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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
CITY OF TACOMA and)
METROPOLITAN PARK DISTRICT)
OF TACOMA,)
)
Defendant(s).)

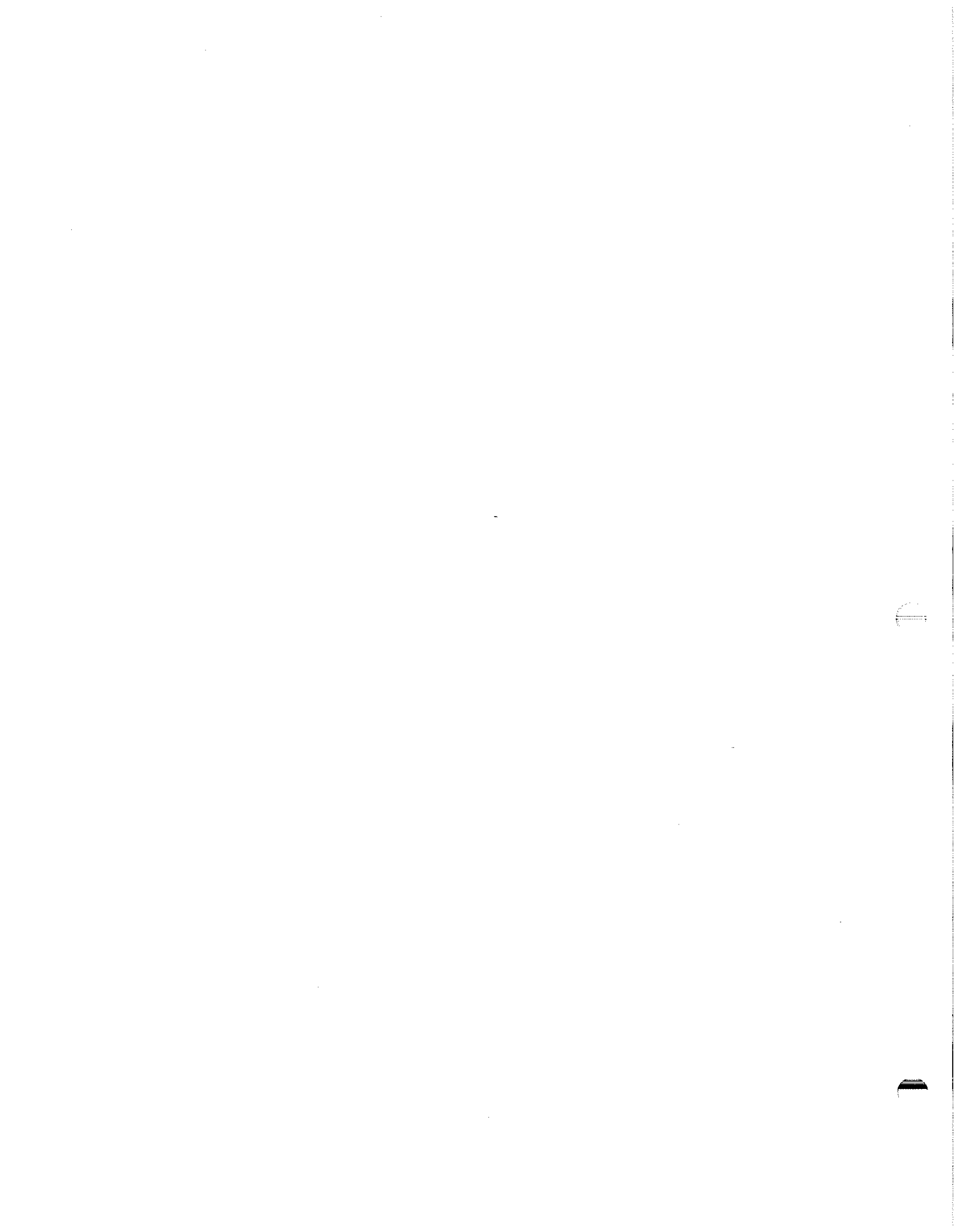
No. 94-2-10917-6
CONSENT DECREE

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1 I. INTRODUCTION

2 A. This Consent Decree (Decree) is made and entered into
3 by and between the Washington State Department of Ecology
4 (Ecology), the City of Tacoma (City), and the Metropolitan Park
5 District of Tacoma (Park District). Successors in
6 Interest and Assigns may become parties to this Decree as
7 provided herein in Section XIX.

8 B. In entering into this Consent Decree (Decree), the
9 mutual objective of the Washington State Department of Ecology
10 (Ecology), and the City of Tacoma and the Metropolitan Park
11 District (Defendant(s)) is to provide for remedial action at
12 facilities adjacent to the Thea Foss Waterway in the City of
13 Tacoma, Washington, where there have been releases or threatened
14 releases of hazardous substances causing contamination of soils.
15 This Decree establishes potential remedial actions for a number
16 of properties, described in Section II. Some of the properties
17 potentially subject to this Decree are currently known to be
18 contaminated and some are not. Some are currently owned by the
19 City and the Park District and some are not. Those properties
20 potentially subject to this Decree that are not reported as or
21 determined by Ecology to be cleanup sites, and those properties
22 that are not eventually purchased by the City or the Park
23 District will not be cleaned up under this Decree.

24 C. Ecology, the City of Tacoma, and the Metropolitan Park
25 District are entering into this Consent Decree in order to
26 achieve substantial public benefits. The City recently acquired

1 approximately 27 acres along the Thea Foss Waterway, which is
2 part of the Commencement Bay Nearshore/Tideflats Superfund Site.
3 The City acquired the property in order to spur cleanup of the
4 City's waterfront and redevelopment of abandoned industrial and
5 commercial land. The City's efforts have included the Park
6 District who has taken title to some of the recently acquired
7 property so that public access, parks and open spaces will be
8 included in the ultimate redevelopment.

9 D. The remedial action(s) under this Decree recognize
10 land use planning and the ultimate reuse of contaminated
11 property. This Decree will promote expedient, efficient
12 remedial actions. This Decree will facilitate quicker remedial
13 action than would occur without the Decree. This Decree allows
14 Ecology to enforce permanent and effective controls to ensure
15 that cleanups are protective of human health and the
16 environment. Furthermore, this Decree will promote the
17 fulfillment of Ecology's source control obligations set forth in
18 the 1994 Cooperative Agreement between the U.S. Environmental
19 Protection Agency (EPA) and Ecology.

20 E. This Decree requires the Defendant(s) to undertake the
21 following remedial action(s), which are more specifically
22 described in Sections IX and X of this Decree:

- 23 (1) Conduct remedial investigations of sites;
- 24 (2) Prepare site-specific Cleanup Action Plans for soil
25 contamination on sites, to be approved by Ecology.

26 The site-specific Cleanup Action Plans will be

- 1 consistent with the Thea Foss Redevelopment Cleanup
2 Action Plan attached hereto as Exhibit C;
- 3 (3) Remediate soil contamination on sites in accordance
4 with the site-specific Cleanup Action Plans;
- 5 (4) Provide and maintain institutional controls and
6 compliance monitoring, as required in this Decree.

7 Ecology has determined that these actions are necessary to
8 protect public health and the environment. This Decree
9 addresses soil contamination only. Sites at which active
10 remediation of groundwater is necessary are not within the scope
11 of this Decree.

12 F. The Complaint in this action is being filed
13 simultaneously with this Decree. An answer has not been filed,
14 and there has not been a trial on any issue of fact or law in
15 this case. However, the parties wish to resolve the issues
16 raised by Ecology's complaint. In addition, the parties agree
17 that settlement of these matters without litigation is
18 reasonable and in the public interest and that entry of this
19 Decree is the most appropriate means of resolving these matters.

20 G. In signing this Decree, Defendant(s) agrees to its
21 entry and agrees to be bound by its terms.

22 H. By entering into this Decree, the parties do not
23 intend to discharge nonsettling parties from any liability they
24 may have with respect to matters alleged in the complaint. The
25 parties retain the right to seek reimbursement, in whole or in
26

1 part, from any liable persons for sums expended under this
2 Decree.

