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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology), Chauncey and Elizabeth Lufkin (the Lufkins) and Hytec Inc., (Defendants) under  
4 this Decree is to provide for remedial action at a facility where there has been a release or  
5 threatened release of hazardous substances. This Decree requires Defendants to perform a  
6 remedial action at the Hytec Fiberglass Debris Landfill Site in Olympia, Washington in  
7 accordance with the Cleanup Action Plan (CAP) attached as Exhibit B to this Consent Decree.

8 Ecology has determined that these actions are necessary to protect human health and  
9 the environment.

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

15 C. By signing this Decree, the Parties agree to its entry and agree to be bound by  
16 its terms.

17 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
18 parties from any liability they may have with respect to matters alleged in the Complaint. The  
19 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
20 sums expended under this Decree.

21 E. This Decree shall not be construed as proof of liability or responsibility for any  
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
23 provided, however, that Defendants shall not challenge the authority of the Attorney General  
24 and Ecology to enforce this Decree.

25 F. The Court is fully advised of the reasons for entry of this Decree, and good  
26 cause having been shown:

1 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

2 **II. JURISDICTION**

3 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
4 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

5 B. Authority is conferred upon the Washington State Attorney General by RCW  
6 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after  
7 public notice and any required hearing, Ecology finds the proposed settlement would lead to a  
8 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
9 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

10 C. Ecology has determined that a release or threatened release of hazardous  
11 substances has occurred at the Site that is the subject of this Decree.

12 D. Ecology has given notice to Defendants of Ecology's determination that  
13 Defendants are PLPs for the Site, as required by RCW 70.105D.020(21) and WAC  
14 173-340-500.

15 E. The actions to be taken pursuant to this Decree are necessary to protect public  
16 health and the environment.

17 F. This Decree has been subject to public notice and comment.

18 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
19 hazardous substances at the Site in compliance with the cleanup standards established under  
20 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

21 H. Defendants have agreed to undertake the actions specified in this Decree and  
22 consent to the entry of this Decree under MTCA.

23 **III. PARTIES BOUND**

24 This Decree shall apply to and be binding upon the Parties to this Decree, their  
25 successors and assigns. The undersigned representative of each party hereby certifies that he  
26 or she is fully authorized to enter into this Decree and to execute and legally bind such party to

1 comply with this Decree. Defendants agree to undertake all actions required by the terms and  
2 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'  
3 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,  
4 contractors, and subcontractors retained to perform work required by this Decree, and shall  
5 ensure that all work undertaken by such agents, contractors, and subcontractors complies with  
6 this Decree.

#### 7 **IV. DEFINITIONS**

8 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and  
9 WAC 173-340-200 shall control the meanings of the terms in this Decree.

10 A. Site: The Site is referred to as the Hytec fiberglass debris landfill, and is  
11 generally located at 13434 S.W. Halo Kuntux Lane, Olympia, Washington. The Site is more  
12 particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under  
13 RCW 70.105D.020(5).

14 B. Parties: Refers to the State of Washington, Department of Ecology and Mr. and  
15 Mrs. Chauncey and Elizabeth Lufkin (Lufkins) and Hytec Inc.

16 C. Defendants: Refers to Mr. and Mrs. Chauncey and Elizabeth Lufkin (Lufkins)  
17 and Hytec Inc.

18 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
19 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
20 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

21 E. CAP: Refers to the Cleanup Action Plan developed for this Site and included as  
22 Exhibit B to this Consent Decree.

23 F. SEPA Checklist: Refers to the State Environmental Policy Act Checklist  
24 prepared for this Site and included with Exhibit B to this Consent Decree.  
25  
26

1 **V. FINDINGS OF FACT**

2 Ecology makes the following findings of fact without any express or implied  
3 admissions of such facts by Defendants.

4 A. The site is generally located at 13434 S.W. Halo Kuntux Lane, Olympia,  
5 Washington (Township 16, Range 3 West, Section 9). The general area and investigation  
6 locations in and around the Hytec Fiberglass Debris Landfill were surveyed by Butler  
7 Surveying, a licensed Washington surveyor located in Chehalis, Washington, in August 2006.  
8 All spatial coordinates in the survey are based on the Washington State Plane South Zone. The  
9 position of the approximate center of the Hytec Fiberglass Debris Landfill area is: Northing  
10 (ft) 579,446; Easting (ft) 998,481. The surface area of the Hytec Fiberglass Debris Landfill  
11 covers an area of approximately 1.32 acres (based on the results of test pits, soil borings, and  
12 geophysical testing; see Figures 3-1, 3-2, and 3-3 from the RI/FS). The property(s) upon  
13 which the site is generally located is bounded to the north and east by residential properties, to  
14 the west by 77.3 acres of land owned by the Washington State Department of Natural  
15 Resources and to the south by Bordeaux Road. The other side of Bordeaux Road is  
16 undeveloped. The nearest town is Littlerock.

