

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
CITY OF SEATTLE,)
)
Defendant.)

No. 90-213283-8
CONSENT DECREE

Table of Contents

		Page
I	INTRODUCTION	3
II.	JURISDICTION	3
III.	PARTIES BOUND	4
IV.	DENIAL OF LIABILITY	6
V.	PURPOSE	6
VI.	COVENANT NOT TO SUE	7
VII.	ECOLOGY FINDINGS OF FACT.	7
VIII.	ECOLOGY DETERMINATION	11
IX.	DEFINITIONS	11
X.	STATEMENT OF FACTS.	15
XI.	SCOPE OF WORK	16
XII.	DESIGNATED PROJECT MANAGERS	25
XIII.	PERFORMANCE	26
XIV.	ACCESS.	26
XV.	SAMPLING, DATA REPORTING AND AVAILABILITY	27
XVI.	PROGRESS REPORTS	28
XVII.	RETENTION OF RECORDS	29
XVIII.	PROVISION OF OTHER DOCUMENTS.	29
XIX.	TRANSFER OF INTEREST IN PROPERTY.	30
XX.	RESOLUTION OF DISPUTES.	30
XXI.	AMENDMENT OF CONSENT DECREE	32
XXII.	EXTENSION OF SCHEDULE	33
XXIII.	STIPULATED PENALTIES.	36
XXIV.	ENDANGERMENT.	37
XXV.	RESERVATION OF RIGHTS	39

1	XXVI.	COVENANT REOPENERS.	40
	XXVII.	CONTRIBUTION PROTECTION	41
2	XXVIII.	INDEMNIFICATION	42
	XXIX.	COMPLIANCE WITH APPLICABLE LAWS	42
3	XXX.	OVERSIGHT COSTS	42
	XXXI.	PUBLIC PARTICIPATION.	14
4	XXXII.	DURATION OF DECREE.	45
	XXXIII.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT	46
5	XXXIV.	CONFIDENTIAL INFORMATION.	46
	XXXV.	OTHER CLAIMS.	47
6	XXXVI.	SATISFACTION OF THIS DECREE	47

7 Exhibit A
 Exhibit B

8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION

The State of Washington Department of Ecology (Ecology) and the City of Seattle (hereinafter "Seattle") enter into this Consent Decree pursuant to Chapter 70.105D RCW, Laws of 1989, (passed by voters on November 8, 1988 as Initiative 97).

II. JURISDICTION

This Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. § 6901 et seq., 42 U.S.C. § 9601 et seq., Chapter 70.105D RCW, and personal jurisdiction over Ecology and Seattle as consenting hereto. The Court shall retain jurisdiction over this matter. No party shall challenge this Court's jurisdiction to enter and enforce this Consent Decree. The parties stipulate that venue is proper.

A. Authority is conferred upon the State of Washington Attorney General by Chapter 70.105D.040(4)(a) RCW to agree to a settlement with any potentially liable person if after public notice and hearing Ecology finds that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(d).

B. After public notice and concurrent with the filing of this Decree, the Attorney General of the State of Washington will file a complaint against Seattle pursuant to RCW 70.105D, seeking relief regarding the cleanup of the Midway Landfill as defined herein and recovering costs incurred and to be incurred

1 in responding to the release or threat of release of hazardous
2 substances at or in connection with the Midway Landfill.

3 C. Authority is conferred upon the Attorney General by
4 RCW 70.105D.040(4)(b), to enter the settlement agreement as a
5 consent decree, issued by an appropriate state court.

6 **III. PARTIES BOUND**

7 This Consent Decree applies to and is binding upon the
8 undersigned parties and their successors, assigns, officers,
9 employees and agents. The undersigned representative of each
10 party to this Decree certifies that he or she is fully
11 authorized by the party or parties whom she or he represents to
12 enter into the terms and conditions of this Consent Decree and
13 to execute and legally bind that party to the terms of said
14 Decree.

15 Seattle shall provide a copy of this Decree to all
16 contractors, subcontractors, and consultants retained to
17 conduct any portion of the work performed pursuant to this
18 Decree, not later than fourteen (14) days after the effective
19 date of this Decree or the date of such retention, which ever
20 is later.