3 I. This Decree shall not be construed as proof of
4 liability or responsibility for any releases of hazardous
5 substances or cost for remedial action nor an admission of any
6 facts; provided, however, that the Defendant(s) shall not
7 challenge the jurisdiction of Ecology or the findings of fact in
8 this Decree in any proceeding brought by Ecology to enforce this
9 Decree.

10 J. The Court is fully advised of the reasons for entry of
11 this Decree, and good cause having been shown: IT IS HEREBY
12 ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

13 **II. POTENTIAL SCOPE OF DECREE; DESCRIPTION OF SITES**

14 A. The property potentially subject to this Decree shall
15 be: (1) property adjacent to the west side of the Thea Foss
16 Waterway in the City of Tacoma, Washington, located between the
17 mean high high water mark on the east and Dock Street on the
18 west, inclusive of the Dock Street Right of Way; and between
19 Parcel 1A on the north and the Harmon Cabinets property on the
20 south; and the City sewage pump station property; and (2)
21 parcels 5 and 8 and the 11th Street Right of Way adjacent to the
22 east side of the Thea Foss Waterway, upland of the mean high
23 high water mark. This geographic boundary is depicted in
24 Exhibit A to this Decree. The legal descriptions of properties
25 within this geographic boundary are in Exhibit B. The
26 properties above-described may extend to the mean low low wa

1 mark if EPA concurs. Any remedial action on property between
2 the mean high high water mark and the mean low low water mark
3 shall be interim actions and shall not constitute final cleanup
4 of that property.

5 B. In this Decree the term "site(s)" or "cleanup site(s)"
6 shall mean any properties, parcels or portions thereof within
7 the geographic boundary described in paragraph A that are
8 currently owned by the City or the Park District or which the
9 City or the Park District acquires during the duration of this
10 Decree, on which Ecology has determined that a release or
11 threatened release of hazardous substances exists. These sites
12 are "facilities" as defined in RCW 70.105D.020(3).

13 C. The properties which the City owns as of the effective
14 date of this Decree are: Dock Street Right of Way, Municipal
15 Dock, Atlas Foundry, Coast Iron Works, Steam Plant, Johnny's
16 Seafood, 15th Street Right of Way, 18th Street Right of Way,
17 Sewage Pump Station, and 11th Street Right of Way. The
18 properties which the Park District owns as of the effective date
19 of this Decree are: Parcels 1A, 1B, 1C, 1D, 2, 3A, 3B, 3C, 5,
20 and 8; and the Morris Property (hereinafter Parcel 7). The
21 properties within the geographic boundary described in paragraph
22 A but not now owned by either the City or the Park District are:
23 Albers Mill (hereinafter Parcel 9), Investco Property, Trucco
24 Property, Harmon Cabinets, and any State Department of Natural
25 Resources (DNR) property. These properties are generally
26 depicted on Exhibit A. Defendant(s) will provide the legal

1 descriptions of these properties to Ecology in the Notice of
2 Intent to Proceed submitted under Section VIII of this Decree.
3 D. The properties currently owned by the City on which
4 there are known releases of hazardous substances and which are
5 now known to be "sites" under this Decree are Atlas Foundry,
6 Steam Plant, and 18th Street Right of Way. The properties
7 currently owned by the Park District on which there are known
8 releases of hazardous substances and which are now known to be
9 sites are: Parcel 7. These sites are generally depicted in
10 Exhibit A; their legal descriptions are included in Exhibit B.
11 Other properties depicted in Exhibit A will become "sites" under
12 this Decree, when (1) Defendant(s) acquires an ownership
13 interest in the property; and/or (2) Ecology determines the
14 property is a cleanup site pursuant to Section VII of this
15 Decree. Ecology has determined that Parcel 9 and Investco
16 Property contain releases of hazardous substances that require
17 cleanup.

18 E. The designation of a site by Ecology pursuant to
19 Section VII of the Decree, where appropriate; receipt of a
20 Notice of Intent to Proceed by Ecology under Section VIII of the
21 Decree; and the existence of a binding Prepayment Agreement
22 under Section VIII are conditions precedent to the applicability
23 of the remaining sections of the Consent Decree to any
24 individual site.

25 F. Each of the provisions of this Decree apply to each
26 site individually.

1 G. On property that the City or the Park District does not
2 currently own, if Ecology takes enforcement action at that
3 property prior to the City or Park District's purchase, those
4 sites shall not be subject to this Decree unless agreed to by
5 the parties.

6 **III. JURISDICTION**

7 A. This Court has jurisdiction over the subject matter
8 and over the parties pursuant to Chapter 70.105D RCW, the Model
9 Toxics Control Act (MTCA).

10 B. Authority is conferred upon the Washington State
11 Attorney General by RCW 70.105D.040(4)(a) to agree to a
12 settlement with any potentially liable person if, after public
13 notice and hearing, Ecology finds the proposed settlement would
14 lead to a more expeditious cleanup of hazardous substances. RCW
15 70.105D.040(4)(b) requires that such a settlement be entered as
16 a consent decree issued by a court of competent jurisdiction.

17 C. Ecology has determined, or will determine as set forth
18 in Section VII of this Decree, that releases or threatened
19 releases of hazardous substances have occurred at the sites
20 which are the subject of this Decree. Ecology has further
21 determined, or will determine as set forth in Section VII of
22 this Decree, that the releases are causing contamination of
23 soils, surface water and/or groundwater, and will continue to
24 cause contamination unless the releases are remediated.

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1 D. The City is a potentially liable person (PLP) for the
2 Atlas Foundry, Steam Plant, and 18th Street Right of Way sites
3 as an owner or operator under RCW 70.105D.040(1)(a).

4 E. The City is an owner of Dock Street Right of Way,
5 Municipal Dock, Coast Iron Works, Johnny's Seafood, 15th Street
6 Right of Way, Sewage Pump Station, and 11th Street Right of Way,
7 and will be a PLP if Ecology determines that a release or
8 threatened release of hazardous substances has occurred at that
9 property.

10 F. The Park District is a PLP for Parcel 7 as an owner or
11 operator under RCW 70.105D.040(1)(a).

12 G. The Park District is an owner or operator of Parcels
13 1A, 1B, 1C, 1D, 2, 3A, 3B, 3C, 5, and 8, and will be a PLP if
14 Ecology determines that a release or threatened release of
15 hazardous substances has occurred at that property.

16 H. If the City or the Park District acquires an interest
17 in Trucco Property, Harmon Cabinets, or any DNR property, it
18 would be a PLP as an owner if Ecology determines during the
19 City's or the Park District's ownership that a release or
20 threatened release of hazardous substances has occurred at that
21 property. Ecology has already determined that a release of
22 hazardous substances has occurred at Parcel 9 and Investco
23 Property, and the City or the Park District would be a PLP as an
24 owner if either acquires an interest in those properties.

25
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1 I. The City and the Park District have accepted their
2 status as PLPs for the site(s) and by signing this Decree waive
3 their right to notice and comment under RCW 70.105D.020(8).

4 J. The actions to be taken pursuant to this Decree are
5 necessary to protect public health, welfare, and the
6 environment.

7 K. Defendant(s) has agreed to undertake the actions
8 specified in this Decree and consents to the entry of this
9 Decree under the MTCA.

10 **IV. PARTIES BOUND**

11 A. This Decree shall apply to and be binding upon the
12 signatories to this Decree. Successors in Interest and Assigns
13 may become parties as provided in Section XIX. The undersigned
14 representative of each party hereby certifies that he or she is
15 fully authorized to enter into this Decree and to execute and
16 legally bind such party to comply with the Decree. Defendant(s)
17 agree to undertake all actions required by the terms and
18 conditions of this Decree and not to contest state jurisdiction
19 regarding this Decree, nor to contest any findings of fact in
20 this Decree. No change in ownership, corporate status, or
21 membership of any governing body shall alter the responsibility
22 of the Defendant(s) under this Decree. Defendant(s) agrees to
23 utilize contractual and regulatory means to insure the
24 implementation and enforceability of this Decree by and against
25 any subsequent owner, operator, lessee or tenant of the site(s).
26 Defendant(s) shall remain liable for all obligations agreed to

1 in this Decree in the event of a sale, transfer, or assignment
2 of any ownership interest from Defendant(s) to a third party.
3 Nothing herein shall prevent the City or the Park District from
4 negotiating with purchasers, lessees, or other third parties to
5 contractually allocate remedial action costs and
6 responsibilities, provided that such contractual arrangements
7 are not in breach of this Decree and do not affect the City's or
8 the Park District's liability hereunder.