17 B. Mr. and Mrs. Chauncey Lufkin (the Lufkins) currently own 24 acres located at  
18 13434 S.W. Halo Kuntux Lane, Olympia, Washington (Township 16, Range 3 West, Section  
19 9). Originally, the Lufkins owned a larger 44 acre parcel of property, which they purchased in  
20 1975, that included their current property. This larger 44 acre property, which was eventually  
21 subdivided into the current Lufkin property plus 4 residential lots (comprising approximately 5  
22 acres each), was the Hytec Littlerock clean-up site for the purposes of conducting the Remedial  
23 Investigation and Feasibility Study.

24 C. In 1998, the Lufkins sold two of these parcels to Joseph Monte, who  
25 subsequently sold the parcels to Juliane M. Morgan, and Richard E. and Cecile E. Spears.  
26 Juliane M. Morgan currently owns the property located at 13405 Halo Kuntux Lane S.W.

1 Olympia, Washington 98512, and has built a home on her land. Richard E. and Cecile E.  
2 Spears' parcel is vacant and located at 13333 Halo Kuntux Lane S.W. Olympia, Washington  
3 98512. In 1998, Mr. Pavlicek bought two 5 acres parcels from the Lufkins, located at 13423  
4 Halo Kuntux Lane S.W. Olympia, Washington 98512. Mr. Pavlicek built a house on one  
5 parcel and the other parcel is a vacant lot. The parcel the Lufkins retained comprises  
6 approximately 24 acres and is located at 13434 S.W. Halo Kuntux Lane in Olympia. This  
7 parcel is undeveloped and includes a former gravel pit along Bordeaux Road.

8 D. The Pavlicek property has a drinking water well with a depth of 60 feet below  
9 ground surface (bgs). The Morgan property has a drinking water well with a depth of 180 feet  
10 bgs.

11 E. Until 1986, Mr. Lufkin served as President of Hytec, Inc. (Hytec), a fiberglass  
12 manufacturing company that manufactured fiberglass bathroom fixtures. Hytec was  
13 incorporated in Washington State in 1968.

14 F. During the mid-1970s, Hytec generated fiberglass manufacturing waste,  
15 including fiberglass trimmings and drums of waste polyester resin. Waste disposal was done  
16 by burying the waste on the north-central portion of the original 44-acre property owned by the  
17 Lufkins. This disposal was performed under a solid waste dump permit issued to Hytec by the  
18 Thurston-Mason Health District in 1976, in accordance with Article IX of the Thurston-Mason  
19 Sanitary Code. The localized area of waste burial by Hytec is readily visible from aerial  
20 photographs taken during the 1970s.

21 G. Philips Industries, Inc., an Ohio corporation, purchased all the outstanding  
22 capital stock of Hytec, Inc. from Mr. Lufkin as the principle stockholder in 1986. Hytec is still  
23 registered as an active corporation in Washington State.

24 H. Access to the Lufkins' property at 13434 S.W. Halo Kuntux Lane was not  
25 restricted from at least the late 1970s through the mid 1990s, when a gate was installed.  
26 Intermittent dumping of household waste by unknown third parties occurred along the former

1 access road. During a site walk conducted on April 22, 2004, Ecology staff noted several areas  
2 where household wastes had been dumped at the property. The source(s) of this waste or  
3 parties who dumped this waste are not known.

4 I. A soil gas survey was performed at the site from October 28 to October 30,  
5 1990, by Science Application International Corporation (SAIC), under contract to Ecology.  
6 Several organic compounds were detected during the soil gas survey of the property. The  
7 maximum organic solvent concentration was of methylene chloride at 1,110 ppbv. Another  
8 solvent 1,1-dichloroethylene was detected in five of seven soil gas samples. Benzene,  
9 ethylbenzene, toluene, m-xylene and/or o-xylene were detected at 17 of the sample locations.  
10 A magnetic survey was performed by SAIC in 1990. This study concluded there may be  
11 buried drums or metallic material at various locations at the Site. During this study, several  
12 drums were observed on the surface of the ground.

13 J. Following the Site Hazard Assessment (SHA) in 1990, the Department of  
14 Ecology (Ecology) ranked this site as 3 (1 indicating the highest relative risk and 5 the lowest)  
15 under the Washington Ranking Method (Warm). In August 1992, Ecology informed Mr.  
16 Chauncey Lufkin the Warm ranking for the site had been reduced to 4. In July 1993, prior to  
17 the time anyone resided at or on the Site, the Washington State Department of Health  
18 conducted a preliminary assessment of the potential for the Site to affect public health and  
19 concluded, at that time, that the Site did not present a significant hazard to public health.

