance with this Decree or comply with any time  
22 schedules contained in this Decree or any other time schedule  
23 approved in writing by Ecology, or otherwise fails to comply with  
24 this Decree, Pennwalt stipulates and agrees that it shall, at  
25 Ecology's discretion, be obligated to pay a civil penalty into the  
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1 General Fund of the Treasury of the State of Washington an amount  
2 of up to one thousand dollars (\$1,000.00).

3 B. Pennwalt shall not be liable for payment under this part  
4 if it has submitted a timely request to Ecology for an extension  
5 of schedules under Part XVI of this Decree and such request has  
6 been granted.

7 C. Upon determination by Ecology that Pennwalt has failed  
8 to make a submittal referenced herein or has otherwise failed to  
9 comply with this Decree, Ecology shall immediately give written  
10 notice to Pennwalt of the failure, specifying the provision of the  
11 Decree which has not been complied with and specifying the amount  
12 of the civil penalty due pursuant to Part XVIII.A. Pennwalt shall  
13 pay the civil penalty within sixty (60) days of receipt of notifi-  
14 cation from Ecology.

15 D. Payments required by this Part shall accrue from the  
16 date on which the submittal was to have been made. Payments  
17 required by this Part shall cease to accrue when Pennwalt  
18 delivers the required submittal to Ecology.

19 E. Any disagreement over the factual basis for issuance of  
20 a penalty under this Part shall be resolved through the dispute  
21 resolution clause. Any penalty issued pursuant to this Part shall  
22 not be appealable to the Pollution Control Hearings Board.

23 XIX.

24 OTHER ACTIONS

25 Ecology reserves its rights to institute response activities  
26 and subsequently pursue appropriate cost recovery and/or Ecology

1 reserves its rights to issue orders or penalties to Pennwalt pur-  
2 suant to available statutory authority upon the occurrence or  
3 discovery of a situation as to which Ecology would be empowered  
4 to take any further response action, including but not limited to  
5 an immediate removal, planned removal, and/or interim remedial  
6 action; or in the event of a release or threatened release not  
7 addressed by this Decree; or upon the determination that action  
8 beyond the terms of this Decree is necessary to abate an imminent  
9 and substantial endangerment to the public health or welfare or  
10 the environment that may be posed by this facility; or under any  
11 other circumstances authorized by law. Ecology shall not  
12 penalize Pennwalt for any action or failure to act for which  
13 Pennwalt was penalized under paragraph XVIII. Pennwalt reserves  
14 all rights to contest any action taken pursuant to this Part.

15 XX.

16 COMPLIANCE WITH APPLICABLE LAWS

17 All actions carried out by Pennwalt pursuant to this Decree  
18 shall be done in accordance with all applicable federal, state and  
19 local requirements, including requirements to obtain necessary  
20 permits.

21 XXI.

22 COVENANT NOT TO SUE AND SATISFACTION OF THE DECREE

23 The provisions of this Decree shall be deemed satisfied  
24 upon Pennwalt's receipt of written certification from Ecology  
25 that the program outlined in this Decree, as amended by any  
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1 modifications made pursuant to Part XVII of this Decree, has been  
2 completed. Ecology's failure to certify completion is subject to  
3 the provisions of paragraph XIV.

4 In consideration of Pennwalt's performance of the terms and  
5 conditions of this Decree, Ecology agrees that, during the period  
6 of performance of the terms and conditions of this Decree,  
7 compliance with this Decree shall stand in lieu of any and all  
8 administrative, legal, and equitable remedies available to  
9 Ecology to respond to any release or threatened release of  
10 hazardous substances at the Site. Nothing in this Decree shall  
11 preclude Ecology from exercising any administrative, legal, or  
12 equitable remedies available to it to require, during the time  
13 period covered by this Decree, additional actions by Pennwalt to  
14 be taken to remedy the following circumstances: (1) the presence  
15 of hazardous substances not evident on the effective date of this  
16 Decree; or (2) a threat or potential threat to the public health  
17 or welfare or the environment not evident on the effective date  
18 of this Decree.