9 B. Defendant(s) shall provide a copy of this Decree to
10 all agents, contractors and subcontractors retained to perform
11 work required by this Decree and shall ensure that all work
12 undertaken by such contractors and subcontractors will be in
13 compliance with this Decree.

14 V. DEFINITIONS

15 Except for as specified herein, all definitions in Chapters
16 70.105D RCW and 173-340 WAC apply to the terms in this Decree.

17 A. Active Remediation of Groundwater: For purposes of
18 this Decree, active remediation of groundwater shall mean all
19 remedial actions related to groundwater except for long term
20 monitoring of groundwater and remediation of contaminated soil
21 that is a source of contamination to the groundwater.

22 B. Consent Decree or Decree: Refers to this Consent
23 Decree, each of the exhibits to the Decree, and any amendments
24 to the Decree. All exhibits are integral and enforceable parts
25 of this Consent Decree. In the event of any conflict between
26

1 | the Consent Decree and any exhibits to the Decree, the Consent
2 | Decree shall govern.

3 | C. Days: Refers to calendar days unless otherwise
4 | specified.

5 | D. Defendant(s): Refers to the City of Tacoma and the
6 | Metropolitan Park District. Successors in Interest and Assigns
7 | may become Defendants as provided in Section XIX.

8 | E. Parties: Refers to the Washington State Department of
9 | Ecology, the City of Tacoma and the Metropolitan Park District.
10 | Successors in Interest and Assigns may become parties as
11 | provided in Section XIX.

12 | F. Section: Refers to a portion of this Decree
13 | identified by a Roman numeral and including one or more
14 | paragraphs.

15 | G. Site(s) or cleanup site(s): Refers to the properties,
16 | or any of them, described in Section II.B of this Decree.

17 | H. Successors in Interest and Assigns: Refers to any
18 | person who acquires an interest in the sites under this Decree
19 | through purchase, lease, transfer, or assignment.

20 | **VI. STATEMENT OF FACTS**

21 | Ecology makes the following finding of facts without any
22 | express or implied admissions by Defendant(s).

23 | A. The City of Tacoma and the Metropolitan Park District
24 | own various parcels of property adjacent to the Thea Foss
25 | Waterway, as described in Section II of this Decree, totaling
26 | approximately 27 acres. Many of the parcels were abandoned,

1 unused industrial land. Since approximately 1852, these
2 properties have been the site of various industrial activities.
3 Lumber mills, shipyards, asphalt and concrete plants, flour
4 mills, metal plating and foundry facilities, and other
5 industrial based operations have occurred along the waterway.

6 B. In 1991, the City and the Park District began
7 purchasing some of this property for the purpose of cleanup,
8 redevelopment, and reuse of the City's waterfront for commercial
9 and residential use, including public access, parks and open
10 spaces. The City and the Park District may purchase additional
11 parcels adjacent to the waterway, for the same purpose. These
12 parcels are also described in Section II.

13 C. The City and others have performed independent
14 environmental investigations of the properties potentially
15 subject to this Decree. These investigations are described more
16 fully in Section 3.1 of the Thea Foss Redevelopment Cleanup
17 Action Plan, attached to this Decree as Exhibit C. Under these
18 investigations, soil and groundwater samples were collected from
19 15 of the properties potentially subject to this Decree. These
20 investigations have documented the presence of hazardous
21 substances that exceed the MTCA method B soil cleanup standards
22 under WAC 173-340-740, as described in Section 3.0 of the Thea
23 Foss Redevelopment CAP. These hazardous substances are: total
24 petroleum hydrocarbons (TPH); benzene, toluene, ethylbenzene,
25 and xylene (BTEX); polynuclear aromatic hydrocarbons (PAHs);

26

1 antimony; arsenic; cadmium; chromium; copper; lead; mercury;
2 nickel; zinc; and polychlorinated biphenyls (PCBs).

3 D. In 1993-94, the City prepared an Area-wide Feasibility
4 Study (FS) and Phase I Remedial Investigation. The
5 investigation indicates that the properties potentially subject
6 to this Decree have similar physical characteristics, past and
7 future uses, and similar potential contaminant problems,
8 allowing the development of similar cleanup remedies for all the
9 properties.

10 VII. DESIGNATION OF CLEANUP SITES

11 A. On property that is owned by Defendant(s) and within
12 the geographic boundary described in Section II.A but has not
13 yet been determined by Ecology to be a cleanup site under MTCA,
14 if a release of a hazardous substance is discovered at the
15 property, Defendant(s) shall report that release to Ecology in
16 accordance with WAC 173-340-300. Ecology shall determine
17 whether the site requires further action under MTCA. Ecology
18 shall inform Defendant(s) in writing of its decision. Ecology's
19 decision shall not be subject to dispute resolution under
20 Section XVIII.B of this Decree. If Defendant(s) disagrees with
21 Ecology's decision, the site shall not be included within the
22 scope and effect of this Decree. Sites that Ecology determines
23 require no further action are also not within the scope and
24 effect of this Decree. Unless otherwise specified in this
25 Decree, sites that Ecology determines require further action
26 under MTCA shall be subject to this Decree, unless Defendant(s)

1 disagrees with Ecology's decision and so informs Ecology in
2 writing.

3 B. Once Defendant(s) reports a release, Defendant(s)
4 shall not allow any person or entity to perform any remedial
5 actions at the site nor physically disturb the site or otherwise
6 impair or foreclose potential remedial actions until Ecology
7 determines if the site is subject to this Decree or unless
8 Ecology otherwise agrees in writing. Defendant(s) and Ecology
9 anticipate the possible construction of public access facilities
10 on portions of some sites. Construction of such facilities on
11 portions of sites that are not contaminated may proceed prior to
12 or during remediation of sites if Ecology so agrees in writing.

13 **VIII. NOTICE OF INTENT TO PROCEED AND PREPAYMENT OF COSTS**

14 A. On sites that are subsequently determined to be
15 cleanup sites under Section VII of this Decree and on the Atlas
16 Foundry, Steam Plant, 18th Street Right of Way, Parcel 7, Parcel
17 9, and Investco Property sites, prior to physical disturbance of
18 a site, exclusive of actions necessary to discover the release
19 of a hazardous substance consistent with WAC 173-340-300, and
20 those activities agreed to by Ecology as described in Section
21 VII, the Defendant(s) shall file a written "Notice of Intent to
22 Proceed" with Ecology. The written Notice of Intent to Proceed
23 shall indicate that the Defendant(s) is prepared to perform
24 remedial actions at the site(s) consistent with this Decree.
25 The Notice shall provide a legal description of the site(s); the
26 intended use of the site(s); proof that the Defendant(s) own

1 the property that makes up the site(s); and whether the
2 Defendant(s) will be selling, leasing or otherwise transferring
3 any ownership or possessory interest in the site(s) to a third
4 party(ies), and, if so, the identity of the third party(ies).

5 B. The Notice of Intent to Proceed shall be accompanied
6 by a draft "Prepayment Agreement" pursuant to Ecology's Toxics
7 Cleanup Program's policy POL 500C, as now or hereafter amended.
8 If the City or the Park District wish to include any Successors
9 in Interest or Assigns as parties to the Consent Decree, the
10 City or the Park District shall follow the procedures in
11 Section XIX. The Prepayment Agreement is necessary to provide
12 Ecology staff resources to oversee implementation of the Consent
13 Decree. A Prepayment Agreement may apply to more than one site.
14 Ecology, in its sole discretion, may choose not to enter into a
15 Prepayment Agreement or implement the Consent Decree until
16 sufficient services are needed under the Decree to require at
17 least one half of a full time equivalent position (FTE) or
18 additional services in increments of at least one half of an
19 FTE. Ecology's decision shall not be subject to dispute
20 resolution under Section XVIII.B of this Decree.