20 K. In 2003, Mr. Lufkin hired Paul W. Stemen of Stemen Environmental, Inc. to  
21 perform a site investigation. Mr. Stemen submitted a voluntary cleanup application (VCP) on  
22 behalf of Mr. Lufkin to Ecology in September 2003.

23 L. Mr. Stemen began performing a site investigation by allegedly excavating test  
24 pits and collecting soil samples at various locations on the site and groundwater samples from  
25 the Pavlicek and Morgan wells. On April 11, 2004, Paul Stemen wrote a letter to Ecology  
26 stating he wished to withdraw the VCP application since he no longer represented Mr. Lufkin.



1 He also submitted the sampling data he had gathered regarding soil and groundwater at the site.  
2 The information Mr. Stemen submitted was in the form of raw data and did not have an  
3 accompanying report. Therefore, the locations of soil testing are not clear. The data indicates  
4 a concentration of 12 mg/kg of naphthalene had been measured in soil sample D1-L2. The  
5 location of D1-L2 is unknown. This value is more than twice the Method A soil cleanup  
6 standard for unrestricted land use (5 mg/kg). The groundwater sample from the Morgan well  
7 had a concentration of 1.09 µg/l of naphthalene. The Method A cleanup level for naphthalene  
8 in groundwater is 160 µg/l. In the Pavlicek well, trichlorofluoromethane was measured to be  
9 2.1 µg/l. There is no Method A cleanup standard for trichlorofluoromethane. Concentrations  
10 ranging from 330 to 800 mg/kg of lead were measured in soil samples D1-L1, SLF- 2 and  
11 SLF-1 (the sample locations were unspecified). These values are higher than the Method A  
12 soil cleanup standard for unrestricted land use (250 mg/kg). In addition to naphthalene,  
13 trichlorofluoromethane and lead, a number of volatile organic compounds such as  
14 chlorobenzene, ethylbenzene, styrene, benzyl alcohol, 2-methylnaphthalene, 1-  
15 methylnaphthalene, dimethylphthalate, fluorine, phenanthrene, di-n-butylphthalate,  
16 fluoranthene, pyrene, benzo (a) anthracene, chrysene, bis (2-ethylhexyl) phthalate, benzo (b)  
17 fluoranthene, and metals such as chromium, barium, and lead were detected in soil and  
18 groundwater during the preliminary study by Stemen Environmental, Inc. The laboratory  
19 analysis was performed by Environmental Services Network. Because no written report  
20 accompanied the Stemen Environmental data, it is unknown whether the samples were  
21 collected, stored, and transported in accordance with acceptable sample collection and analysis  
22 methods. No confirmation of the sampling and analysis protocols was done.

23 M. Mr. Lufkin resubmitted a request to enter the Site in the VCP. In April 2004,  
24 Ecology informed Mr. Lufkin that his second VCP application was not accepted and the site  
25 should be investigated and remediated under a formal agreement with Ecology.  
26

1 N. In November 2005, Ecology issued Agreed Order No. 2888 for the Defendants  
2 to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the original 44-acre Hytec  
3 Littlerock site. The Defendants submitted a final RI/FS to Ecology on August 1, 2007.  
4 Ecology approved the final RI/FS on September 5, 2007.

5 O. The investigations conducted during the RI/FS made it clear that the original  
6 site included two separate and distinct areas of contamination: The Hytec fiberglass debris  
7 landfill and the area comprising the dump for the old logging town of Bordeaux. The  
8 determination was made to treat the two areas as separate sites, and to handle cleanup of the  
9 two sites independently. The Hytec fiberglass debris landfill is subject to cleanup under this  
10 Consent Decree. The Bordeaux dump site is subject to a separate clean-up action under a  
11 separate agreed order between Ecology and the Lufkins.

12 P. Tables 5-1, 5-2, and 5-3 in Appendix A of the CAP show a summary of the  
13 chemicals of concern measured in soil and groundwater at the site.

14 Q. This Consent Decree is being issued for the Defendants to implement the CAP  
15 attached as Exhibit B.

## 16 17 **VI. WORK TO BE PERFORMED**

18 This Decree contains a program designed to protect human health and the environment  
19 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
20 or from the Site.