19 Ecology reserves the right to bring an action against  
20 Pennwalt pursuant to chapter 70.105A RCW and section 107 of 42  
21 U.S.C. § 9601 et seq., for recovery of all response costs  
22 incurred by Ecology in responding to the release or threatened  
23 release of hazardous substances from the Site, and in performing  
24 all response measures, including oversight costs, that, in the  
25 view of Ecology, are associated with conditions at the Site.

1 Nothing in this Decree shall preclude Ecology from asserting  
2 a cross-claim, third-party claim, counterclaim, or contribution  
3 claim against Pennwalt in the event that Ecology is sued over any  
4 matter related to the Site.

5 Nothing herein shall waive Ecology's right to enforce this  
6 Decree under chapter 90.48 RCW or any and all other applicable  
7 state and federal laws. Nothing herein shall waive Ecology's  
8 right to take any action authorized by chapter 90.48 RCW or any  
9 and all other applicable state and federal laws should Pennwalt  
10 fail to maintain compliance with this Decree.

11 XXII.

12 TRANSFER OF INTEREST IN PROPERTY

13 No conveyance of title, easement, or other interest in any  
14 portion of the Site owned by Pennwalt shall be consummated without  
15 provision for continued operation and maintenance of any contain-  
16 ment system, treatment system, and monitoring system installed or  
17 implementation of that pursuant to this Decree.

18 Prior to transfer of any legal or equitable interest in all  
19 or any portion of the property, Pennwalt shall serve a copy of  
20 this Decree upon any prospective purchaser, lessee, transferee,  
21 assignee, or other successor in interest of the property and, at  
22 least thirty (30) days prior to any transfer, shall notify Ecology  
23 of said contemplated transfer. In the event Pennwalt shall trans-  
24 fer possession of the property to any such purchaser, lessee,  
25 transferee, assignee, or other successor in interest, the terms  
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1 and provisions of the Decree shall become binding upon such pur-  
2 chaser, lessee, transferee, assignee, or successor in interest.  
3 Within thirty (30) days after entry of the Decree, Pennwalt shall  
4 cause to be recorded in the appropriate registry of deeds a notice  
5 and a copy of this Decree with the deeds for its property, and  
6 shall verify to Ecology that such recording has been completed.

7 XXIII.

8 RESERVATION OF RIGHTS

9 The execution and performance of the Decree is not an admission  
10 by Pennwalt of any fact or liability relating to any issue dealt  
11 with in the Decree. Pennwalt's performance under the Decree is under-  
12 taken without waiver of or prejudice to any claims or defenses  
13 whatsoever that may be asserted in the event of further litigation  
14 about or relating to the property, the ground water or the Pennite  
15 Site. Nor is the execution or the performance of the Decree an  
16 agreement by Pennwalt to take any action at the property other  
17 than that described in Part V.

18 Nothing in the Decree shall constitute or be construed as a  
19 release from any claim, cause of action, or demand in law or equity  
20 which may be asserted against any person, firm, partnership, or  
21 corporation not a signatory to the Decree for any damages or  
22 liability such entity may have to Pennwalt, Ecology, or any other  
23 entity arising out of or relating in any way to (1) the genera-  
24 tion, storage, treatment, handling, transportation, release, or  
25 disposal of any contaminants found at, taken to, or taken from

1 the property; (2) any costs or damages arising from compliance  
2 with the Decree; or (3) any other costs or damages whatsoever.

3 Nothing in the Decree shall waive or restrict any right or  
4 claim, including but not limited to any right of contribution or  
5 indemnity that Pennwalt has or may have against any entity for  
6 costs incurred in connection with the work undertaken at the  
7 property pursuant to the Decree.

8 Pennwalt expressly reserves all rights and defenses it may  
9 have with respect to any claims or causes of action whatsoever  
10 relating to the Site, except the right to contest the obligations  
11 Pennwalt has agreed to in this Decree. Pennwalt expressly reserves  
12 the right to claim that no harm has been or will be caused by ground  
13 water or other alleged contamination on, under or at the Site.

14 XXIV.

15 EFFECTIVE DATE

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

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