21 C. As an alternative to entering into a Prepayment
22 Agreement on each site, the Defendant(s) and Ecology may, at
23 their option, agree to enter into a Prepayment Agreement that
24 addresses all sites under this Decree, and establishes a prepaid
25 account into which funds may be deposited by Defendant(s) and
26 drawn upon by Ecology to perform Ecology's obligations under

1 | this Decree. Any such Prepayment Agreement must include a
2 | provision that the agreement would not become effective, and
3 | Ecology would not be required to implement the Consent Decree,
4 | until sufficient services are needed under the Decree to require
5 | at least one half of an FTE or additional services in increments
6 | of at least one half of an FTE.

7 | D. If Ecology chooses to enter into a Prepayment
8 | Agreement, Ecology and the Defendant(s) shall negotiate that
9 | agreement. If the parties cannot reach agreement on the terms
10 | of a Prepayment Agreement, the site or sites intended to be
11 | covered by the agreement will not be within the scope of this
12 | Consent Decree.

13 | **IX. WORK TO BE PERFORMED**

14 | A. This Decree contains a program designed to protect
15 | public health, welfare and the environment from the known
16 | release, or threatened release, of hazardous substances or
17 | contaminants at, on, or from the site(s). The work to be
18 | performed in this Decree is subject to change by Ecology, as
19 | necessary, to incorporate the substantive requirements of state
20 | and local laws, as required by Section 14 of ESSB 6339 (1994).
21 | See Section XXXI.A.6.

22 | B. No sooner than ninety (90) days nor later than one
23 | hundred twenty (120) days after the parties have entered into a
24 | site-specific prepayment agreement or, if the parties enter into
25 | a prepayment agreement for all sites under this Decree, no
26 | sooner than ninety (90) days nor later than one hundred twenty

1 (120) days after receipt by Ecology of a Notice to Proceed under
2 Section VIII, unless a shorter time is agreed to by Ecology, the
3 Defendant(s) shall submit to Ecology a site-specific Remedial
4 Investigation (RI) work plan consistent with WAC 173-340-350.
5 The work plan shall include a site-specific Sampling and
6 Analysis Plan (SSAP) consistent with WAC 173-340-350 and WAC
7 173-340-820, a site-specific Quality Assurance Project Plan, and
8 a site-specific Safety and Health Plan consistent with WAC
9 173-340-810. The SSAP shall incorporate the elements of the
10 Thea Foss Sampling and Analysis Plan (SAP) and the Thea Foss
11 Quality Assurance Project Plan (QAPP), attached hereto as
12 Exhibits D and E, respectively, and shall be modified, as
13 appropriate, by site-specific characteristics and knowledge.
14 Ecology shall review and comment on, but not approve or
15 disapprove, the Safety and Health Plan. The RI work plan shall
16 include a schedule for conducting all RI tasks and submitting
17 all deliverables. The RI work plan shall be submitted to
18 Ecology for review. Ecology will endeavor to review the RI work
19 plan and submit any comments to Defendant(s) within twenty one
20 (21) days of Ecology's receipt of the work plan. Within twenty
21 one (21) days of receipt of Ecology's comments, Defendant(s)
22 shall submit a revised RI work plan to Ecology that incorporates
23 Ecology's comments.

24 C. Upon receipt of Ecology's approval of the RI work
25 plan, Defendant(s) shall implement the plan in accordance with
26 the schedule in the approved plan. Within 60 days of completion

1 of all work required in the RI work plan, the Defendant(s) shall
2 prepare and submit to Ecology a remedial investigation (RI)
3 report. The report must include the Defendant(s)' analysis of
4 which cleanup action, if any, specified in the Thea Foss
5 Redevelopment Cleanup Action Plan, attached as Exhibit C to this
6 Decree, applies to the site and the rationale for that
7 determination.

8 D. After receipt of the RI report, Ecology shall
9 determine whether any of the cleanup actions specified in
10 Exhibit C apply to the site and if so, which one. Ecology shall
11 provide Defendant(s) with written notice of its decision. If
12 Ecology determines that none of the cleanup actions in Exhibit C
13 apply to the site, the site shall no longer be included within
14 the scope of this Decree. If Ecology determines that
15 groundwater contamination exists on the site that needs active
16 remediation, the site shall no longer be included within the
17 scope of this Decree. Ecology's decisions under this paragraph
18 shall not be subject to dispute resolution under Section XVIII.B
19 of this Decree. If Defendant(s) does not agree with Ecology's
20 final decision under this paragraph, the site shall no longer be
21 included within the scope of this Decree.

22 E. If Ecology determines one of the cleanup actions in
23 Exhibit C applies, and Defendant(s) agrees, Defendant(s) shall
24 prepare a draft site-specific cleanup action plan (SCAP)
25 consistent with WAC 173-340-360 and the Thea Foss Redevelopment
26 Cleanup Action Plan attached as Exhibit C. The draft SCAP shall

1 describe and justify the specific cleanup action proposed for
2 the site, including the specific technologies proposed to be
3 used. The justification for the proposed cleanup action shall
4 be in accordance with WAC 173-340-360. The draft SCAP shall
5 include a schedule for submission of remedial design documents
6 and a compliance monitoring plan. Defendant(s) shall submit the
7 draft SCAP to Ecology for approval within sixty (60) days of
8 receipt of Ecology's written notice of decision regarding the
9 appropriate cleanup action for the site. Ecology shall prepare
10 a final draft SCAP, and may modify the draft SCAP as necessary.

11 F. Ecology shall provide public notice and a 30-day
12 comment period for the RI report and the final draft SCAP in
13 accordance with WAC 173-340-600. The public shall be invited to
14 comment upon all information and decisions for which Ecology did
15 not previously provide an opportunity for public comment. If
16 significant public comment is received on these issues, Ecology
17 shall prepare a responsiveness summary responding to the
18 comments. Ecology shall then issue a final SCAP. Ecology may
19 modify the final draft SCAP based on public comment. If, based
20 on public comment, Ecology determines that none of the cleanup
21 actions in the Thea Foss Redevelopment Cleanup Action Plan apply
22 to the site, the site shall no longer be included within the
23 scope of this Decree.

24 G. The final SCAP shall be included as an amendment to
25 the Decree, pursuant to the procedures in Section XIX.
26

1 H. The final SCAP shall be implemented by Defendant(s)
2 In accordance with the approved time schedule in the SCAP,
3 Defendant(s) shall submit to Ecology for review a draft
4 engineering design report, construction plans and
5 specifications, and an operation and maintenance plan
6 (collectively referred to as remedial design documents)
7 consistent with WAC 173-340-400(4), and a draft compliance
8 monitoring plan consistent with WAC 173-340-410. The remedial
9 design documents and the compliance monitoring plan may be
10 submitted separately or combined in one document. The remedial
11 design documents shall include a schedule for implementing the
12 final SCAP. Ecology will endeavor to review and comment on the
13 draft remedial design documents and compliance monitoring plan
14 within thirty (30) days. Within thirty (30) days of receipt of
15 Ecology's comments, Defendant(s) shall submit to Ecology final
16 remedial design documents and a final compliance monitoring plan
17 that incorporate Ecology's comments on the draft documents.
18 Upon receipt of Ecology's approval of the remedial design
19 documents and the monitoring plan, Defendant(s) shall implement
20 the approved remedial action in accordance with the terms and
21 schedule contained in those documents. Defendant(s) shall
22 submit construction documentation to Ecology in accordance with
23 the approved remedial design documents.

24 I. Defendant(s) agrees not to perform any remedial
25 actions outside the scope of this Decree unless the signatories
26 agree to amend the scope of work to cover those actions. Al

1 work conducted under this Decree shall be done in accordance
2 with chapter 173-340 WAC unless otherwise provided herein.