21 A. Based on the final RI/FS, Ecology prepared a draft CAP (attached as Exhibit B)  
22 for cleanup of the Hytec fiberglass debris landfill, and chose a preferred clean-up alternative.  
23 The CAP requires excavation and removal of soil containing chemicals of concern. The soil  
24 cleanup levels for the chemicals of concern at the point of compliance will be the lowest of (1)  
25 MTCA Methods A or B for unrestricted land use, or (2) the soil cleanup level generated by  
26 equation 747-1 to protect groundwater. Compliance monitoring reports for soil and

1 groundwater, a health and safety plan and a final remedial action report must be prepared and  
2 submitted to Ecology as outlined in Appendix B of the CAP.

3 C. Defendants agree not to perform any remedial actions outside the scope of this  
4 Decree unless the Parties agree to modify the CAP (Exhibit B) to cover these actions. All  
5 work conducted by Defendants under this Decree shall be done in accordance with Chapter  
6 173-340 WAC unless otherwise provided herein.

### 7 VII. DESIGNATED PROJECT COORDINATORS

8 The project coordinator for Ecology is:

9  
10 Mohsen Kourehdar, P.E.  
11 Ecology's Southwest Regional Office  
12 Toxics Cleanup Program  
13 300 Desmond Dr.  
14 PO Box 47775  
15 Olympia, WA 98504-7775  
16 (360) 407-6256  
17 mkou461@ecy.wa.gov

18 The project coordinators for the Defendants are:

19 Tom McKeon, P.E.  
20 CALIBRE Systems Inc.  
21 16935 SE 39<sup>th</sup> St.  
22 Bellevue, WA 98008  
23 (425) 643-4634  
24 Tom.McKeon@calibresys.com

25 Michael W. Mayberry  
26 Owens Davies, P.S.  
PO Box 187  
Olympia, WA 98507  
(360)943-8320  
[mmayberry@owensdavies.com](mailto:mmayberry@owensdavies.com)

Cliff Schmitt  
Farallon Consulting

1 975 Fifth Ave. NW  
2 Issaquah, WA 98027  
3 (425)427-0061  
4 [cschmitt@farallonconsulting.com](mailto:cschmitt@farallonconsulting.com)

5 John J. Houlihan, Jr.  
6 Houlihan Law  
7 3401 Evanston Avenue, N.  
8 Suite C  
9 Seattle, WA 98103  
10 (206) 547-5052  
11 [john@houlihan-law.com](mailto:john@houlihan-law.com)

12 Each project coordinator shall be responsible for overseeing the implementation of this  
13 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
14 To the maximum extent possible, communications between Ecology and Defendants and all  
15 documents, including reports, approvals, and other correspondence concerning the activities  
16 performed pursuant to the terms and conditions of this Decree, shall be directed through the  
17 project coordinators. The project coordinators may designate, in writing, working level staff  
18 contacts for all or portions of the implementation of the work to be performed required by this  
19 Decree.

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

#### 22 **VIII. PERFORMANCE**

23 All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
24 the supervision and direction of a geologist licensed in the State of Washington or under the  
25 direct supervision of an engineer registered in the State of Washington, except as otherwise  
26 provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Decree shall be under the direct  
supervision of a professional engineer registered in the State of Washington, except as  
otherwise provided for by RCW 18.43.130.

1 All construction work performed pursuant to this Decree shall be under the direct  
2 supervision of a professional engineer or a qualified technician under the direct supervision of  
3 a professional engineer. The professional engineer must be registered in the State of  
4 Washington, except as otherwise provided for by RCW 18.43.130.

5 Any documents submitted containing geologic, hydrologic or engineering work shall be  
6 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or  
7 RCW 18.43.130.

8 Defendants shall notify Ecology in writing of the identity of any engineer(s) and  
9 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
10 of this Decree, in advance of their involvement at the Site.

#### 11 **IX. ACCESS**

12 Ecology or any Ecology authorized representative shall have full authority to enter and  
13 freely move about all property at the Site that Defendants either own, control, or have access  
14 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation  
15 logs, and contracts related to the work being performed pursuant to this Decree; reviewing  
16 Defendants' progress in carrying out the terms of this Decree; conducting such tests or  
17 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or  
18 other documentary type equipment to record work done pursuant to this Decree; and verifying  
19 the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to  
20 secure access rights for those properties within the Site not owned or controlled by Defendants  
21 where remedial activities or investigations will be performed pursuant to this Decree. Ecology  
22 or any Ecology authorized representative shall give reasonable notice before entering any Site  
23 property owned or controlled by Defendants unless an emergency prevents such notice. All  
24 Parties who access the Site pursuant to this Section shall comply with any applicable Health  
25 and Safety Plan(s). Ecology employees and their representatives shall not be required to sign  
26 any liability release or waiver as a condition of Site property access.

1                   **X.            SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

2           With respect to the implementation of this Decree, Defendants shall make the results of  
3 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
4 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology  
5 in both printed and electronic formats in accordance with Section XI (Progress Reports),  
6 Ecology’s Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any  
7 subsequent procedures specified by Ecology for data submittal.