3 X. INSTITUTIONAL CONTROLS

4 A. For any site(s) on which (1) the cleanup action results
5 in residual concentrations of hazardous substances on site which
6 exceed method A or method B cleanup levels established under the
7 MTCA regulations; (2) conditional points of compliance have been
8 established; or (3) Ecology determines institutional controls
9 are required, Defendant(s) shall implement all institutional
10 controls required by Ecology. At the time Ecology prepares a
11 final draft SCAP for a site, if Ecology and the Attorney General
12 determine institutional controls are necessary at the site, they
13 shall propose a restrictive covenant that includes the necessary
14 institutional controls. Ecology shall ensure that the
15 appropriate cities or counties are notified and provided an
16 opportunity to comment on the proposed restrictive covenant, as
17 required by ESSB 6123 (1994). Ecology, the Attorney General,
18 and the Defendant landowner of the site shall use good faith
19 efforts to reach agreement on the terms of the restrictive
20 covenant. Negotiations on the restrictive covenant shall not
21 exceed thirty (30) days, unless agreed to by the negotiating
22 parties. If these parties cannot reach agreement on the
23 restrictive covenant within the allotted time period, Ecology
24 and the Attorney General shall decide the terms of the
25 restrictive covenant, and such decision shall not be subject to
26 dispute resolution under this Decree. If Defendant landowner

1 does not agree with the restrictive covenant, the site(s) sh
2 no longer be included within the scope of this Decree.

3 B. On any site for which a restrictive covenant has been
4 established under paragraph A of this section, within thirty
5 (30) days of the issuance of the final SCAP the Defendant
6 landowner of that site shall record with the Office of the
7 Pierce County Auditor the established restrictive covenant, and
8 provide Ecology and the Attorney General with written
9 confirmation of such recording.

10 C. The City will use available filing and calendaring
11 mechanisms to ensure that parcels subject to this Decree are
12 flagged or otherwise noted with use restrictions through the
13 City's permit system.

14 **XI. DESIGNATED PROJECT COORDINATORS**

15 A. The project coordinator for Plaintiff Ecology is:
16 Marv Coleman
17 Department of Ecology
18 Southwest Regional Office
19 St. Martin's College Campus
20 P.O. Box 47775
21 Olympia, WA 98504-7775

22 B. For each site, the Defendant(s) shall include the name
23 and address of the project coordinator in the Notice of Intent
24 to Proceed filed with Ecology pursuant to Section VIII of this
25 Decree.

26 C. Each project coordinator shall be responsible for
overseeing the implementation of this Decree. The Ecology
project coordinator will be Ecology's designated representative
at the site. To the maximum extent possible, communications

1 between Ecology and the Defendant(s) and all documents,
2 including reports, approvals, and other correspondence
3 concerning the activities performed pursuant to the terms and
4 conditions of this Decree, shall be directed through the project
5 coordinators. The project coordinators may designate, in
6 writing, working level staff contacts for all or portions of the
7 implementation of the remedial work required by this Decree.
8 The project coordinators may agree to minor modifications to the
9 work to be performed without formal amendments to this Decree.

10 D. Any party may change its respective project
11 coordinator. Written notification shall be given to the other
12 parties at least ten (10) calendar days prior to the change.

13 XII. PERFORMANCE

14 All work performed pursuant to this Decree shall be under
15 the direction and supervision, as necessary, of a professional
16 engineer or hydrogeologist, or equivalent, with experience and
17 expertise in hazardous waste site investigation and cleanup.
18 Any construction work must be under the supervision of a
19 professional engineer. Defendant(s) shall notify Ecology in
20 writing as to the identity of such engineer(s) or
21 hydrogeologist(s), or others and of any contractors and
22 subcontractors to be used in carrying out the terms of this
23 Decree, in advance of their involvement at the site.

24 XIII. ACCESS

25 Ecology or any Ecology authorized representatives shall
26 have the authority to enter and freely move about all property

1 at the site at all reasonable times for the purposes of, inter-
2 alia: inspecting records, operation logs, and contracts related
3 to the work being performed pursuant to this Decree; reviewing
4 Defendant(s)'s progress in carrying out the terms of this
5 Decree; conducting such tests or collecting such samples as
6 Ecology may deem necessary; using a camera, sound recording, or
7 other documentary type equipment to record work done pursuant to
8 this Decree; and verifying the data submitted to Ecology by the
9 Defendant(s). Upon request, Ecology shall split any samples
10 taken during an inspection unless the Defendant(s) fails to make
11 available a representative for the purpose of splitting samples.
12 All parties with access to the site pursuant to this paragraph
13 shall comply with approved safety and health plans.

14 **XIV. SAMPLING, DATA REPORTING, AND AVAILABILITY**

15 A. With respect to the implementation of this Decree,
16 Defendant(s) shall make the results of all sampling, laboratory
17 reports, and/or test results generated by it, or on its behalf
18 available to Ecology and shall submit these results in
19 accordance with Section XV of this Decree.

20 B. If requested by Ecology, Defendant(s) shall allow
21 split or duplicate samples to be taken by Ecology and/or its
22 authorized representatives of any samples collected by
23 Defendant(s) pursuant to the implementation of this Decree.
24 Defendant(s) shall notify Ecology five (5) working days in
25 advance of any sample collection or work activity at the site.
26 Ecology shall, upon request, allow split or duplicate samples to

1 be taken by Defendant(s) or its authorized representatives of
2 any samples collected by Ecology pursuant to the implementation
3 of this Decree provided it does not interfere with the
4 Department's sampling. Without limitation on Ecology's rights
5 under Section XIII, Ecology shall endeavor to notify
6 Defendant(s) prior to any sample collection activity.

7 **XV. PROGRESS REPORTS**

8 A. Defendant(s) shall submit to Ecology written progress
9 reports which describe the actions taken during the previous
10 reporting period to implement the requirements of this Decree.
11 There shall be quarterly reporting periods when the Defendant(s)
12 is actively sampling or remediating any site or sites pursuant
13 to this Decree. Otherwise there shall be annual progress
14 reports. The progress reports shall include the following:

15 (1) A list of activities on each site that have taken
16 place during the reporting period;

17 (2) Detailed description of any deviations from required
18 tasks not otherwise documented in project plans or amendment
19 requests;

20 (3) Description of all deviations from any approved
21 schedules for implementing work under the Decree during the
22 current reporting period and any planned deviations in the
23 upcoming reporting period;

24 (4) For any deviations in schedule, a plan for recovering
25 lost time and maintaining compliance with the schedule;

26

1 (5) All raw data (including laboratory analysis) received
2 by the Defendant(s) during the past reporting period and an
3 identification of the source of the sample; and

4 (6) A list of deliverables for the upcoming reporting
5 period if different from the schedule.

6 B. All progress reports shall be submitted by the tenth
7 day of the month in which they are due after the effective date
8 of this Decree. Unless otherwise specified, progress reports
9 and any other documents submitted pursuant to this Decree shall
10 be sent by certified mail, return receipt requested, to
11 Ecology's project coordinator.

12 **XVI. RETENTION OF RECORDS**

13 Defendant(s) shall preserve, during the pendency of this
14 Decree and for ten (10) years from the date this Decree is no
15 longer in effect as provided in Section XXIX, all records,
16 reports, documents, and underlying data in its possession
17 relevant to the implementation of this Decree and shall insert
18 in contracts with project contractors and subcontractors a
19 similar record retention requirement. Upon request of Ecology,
20 Defendant(s) shall make all non-archived records available to
21 Ecology and allow access for review. All archived records shall
22 be made available to Ecology within a reasonable period of time.

23 **XVII. TRANSFER OF INTEREST IN PROPERTY**

24 A. No voluntary or involuntary conveyance or
25 relinquishment of title, easement, leasehold, or other interest
26 in any site(s) or portion of any site(s) shall be consummated.

1 without provision for continued operation and maintenance of any
2 containment system, treatment system, and monitoring system
3 installed or implemented pursuant to this Decree.

4 B. Prior to transfer of any legal or equitable interest
5 in all or any portion of the sites(s), and during the effective
6 period of this Decree, Defendant(s) shall serve a copy of this
7 Decree upon any prospective purchaser, lessee, transferee,
8 assignee, or other successor in interest of the site(s); and, at
9 least thirty (30) days prior to any transfer, Defendant(s) shall
10 notify Ecology of said contemplated transfer.