8           If requested by Ecology, Defendants shall allow Ecology and/or its authorized  
9 representative to take split or duplicate samples of any samples collected by Defendants  
10 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days  
11 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,  
12 allow Defendants and/or their authorized representatives to take split or duplicate samples of  
13 any samples collected by Ecology pursuant to the implementation of this Decree, provided that  
14 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights  
15 under Section IX (Access), Ecology shall notify Defendants three (3) days prior to any sample  
16 collection activity unless an emergency prevents such notice.

17           In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be  
18 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to  
19 be conducted, unless otherwise approved by Ecology.

20                                   **XI.            PROGRESS REPORTS**

21           Every two (2) months, Defendants shall submit to Ecology written Progress Reports  
22 that describe the actions taken during the previous two (2) months to implement the  
23 requirements of this Decree. The Progress Reports shall include the following:

- 24           A.     A list of on-site activities that have taken place during the months;
- 25           B.     Detailed description of any deviations from required tasks not otherwise  
26 documented in project plans or amendment requests;

1 C. Description of all deviations from the CAP (Exhibit B) during the current  
2 months and any planned deviations in the upcoming months;

3 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
4 compliance with the schedule;

5 E. All raw data (including laboratory analyses) received by Defendants during the  
6 past month and an identification of the source of the sample; and

7 F. A list of deliverables for the upcoming two (2) months if different from the  
8 schedule.

9 All Progress Reports shall be submitted by the tenth (10<sup>th</sup>) day of the month in which  
10 they are due after the effective date of this Decree. Unless otherwise specified, Progress  
11 Reports and any other documents submitted pursuant to this Decree shall be sent by certified  
12 mail, return receipt requested, to Ecology's project coordinator.

## 13 XII. RETENTION OF RECORDS

14 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
15 no longer in effect as provided in Section XXVI (Duration of Decree), Defendants shall  
16 preserve all records, reports, documents, and underlying data in their possession relevant to the  
17 implementation of this Decree and shall insert a similar record retention requirement into all  
18 contracts with project contractors and subcontractors. Upon request of Ecology, Defendants  
19 shall make all records available to Ecology and allow access for review within a reasonable  
20 time.

## 21 XIII. TRANSFER OF INTEREST IN PROPERTY

22 No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
23 interest in any portion of the Site shall be consummated by Defendants without provision for  
24 continued operation and maintenance of any containment system, treatment system, and/or  
25 monitoring system installed or implemented pursuant to this Decree.  
26

1 Prior to a Defendant's transfer of any interest in all or any portion of the Site, and  
2 during the effective period of this Decree, that Defendant shall provide a copy of this Decree to  
3 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,  
4 at least thirty (30) days prior to any transfer, that Defendant shall notify Ecology of said  
5 transfer. Upon Defendants' transfer of any interest, Defendants shall restrict uses and activities  
6 to those consistent with this Consent Decree and notify all transferees of the restrictions on the  
7 use of the property.

#### 8 **XIV. RESOLUTION OF DISPUTES**

9 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
10 other decision or action by Ecology's project coordinator, or an itemized billing statement  
11 under Section XXII (Remedial Action Costs), the Parties shall utilize the dispute resolution  
12 procedure set forth below.

13 1. Upon receipt of Ecology's project coordinator's written decision, or the  
14 itemized billing statement, Defendants have fourteen (14) days within which to notify  
15 Ecology's project coordinator in writing of any objection to the decision or itemized  
16 statement.

17 2. The Parties' project coordinators shall then confer in an effort to resolve  
18 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)  
19 days, Ecology's project coordinator shall issue a written decision.

20 3. Defendants may then request regional management review of the  
21 decision. This request shall be submitted in writing to the Southwest Region Toxics  
22 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's  
23 project coordinator's written decision.

24 4. Ecology's Regional Section Manager shall conduct a review of the  
25 dispute and shall endeavor to issue a written decision regarding the dispute within thirty  
26 (30) days of Defendants' request for review.



1           5.     If Defendants find Ecology's Regional Section Manager's decision  
2 unacceptable, Defendants may then request final management review of the decision.  
3 This request shall be submitted in writing to the Toxics Cleanup Program Manager  
4 within seven (7) days of receipt of the Regional Section Manager's decision.

5           6.     Ecology's Toxics Cleanup Program Manager shall conduct a review of  
6 the dispute and shall endeavor to issue a written decision regarding the dispute within  
7 thirty (30) days of Defendants' request for review of the Regional Section Manager's  
8 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final  
9 decision on the disputed matter.