11 C. Transfer of any ownership interest in any site(s) or
12 any portion of any site(s) shall not alter or negate the City's
13 and the Park District's obligations under this Decree. Nothing
14 herein shall prevent the City or the Park District from
15 negotiating with purchasers, lessees, or other third parties to
16 allocate remedial action costs and responsibilities, provided
17 that such contractual arrangements are not in breach of this
18 Decree and do not effect the City's or the Park District's
19 liability hereunder.

20 XVIII. RESOLUTION OF DISPUTES

21 A. Unless otherwise specified in this Decree, in the
22 event a dispute arises as to an approval, disapproval, proposed
23 modification or other decision or action by Ecology's project
24 coordinator, the parties shall utilize the dispute resolution
25 procedure set forth below.

26

1 (1) Upon receipt of the Ecology project coordinator's
2 decision, the Defendant(s) has fourteen (14) days within which
3 to notify Ecology's project coordinator of its objection to the
4 decision.

5 (2) The parties' project coordinators shall then confer in
6 an effort to resolve the dispute. If the project coordinators
7 cannot resolve the dispute within fourteen (14) days, Ecology's
8 project coordinator shall issue a written decision.

9 (3) Defendant(s) may then request Ecology management
10 review of the decision. This request shall be submitted in
11 writing to the Toxics Cleanup Program Manager within seven (7)
12 days of receipt of Ecology's project coordinator's decision.

13 (4) Ecology's Toxics Cleanup Program Manager shall conduct
14 a review of the dispute and shall issue a written decision
15 regarding the dispute within thirty (30) days of the
16 Defendant(s)'s request for review. The Program Manager's
17 decision shall be Ecology's final decision on the disputed
18 matter.

19 B. Unless otherwise specified in this Decree, if
20 Ecology's final written decision is unacceptable to
21 Defendant(s), Defendant(s) has the right to submit the dispute
22 to the Court for resolution. The parties agree that one judge
23 should retain jurisdiction over this case and shall, as
24 necessary, resolve any dispute arising under this Decree. In
25 the event Defendant(s) presents an issue to the Court for
26 review, the Court shall review the action or decision of Ecology

1 on the basis of whether such action or decision was arbitrary
2 and capricious and render a decision based on such standard of
3 review.

4 C. The parties agree to only utilize the dispute
5 resolution process in good faith and agree to expedite, to the
6 extent possible, the dispute resolution process whenever it is
7 used. Where either party utilizes the dispute resolution
8 process in bad faith or for purposes of delay, the other party
9 may seek sanctions.

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

14 **XIX. AMENDMENT OF CONSENT DECREE; ADDING NEW PARTIES**
15 **TO DECREE**

16 A. This Decree may only be amended by a written
17 stipulation among the signatories to this Decree that is entered
18 by the Court or by order of the Court. Such amendment shall
19 become effective upon entry by the Court. Agreement to amend
20 shall not be unreasonably withheld by any signatory to the
21 Decree.

22 B. With respect to amendments of the Decree for the
23 purpose of including SCAPs, after Ecology issues a final SCAP
24 for a site, with the concurrence of the Attorney General, the
25 signatories shall sign a copy of Exhibit F, an "Amendment to
26 Consent Decree to Include Site-Specific Cleanup Action Plan",
and it shall be submitted for entry with the Court.

1 C. If the City or the Park District wish to amend the
2 Consent Decree to make their Successors in Interest and Assigns
3 parties to the Decree, the City or the Park District and their
4 Successors in Interest and Assigns shall use the following
5 procedure. The City or the Park District shall require the
6 proposed Successors in Interest and Assigns to sign a copy of
7 Exhibit G, an "Agreement of Successors in Interest and Assigns",
8 thereby consenting to be bound by the terms and conditions of
9 this Decree. This signed agreement shall be sent to Ecology at
10 the same time as the Notice of Intent to Proceed under Section
11 VIII of this Decree. If Ecology and the Attorney General
12 consent to the proposed amendment, the Amendment shall be
13 submitted for entry with the Court.

14 D. For all amendments not covered by paragraphs B and C of
15 this section, Defendant(s) shall submit any request for an
16 amendment to Ecology and the Attorney General for approval.
17 Ecology shall indicate its approval or disapproval in a timely
18 manner after the request for amendment is received. If the
19 amendment to the Decree is substantial, Ecology will provide
20 public notice and opportunity for comment. Reasons for the
21 disapproval shall be stated in writing. If Ecology or the
22 Attorney General does not agree to any proposed amendment, the
23 disagreement may be addressed through the dispute resolution
24 procedures described in Section XVIII of this Decree.

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XX. EXTENSION OF SCHEDULE

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 30 days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed.

An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. A requested extension shall not be effective until approved by Ecology or the Court. Ecology shall act upon any written request for extension in a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section XIX when a schedule extension is granted.

B. The burden shall be on the Defendant(s) to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to, the following.

(1) Circumstances beyond the reasonable control and despite the due diligence of Defendant(s) including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendant(s); or

1 (2) Acts of God, including fire, flood, blizzard, extre
2 temperatures, storm, or other unavoidable casualty; or

3 (3) Endangerment as described in Section XXI.

4 However, neither increased costs of performance of the
5 terms of the Decree nor changed economic circumstances shall be
6 considered circumstances beyond the reasonable control of
7 Defendant(s).

8 C. Ecology may extend the schedule for a period not to
9 exceed ninety (90) days, except where an extension is needed as
10 a result of:

11 (1) Delays in the issuance of a necessary permit which was
12 applied for in a timely manner; or

13 (2) Other circumstances deemed exceptional or
14 extraordinary by Ecology; or

15 (3) Endangerment as described in Section XXI.

16 Ecology shall give Defendant(s) written notification in a
17 timely fashion of any extensions granted pursuant to this
18 Decree.

19 **XXI. ENDANGERMENT**

20 A. In the event Ecology determines that activities
21 implementing or in noncompliance with this Decree, or any other
22 circumstances or activities, are creating or have the potential
23 to create a danger to the health or welfare of the people on the
24 site or in the surrounding area or to the environment, Ecology
25 may order Defendant(s) to stop further implementation of this
26 Decree for such period of time as needed to abate the danger.

1 may petition the Court for an order as appropriate. During any
2 stoppage of work under this section, the obligations of
3 Defendant(s) with respect to the work under this Decree which is
4 ordered to be stopped shall be suspended and the time periods
5 for performance of that work, as well as the time period for any
6 other work dependent upon the work which is stopped, shall be
7 extended, pursuant to Section XX of this Decree, for such period
8 of time as Ecology determines is reasonable under the
9 circumstances.

10 B. In the event Defendant(s) determines that activities
11 undertaken in furtherance of this Decree or any other
12 circumstances or activities are creating an endangerment to the
13 people on the site or in the surrounding area or to the
14 environment, Defendant(s) may stop implementation of this Decree
15 for such period of time necessary for Ecology to evaluate the
16 situation and determine whether Defendant(s) should proceed with
17 implementation of the Decree or whether the work stoppage should
18 be continued until the danger is abated. Defendant(s) shall
19 notify Ecology's project coordinator as soon as possible, but no
20 later than twenty-four (24) hours after such stoppage of work,
21 and thereafter provide Ecology with documentation of the basis
22 for the work stoppage. If Ecology disagrees with the
23 Defendant(s)'s determination, it may order Defendant(s) to
24 resume implementation of this Decree. If Ecology concurs with
25 the work stoppage, the Defendant(s)'s obligations shall be
26 suspended and the time period for performance of that work, as

1 well as the time period for any other work dependent upon the
2 work which was stopped, shall be extended, pursuant to Section
3 XX of this Decree, for such period of time as Ecology determines
4 is reasonable under the circumstances. Any disagreements
5 pursuant to the clause shall be resolved through the dispute
6 resolution procedures in Section XVIII.

7 **XXII. OTHER ACTIONS**

8 A. Ecology reserves its rights to institute remedial
9 action(s) at the site and subsequently pursue cost recovery, and
10 Ecology reserves its rights to issue orders and/or penalties or
11 take any other enforcement action pursuant to available
12 statutory authority under the following circumstances:

13 (1) Where Defendant(s) fails, after notice, to comply with
14 any requirement of this Decree;

15 (2) In the event or upon the discovery of a release or
16 threatened release not addressed by this Decree;

17 (3) Upon Ecology's determination that action beyond the
18 terms of this Decree is necessary to abate an emergency
19 situation which threatens public health or welfare or the
20 environment; or

21 (4) Upon the occurrence or discovery of a situation beyond
22 the scope of this Decree as to which Ecology would be empowered
23 to perform any remedial action or to issue an order and/or
24 penalty, or to take any other enforcement action. This Decree
25 is limited in scope to the site(s) described in Section II and
26 to those types and maximum concentrations of hazardous

1 substances that are on site at the time this Decree is entered,
2 and are described in Section 3.2 of the Thea Foss Redevelopment
3 Cleanup Action Plan, attached as Exhibit C.

4 B. Ecology reserves all rights regarding the injury to,
5 destruction of, or loss of natural resources resulting from the
6 release or threatened release of hazardous substances from the
7 site(s).

8 C. Ecology reserves the right to take any enforcement
9 action whatsoever, including a cost recovery action, against
10 potentially liable persons not party to this Decree.

11 D. Ecology reserves the right to remove all or a portion
12 of a site from this Decree and take separate enforcement actions
13 against Defendants at that site if Ecology determines it is
14 necessary to do so to meet Ecology's source control obligations
15 under the 1994 Cooperative Agreement between Ecology and EPA.

16 **XXIII. INDEMNIFICATION**

17 Defendant(s) agrees to indemnify and save and hold the
18 State of Washington, its employees, and agents harmless from any
19 and all claims or causes of action for death or injuries to
20 persons or for loss or damage to property arising from or on
21 account of acts or omissions of Defendant(s), its officers,
22 employees, agents, or contractors in entering into and
23 implementing this Decree. However, the Defendant(s) shall not
24 indemnify the State of Washington nor save nor hold its
25 employees and agents harmless from any claims or causes of
26 action arising out of the negligent acts or omissions of the

1 State of Washington, or the employees or agents of the state, in
2 implementing the activities pursuant to this Decree.

3 **XXIV. COMPLIANCE WITH APPLICABLE LAWS**

4 All actions carried out by Defendant(s) pursuant to this
5 Decree shall be done in accordance with all applicable federal,
6 state, and local requirements, including requirements to obtain
7 necessary permits.

8 **XXV. REMEDIAL AND INVESTIGATIVE COSTS**

9 The Defendant(s) agrees to pay costs incurred by Ecology
10 pursuant to this Decree. The costs required to be paid under
11 this Decree shall include work performed by Ecology or its
12 contractors for, or on, the site(s) under ch. 70.105D RCW both
13 prior to and subsequent to the issuance of this Decree, for
14 investigations, remedial actions, and Decree preparation,
15 negotiations, oversight and administration. Ecology costs shall
16 include costs of direct activities and support costs of direct
17 activities as defined in WAC 173-340-550(2). The Defendant(s)
18 agrees to pay the required amount within ninety (90) days of
19 receiving from Ecology an itemized statement of costs that
20 includes a summary of costs incurred, an identification of
21 involved staff, and the amount of time spent by involved staff
22 members on the project. A general statement of work performed
23 will be provided upon request. Itemized statements shall be
24 prepared quarterly. Failure to pay Ecology's costs within
25 ninety (90) days of receipt of the itemized statement will
26 result in interest charges.

1 Ecology entered into an agreement with the City of Tacoma,
2 dated June 14, 1993 to receive prepayment of remedial action
3 costs associated with sites under this Decree. Ecology and the
4 City may enter into additional prepayment agreements for sites
5 under the Decree, pursuant to Section VIII. If the City pays
6 remedial action costs pursuant to a prepayment agreement with
7 Ecology for a site under this Decree, it shall not be required
8 to pay those costs again under this Consent Decree. The City is
9 not released from liability for payment of remedial action costs
10 to Ecology should the City of Tacoma fail to comply with the
11 conditions of such a prepayment agreement, or should prepayment
12 agreement be found to be invalid for any reason.

13 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

14 If Ecology determines that Defendant(s) has failed without
15 good cause to implement the remedial action(s) called for by
16 this Decree, Ecology may, after notice to Defendant(s), perform
17 any or all portions of the remedial action(s) that remain
18 incomplete. If Ecology performs all or portions of the remedial
19 action(s) because of the Defendant(s)'s failure to comply with
20 its obligations under this Decree, Defendant(s) shall reimburse
21 Ecology for the costs of doing such work in accordance with
22 Section XXV, provided that Defendant(s) is not obligated under
23 this section to reimburse Ecology for costs incurred for work
24 inconsistent with or beyond the scope of this Decree.

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1 **XXVII. FIVE YEAR REVIEW**

2 As remedial action, including ground water monitoring,
3 continues at the site, the parties agree to review the progress
4 of remedial action at the site, and to review the data
5 accumulated as a result of site monitoring as often as is
6 necessary and appropriate under the circumstances. At least
7 every five years the parties shall meet to discuss the status of
8 the site and the need, if any, of further remedial action at the
9 site. Ecology reserves the right to require further remedial
10 action at the site under appropriate circumstances. This
11 provision shall remain in effect for the duration of the Decree.

12 **XXVIII. PUBLIC PARTICIPATION**

13 Ecology shall maintain the responsibility for public
14 participation at the site(s). However, Defendant(s) shall
15 cooperate with Ecology and, if agreed to by Ecology, shall:

16 A. Prepare drafts of public notices and fact sheets at
17 important stages of the remedial action, such as the submission
18 of work plans and the completion of engineering design. Ecology
19 will finalize (including editing if necessary) and distribute
20 such fact sheets and prepare and distribute public notices of
21 Ecology's presentations and meetings;

22 B. Notify Ecology's project coordinator prior to the
23 preparation of all press releases and fact sheets, and before
24 major meetings with the interested public and local governments.
25 Likewise, Ecology shall notify Defendant(s) prior to the
26

1 issuance of all press releases and fact sheets, and before major
2 meetings with the interested public and local governments;

3 C. Participate in public presentations on the progress of
4 the remedial action at the site. Participation may be through
5 attendance at public meetings to assist in answering questions,
6 or as a presenter;

7 D. In cooperation with Ecology, arrange and/or continue
8 information repositories to be located at the Tacoma Public
9 Library, Main Branch, and Ecology's Southwest Regional Office.
10 At a minimum, copies of all public notices, fact sheets, and
11 press releases; all quality assured ground water, surface water,
12 soil sediment, and air monitoring data; remedial actions plans,
13 supplemental remedial planning documents, and all other similar
14 documents relating to performance of the remedial action
15 required by this Decree shall be promptly placed in these
16 repositories.

17 **XXIX. DURATION OF DECREE**

18 A. This Decree shall remain in effect and the remedial
19 program described in the Decree shall be maintained and
20 continued for a site until the Defendant(s) has received written
21 notification from Ecology that the requirements of this Decree
22 have been satisfactorily completed as to that site.

23 B. This Decree shall apply to any property within the
24 geographic boundary described in Section II.A for which Ecology
25 has received a Notice of Intent to Proceed under Section VIII
26 within five (5) years of the effective date of this Decree.

1 C. After five years from the effective date of this
2 Decree:

3 (1) Ecology and the Attorney General at their convenience
4 may terminate this Decree as to any site(s) not within the scope
5 of paragraph B of this section at any time prior to or within
6 twenty-one (21) days of receipt of a Notice of Intent to Proceed
7 under Section VIII of this Decree, by providing sixty (60) days
8 written notice of termination to Defendant(s).

9 (2) Defendant(s) at its convenience may terminate this
10 Decree as to any site(s) not within the scope of paragraph B of
11 this section at any time prior to receipt by Ecology of a Notice
12 of Intent to Proceed, by providing sixty (60) days written
13 notice to Ecology and the Attorney General.