10          B.     If Ecology's final written decision is unacceptable to Defendants, Defendants  
11 have the right to submit the dispute to the Court for resolution. The Parties agree that one  
12 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
13 arising under this Decree. In the event Defendants present an issue to the Court for review, the  
14 Court shall review the action or decision of Ecology on the basis of whether such action or  
15 decision was arbitrary and capricious and render a decision based on such standard of review.

16          C.     The Parties agree to only utilize the dispute resolution process in good faith and  
17 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
18 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
19 the other party may seek sanctions.

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

## 23                           **XV.            AMENDMENT OF DECREE**

24           The project coordinators may agree to minor changes to the work to be performed  
25 without formally amending this Decree. Minor changes will be documented in writing by  
26 Ecology.

1 Substantial changes to the work to be performed shall require formal amendment of this  
2 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
3 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
4 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
5 by any party.

6 Defendants shall submit a written request for amendment to Ecology for approval.  
7 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
8 written request for amendment is received. If the amendment to the Decree is a substantial  
9 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
10 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
11 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
12 resolution procedures described in Section XIV (Resolution of Disputes).

#### 13 **XVI. EXTENSION OF SCHEDULE**

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

- 18 1. The deadline that is sought to be extended;
- 19 2. The length of the extension sought;
- 20 3. The reason(s) for the extension; and
- 21 4. Any related deadline or schedule that would be affected if the extension  
22 were granted.

23 B. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology  
24 that the request for such extension has been submitted in a timely fashion and that good cause  
25 exists for granting the extension. Good cause may include, but may not be limited to:  
26

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

5           2.       Acts of God, including fire, flood, blizzard, extreme temperatures,  
6 storm, or other unavoidable casualty; or

7           3.       Endangerment as described in Section XVII (Endangerment).

8       However, neither increased costs of performance of the terms of this Decree nor  
9 changed economic circumstances shall be considered circumstances beyond the reasonable  
10 control of Defendants.

11       C.       Ecology shall act upon any written request for extension in a timely fashion.  
12 Ecology shall give Defendants written notification of any extensions granted pursuant to this  
13 Decree. A requested extension shall not be effective until approved by Ecology or, if required,  
14 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend  
15 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is  
16 granted.

17       D.       An extension shall only be granted for such period of time as Ecology  
18 determines is reasonable under the circumstances. Ecology may grant schedule extensions  
19 exceeding ninety (90) days only as a result of:

20           1.       Delays in the issuance of a necessary permit which was applied for in a  
21 timely manner;

22           2.       Other circumstances deemed exceptional or extraordinary by  
23 Ecology; or

24           3.       Endangerment as described in Section XVII (Endangerment).  
25  
26

1 **XVII. ENDANGERMENT**

2 In the event Ecology determines that any activity being performed at the Site is creating  
3 or has the potential to create a danger to human health or the environment, Ecology may direct  
4 Defendants to cease such activities for such period of time as it deems necessary to abate the  
5 danger. Defendants shall immediately comply with such direction.

6 In the event Defendants determine that any activity being performed at the Site is  
7 creating or has the potential to create a danger to human health or the environment, Defendants  
8 may cease such activities. Defendants shall notify Ecology’s project coordinator as soon as  
9 possible, but no later than twenty-four (24) hours after making such determination or ceasing  
10 such activities. Upon Ecology’s direction, Defendants shall provide Ecology with  
11 documentation of the basis for the determination or cessation of such activities. If Ecology  
12 disagrees with Defendants’ cessation of activities, it may direct Defendants to resume such  
13 activities.

14 If Ecology concurs with or orders a work stoppage pursuant to this Section,  
15 Defendants’ obligations with respect to the ceased activities shall be suspended until Ecology  
16 determines the danger is abated, and the time for performance of such activities, as well as the  
17 time for any other work dependent upon such activities, shall be extended, in accordance with  
18 Section XVI (Extension of Schedule), for such period of time as Ecology determines is  
19 reasonable under the circumstances.

20 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or  
21 contractors to take or require appropriate action in the event of an emergency.

22 **XVIII. COVENANT NOT TO SUE**

23 A. Covenant Not to Sue: In consideration of Defendants’ compliance with the  
24 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
25 actions against Defendants regarding the release or threatened release of hazardous substances  
26 covered by this Decree.

1 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
2 and those hazardous substances that Ecology knows are located at the Site as of the date of  
3 entry of this Decree. This Decree does not cover any other hazardous substance or area.  
4 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

5 This Covenant Not to Sue shall have no applicability whatsoever to:

- 6 1. Criminal liability;
- 7 2. Liability for damages to natural resources; and
- 8 3. Any Ecology action, including cost recovery, against PLPs not a party to  
9 this Decree.