14 **XXX. CLAIMS AGAINST THE STATE**

15 Defendant(s) hereby agrees that it will not seek to recover
16 any costs accrued in implementing the remedial action required
17 by this Decree from the State of Washington Department of
18 Ecology; and further, that the Defendant(s) will make no claim
19 against the state Toxics Control Account for any costs incurred
20 in implementing this Decree. Except as provided above, however,
21 Defendant(s) expressly reserves its right to seek to recover any
22 costs incurred in implementing this Decree from any other
23 potentially liable person under state or federal law.

24 **XXXI. COVENANT NOT TO SUE: REOPENER**

25 In consideration of Defendant(s)'s compliance with
26 provisions of this Decree, Ecology covenants not to institute

1 further legal or administrative actions against Defendant(s)
2 regarding matters within the scope of this Decree. This
3 covenant is limited in its application to the site(s) described
4 in Section II of this Decree and to the types and maximum
5 concentrations of hazardous substances that are on site at the
6 time this Decree is entered, and are described in Section 3.2 of
7 the Thea Foss Redevelopment Cleanup Action Plan, attached as
8 Exhibit C. This covenant is not applicable to any other area,
9 substances, or concentrations of substances. This covenant is
10 contingent upon Defendant(s)'s compliance with all terms and
11 conditions of this Decree. This covenant does not affect
12 Ecology's right to seek recovery for natural resource damages.

13 A. Reopeners: Notwithstanding the covenant given above,
14 Ecology reserves the right to institute legal or administrative
15 actions against Defendant(s) seeking to require them to perform
16 additional response actions at a site under this Decree, and to
17 pursue appropriate cost recovery in accordance with provisions
18 set out in RCW 70.105D.050, under the following circumstances:

19 (1) If Defendants fail to meet the requirements of this
20 Decree, including, but not limited to, failure of the remedial
21 action to meet the cleanup standards identified in the Thea Foss
22 Redevelopment Cleanup Action Plan (Exhibit C) and the SCAP for
23 that site;

24 (2) Upon Ecology's determination that action beyond the
25 terms of this Decree is necessary to abate an imminent and
26

1 substantial endangerment to public health or welfare or the
2 environment;

3 (3) In the event new information becomes available
4 regarding factors previously unknown to Ecology, including the
5 nature or quantity of hazardous substances at the Site, and
6 Ecology determines, in light of this information, that further
7 remedial action is necessary at the Site to protect human health
8 or the environment, and Defendants, after notice, fail to take
9 the necessary action within a reasonable time;

10 (4) In the event the assumptions upon which the cleanup
11 remedies agreed to in the Thea Foss Redevelopment Cleanup Action
12 Plan and the SCAP for the site were based do not prove to be
13 true or accurate;

14 (5) In the event the remedial action conducted at the Site
15 fails to meet the requirements set forth in the Thea Foss
16 Redevelopment Cleanup Action Plan and the SCAP for the site; and

17 (6) In the event more stringent or different cleanup
18 standards or other regulatory requirements regarding remedial
19 action under MTCA are adopted by the Washington State
20 Legislature or by Ecology.

21 Further, if factors or conditions at the site, previously
22 unknown to Ecology, are discovered after entry of this Decree,
23 and these unknown factors or conditions indicate that the
24 remedial action is not protective of the public health, or
25 welfare, or the environment, or present a previously unknown
26 threat to human health or the environment, Ecology also reserves

1 the right to request the court to amend this covenant not to sue
2 as required by RCW 70.105D.040(4)(c).

3 B. Applicability: The Covenant Not to Sue set forth
4 above shall have no applicability whatsoever to:

- 5 1. Criminal liability;
- 6 2. Liability for damages to natural resources;
- 7 3. Any Ecology action against potentially liable parties
8 not a party to this Decree;
- 9 4. Groundwater contamination that may exist at any of the
10 property within the geographic boundary described in Section
11 II.A that requires active remediation;
- 12 5. Property within the geographic boundary described in
13 Section II.A that is not determined by Ecology to be a cleanup
14 site under Section VII or to property on which Defendant(s)
15 otherwise does not fully implement all remedial actions under
16 this Decree, including a SCAP;
- 17 6. Any portion of a site(s) between the mean high high
18 water mark and the mean low low water mark.

19 **XXXII. EFFECTIVE DATE**

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

22 **XXXIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

23 This Decree has been the subject of public notice and
24 comment under RCW 70.105D.040(4)(a). As a result of this
25 process, Ecology has found that this Decree will lead to a more
26 expeditious cleanup of hazardous substances at the site.

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

6 DEPARTMENT OF ECOLOGY
7
8 By: [Signature] 10/3/94
9 CAROL KRAEGE Date
Acting Program Manager
Toxics Cleanup Program

ATTORNEY GENERAL
By: [Signature]
KATHRYN L. GERLA Date
WSBA #17498 9/30/94
Assistant Attorney General

10 CITY OF TACOMA
11
12 By: [Signature]
13 Name: _____ Date _____
14 Title: _____

[Signature]
Name: [Signature] Date _____
Attorney for City of Tacoma

15 METROPOLITAN PARK DISTRICT
16
17 By: [Signature]
18 Name: Neil A. Oesthun Date _____
19 Title: Executive Director

DAVIES PEARSON, P.C.
[Signature]
Name: Mark R. Roberts Date _____
Attorney for Metropolitan Park
District

20 DATED this 17 day of OCTOBER, 1994.

[Signature]
JUDGE/COMMISSIONER
Pierce County Superior Court

26 TS/tac/tacomaf.csd

1 enforcing or terminating the terms of this Consent Decree, and of
2 adjudicating disputes between the parties under this Consent
3 Decree.

4
5
6 ENTERED this _____ day of _____, 1991.

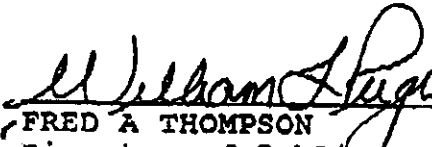
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8
9 UNITED STATES DISTRICT JUDGE


10
11 The parties whose signatures appear below hereby
12 consent to the terms of this Consent Decree. The consent of the
13 United States is subject to the public notice and comment
14 requirements of 28 C.F.R. § 50.7 and 42 U.S.C. § 9622. The
15 consent of the State of Washington is subject to the public
16 notice and hearing requirements of Section 4(4) of the Model
17 Toxics Control Act and is expressly conditioned upon the entry of
18 findings by the Department of Ecology required therein.

CITY CLERK CONTRACT/AGREEMENT NO. _____

FOR THE CITY OF TACOMA, WASHINGTON


By:  Dated: 3/20/91
Ray E. Corpuz, Jr.
City Manager

By:  Dated: 3/20/91
FRED A THOMPSON
Director of Public Works

By:  Dated: 3/21/91
Peter Lutzropp
Director of Finance *with 3/21/91*

Attest:  Dated: 3-20-91
Genelle Birk
City Clerk

Approved as to form:

By:  Dated: 3/20/91
City Attorney

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FOR THE UNITED STATES OF AMERICA

By: *George W. Van Cleave*

Dated: *3/22/91*

GEORGE W. VAN CLEVE
Acting Assistant Attorney
General
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

By: *Steven Novick*

Dated: *3/22/91*

STEVEN NOVICK
Attorney
Land and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20536

MIKE MCKAY
UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

By: *Dana A. Rasmussen*

Dated: *March 20, 1991*

DANA A. RASMUSSEN
Regional Administrator
United States Environmental Protection Agency
Region 10
Seattle, Washington 98101

By: *Andrew J. Boyd*

Dated: *March 20, 1991*

ANDREW J. BOYD
Assistant Regional Counsel
United States Environmental Protection Agency
Region 10
Seattle, Washington 98101

U.S. Department of Justice
10th St. & Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 514-1200

FOR THE STATE OF WASHINGTON

By: Carol L. Fleskes
CAROL S. FLESKES
Hazardous Waste Investigations
and Cleanup Program Manager
Department of Ecology
Olympia, Washington 98504

Dated: 3/20/91

By: Jeffrey S. Myers
JEFFREY S. MYERS
Assistant Attorney General
State of Washington
Olympia, Washington 98504

Dated: 3/20/91