10 If factors not known at the time of entry of the settlement agreement are discovered and  
11 present a previously unknown threat to human health or the environment, the Court shall  
12 amend this Covenant Not to Sue.

13 B. Reopeners: Ecology specifically reserves the right to institute legal or  
14 administrative action against Defendants to require them to perform additional remedial  
15 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050  
16 under the following circumstances:

- 17 1. Upon Defendants' failure to meet the requirements of this Decree,  
18 including, but not limited to, failure of the remedial action to meet the cleanup  
19 standards identified in the Cleanup Action Plan (CAP) (Exhibit B);
- 20 2. Upon Ecology's determination that remedial action beyond the terms of  
21 this Decree is necessary to abate an imminent and substantial endangerment to human  
22 health or the environment;
- 23 3. Upon the availability of new information regarding factors previously  
24 unknown to Ecology, including the nature or quantity of hazardous substances at the  
25 Site, and Ecology's determination, in light of this information, that further remedial  
26 action is necessary at the Site to protect human health or the environment; or

1           4.     Upon Ecology’s determination that additional remedial actions are  
2           necessary to achieve cleanup standards within the reasonable restoration time frame set  
3           forth in the CAP.

4           C.     Except in the case of an emergency, prior to instituting legal or administrative  
5           action against Defendants pursuant to this Section, Ecology shall provide Defendants with  
6           fifteen (15) calendar days notice of such action.

7                                   **XIX.       CONTRIBUTION PROTECTION**

8           With regard to claims for contribution against Defendants, the Parties agree that  
9           Defendants are entitled to protection against claims for contribution for matters addressed in  
10          this Decree as provided by RCW 70.105D.040(4)(d).

11                                   **XX.       INDEMNIFICATION**

12          Defendants agree to indemnify and save and hold the State of Washington, its  
13          employees, and agents harmless from any and all claims or causes of action for death or  
14          injuries to persons or for loss or damage to property to the extent arising from or on account of  
15          acts or omissions of Defendants, its officers, employees, agents, or contractors in entering into  
16          and implementing this Decree. However, Defendants shall not indemnify the State of  
17          Washington nor save nor hold its employees and agents harmless from any claims or causes of  
18          action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
19          the employees or agents of the State, in entering into or implementing this Decree.

20                                   **XXI.       COMPLIANCE WITH APPLICABLE LAWS**

21          A.     All actions carried out by Defendants pursuant to this Decree shall be done in  
22          accordance with all applicable federal, state, and local requirements, including requirements to  
23          obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
24          federal, state or local requirements that the agency has determined are applicable and that are  
25          known at the time of entry of this Decree have been identified in the CAP.

1 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural  
2 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws  
3 requiring or authorizing local government permits or approvals. However, Defendants shall  
4 comply with the substantive requirements of such permits or approvals. The exempt permits or  
5 approvals and the applicable substantive requirements of those permits or approvals, as they  
6 are known at the time of entry of this Decree, have been identified in Exhibit B.

7 Defendants have a continuing obligation to determine whether additional permits or  
8 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
9 action under this Decree. In the event either Ecology or Defendants determine that additional  
10 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
11 remedial action under this Decree, it shall promptly notify the other party of this determination.  
12 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the  
13 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly  
14 consult with the appropriate state and/or local agencies and provide Ecology with written  
15 documentation from those agencies of the substantive requirements those agencies believe are  
16 applicable to the remedial action. Ecology shall make the final determination on the additional  
17 substantive requirements that must be met by Defendants and on how Defendants must meet  
18 those requirements. Ecology shall inform Defendants in writing of these requirements. Once  
19 established by Ecology, the additional requirements shall be enforceable requirements of this  
20 Decree. Defendants shall not begin or continue the remedial action potentially subject to the  
21 additional requirements until Ecology makes its final determination.

22 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
23 exemption from complying with the procedural requirements of the laws referenced in RCW  
24 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for  
25 the State to administer any federal law, the exemption shall not apply and Defendants shall  
26

1 comply with both the procedural and substantive requirements of the laws referenced in RCW  
2 70.105D.090(1), including any requirements to obtain permits.

3 **XXII. REMEDIAL ACTION COSTS**

4 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
5 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
6 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions  
7 and Decree preparation, negotiation, oversight and administration. These costs shall include  
8 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
9 include costs of direct activities and support costs of direct activities as defined in WAC  
10 173-340-550(2). Defendants shall pay the required amount within ninety (90) days of  
11 receiving from Ecology an itemized statement of costs that includes a summary of costs  
12 incurred, an identification of involved staff, and the amount of time spent by involved staff  
13 members on the project. A general statement of work performed will be provided upon  
14 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),  
15 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of  
16 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded  
17 monthly.

18 Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed  
19 remedial action costs by filing a lien against real property subject to the remedial actions.

20 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

21 If Ecology determines that Defendants have failed without good cause to implement the  
22 remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or  
23 all portions of the remedial action that remain incomplete. If Ecology performs all or portions  
24 of the remedial action because of Defendants' failure to comply with their obligations under  
25 this Decree, Defendants shall reimburse Ecology for the costs of doing such work in  
26 accordance with Section XXII (Remedial Action Costs), provided that Defendants are not



1 obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with  
2 or beyond the scope of this Decree.

3 Except where necessary to abate an emergency situation, Defendants shall not perform  
4 any remedial actions at the Site outside those remedial actions required by this Decree, unless  
5 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV  
6 (Amendment of Decree).

#### 7 **XXIV. PERIODIC REVIEW**

8 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
9 agree to review the progress of remedial action at the Site, and to review the data accumulated  
10 as a result of monitoring the Site as often as is necessary and appropriate under the  
11 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
12 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial  
13 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall  
14 submit a report to Ecology that documents whether human health and the environment are  
15 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the  
16 right to require further remedial action at the Site under appropriate circumstances. This  
17 provision shall remain in effect for the duration of this Decree.

#### 18 **XXV. PUBLIC PARTICIPATION**

19 A Public Participation Plan (Exhibit C) is required for this Site. Ecology shall review  
20 any existing Public Participation Plan to determine its continued appropriateness and whether it  
21 requires amendment.

22 Ecology shall maintain the responsibility for public participation at the Site. However,  
23 Defendants shall cooperate with Ecology, and shall:

24 A. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of  
25 public notices and fact sheets at important stages of the remedial action, such as the submission  
26 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and

1 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
2 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

3 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
4 and fact sheets, and before major meetings with the interested public and local governments.  
5 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact  
6 sheets, and before major meetings with the interested public and local governments. For all  
7 press releases, fact sheets, meetings, and other outreach efforts by Defendants that do not  
8 receive prior Ecology approval, Defendants shall clearly indicate to their audience that the  
9 press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by  
10 Ecology.

11 C. When requested by Ecology, participate in public presentations on the progress  
12 of the remedial action at the Site. Participation may be through attendance at public meetings  
13 to assist in answering questions, or as a presenter.

14 D. When requested by Ecology, arrange and/or continue information repositories at  
15 the following locations:

- 16 1. Tumwater Timberline Library  
17 7023 New Market Street  
18 Tumwater, WA 98501  
(360) 695-1566
- 19 2. Ecology's Southwest Regional Office  
20 300 Desmond Drive  
21 PO Box 47775  
Olympia, WA 98504-7775  
(360) 407-6365

22 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured  
23 monitoring data; remedial actions plans and reports, supplemental remedial planning  
24 documents, and all other similar documents relating to performance of the remedial action  
25 required by this Decree shall be promptly placed in these repositories.  
26



1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

ROBERT M. McKENNA  
Attorney General

3  
4 Jim Pendowski  
5 Program Manager  
6 Toxics Cleanup Program  
7 (360) 407 - 7177

8  
9 Katharine G. Shirey WSBA # 35736  
10 Assistant Attorney General  
11 (360) 586-6769

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

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

14 HYTEC, INC.

CHAUNCEY AND ELIZABETH LUFKIN

15  
16   
17 \_\_\_\_\_  
18 *George S. Pappayliou*  
19 *Vice President & Secretary*

20 Date: 5/11/10 \_\_\_\_\_

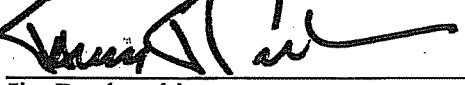
21 Date: \_\_\_\_\_

22 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

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25 JUDGE  
26 Thurston County Superior Court

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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



Jim Pendowski  
Program Manager  
Toxics Cleanup Program  
(360) 407 - 7177

Date: 8/4/10

ROBERT M. McKENNA  
Attorney General

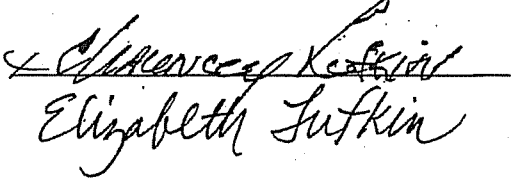


Katharine G. Shirey WSBA # 35736  
Assistant Attorney General  
(360) 586-6769

Date: 8/18/10

HYTEC, INC.

CHAUNCEY AND ELIZABETH LUFKIN



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

Date: May 19, 2010

ENTERED this 20<sup>th</sup> day of August 2010.

CAROL MURPHY

JUDGE  
Thurston County Superior Court