21 A. Seattle consents and agrees to finance and perform
22 the work to be performed set out in this Decree, which in
23 summary fashion is outlined below:

- 24 1. Complete a landfill cover, as technically described
25 in Section XI herein. Ecology has required said landfill cover

1 and has determined that it meets the following technical
2 performance criteria:

- 3 a. Provides long-term minimization of migration of
4 liquids through the closed landfill.
- 5 b. Functions with a minimum of maintenance.
- 6 c. Promotes drainage and minimizes erosion of cover.
- 7 d. Accomodates settling and subsidence in cover design
8 so that cover integrity is maintained.
- 9 e. Has a cover permeability less than the existing
10 natural system.
- 11 f. Minimizes the need for further maintenance.
- 12 g. Controls, minimizes, or eliminates, to the extent
13 necessary to protect human health and the
14 environment, post-closure escape of hazardous
15 emissions from the Midway Landfill.

16 2. Complete a gas extraction system including, design
17 and construction of a gas manifold system at the Midway
18 Landfill facility.

19 3. Complete construction of a surface water management
20 system.

21 4. Perform and comply with all provisions of this
22 Decree.

23 B. Ecology consents and agrees to be bound by the terms
24 of this Decree. However, conduct described herein by the words
25 "may," shall," "expects to," etc. does not create a promise

1 undertaking or separate legal duty on the part of Ecology.
2 Such expressions shall operate only as a condition precedent to
3 a duty of Seattle to perform some act or refrain from acting as
4 appropriate under the terms of this Decree.

5 IV. DENIAL OF LIABILITY

6 The actions undertaken by Seattle in accordance with this
7 Consent Decree do not constitute an admission by Seattle of any
8 violation of state, county, or federal law or an admission of
9 any liability by Seattle to the United States, the State of
10 Washington, or any person or entity. Nor shall this Consent
11 Decree be used as evidence or as collateral estoppel against
12 Seattle in an action or proceeding other than an action or
13 proceeding by Ecology to enforce the terms of this Decree. The
14 City of Seattle specifically denies liability.

15 V. PURPOSE

16 In entering into this Decree, the mutual objectives of
17 Ecology and Seattle are:

18 1. To provide for an expeditious cleanup of the Midway
19 Landfill facility by completing work on the final remedial
20 action at the landfill, including capping the landfill,
21 completing a surface water management system and completing a
22 gas extraction system.

23 2. To accomplish the foregoing objectives in a manner
24 consistent with RCW 70.105D.030(2)(d) and regulations
25 promulgated thereunder and all other applicable state law.

26 CONSENT DECREE

1 3. To accomplish the foregoing in a manner consistent
2 with the National Contingency Plan (NCP), 40 C.F.R. Part 300.

3 **VI. COVENANT NOT TO SUE**

4 Subject to the Covenant Reopeners and Reservation of
5 Rights herein, in consideration for Seattle's satisfactory
6 performance and completion of the terms and conditions of this
7 Consent Decree, Ecology covenants not to sue Seattle, or seek
8 any administrative, legal, or equitable remedy against Seattle,
9 for the performance, conduct, completion, or appropriateness of
10 the remedial actions performed pursuant to this Decree, which
11 include the surface water management system, the final cover,
12 and the landfill gas extraction systems. This covenant not to
13 sue is of a scope commensurate with this settlement agreement.

14 **VII. ECOLOGY FINDINGS OF FACT**

15 Based upon the information available to it, Ecology makes
16 the following Findings of Fact:

17 1. Ecology is an agency of the State of Washington
18 vested with the power to provide for, investigate releases or
19 threatened releases of hazardous substances or to require
20 potentially liable persons to investigate releases or
21 threatened releases of hazardous substances, conduct, provide
22 for conducting, or require potentially liable persons to
23 conduct remedial actions to remedy releases or threatened
24 releases of hazardous substances.

25
26

1 2. In response to a release or threatened release of
2 hazardous substances at or from the landfill, Seattle commenced
3 a Remedial Investigation and Feasibility Study (RI/FS) pursuant
4 to a Response Order by Consent for the landfill which was
5 issued by Ecology on October 3, 1986. The scope of that order
6 was limited to the RI/FS phase of the cleanup process.

7 3. Seattle is still in the process of completing the
8 RI/FS. Seattle estimates completion of the RI/FS by late-1990.

9 4. Investigations conducted by Ecology, Seattle and
10 others indicate the presence of several contaminants of concern
11 in the soil and groundwater on-site, as well as migration of
12 ground water contaminants and landfill gas from the landfill.
13 The contaminants of concern found in the landfill include
14 benzene, chlorobenzene, ethylbenzene, toluene, vinyl chloride
15 and xylenes in the landfill gas; arsenic, benzene, methylene
16 chloride, chlorobenzene, vinyl chloride and xylenes in ground
17 water and landfill leachate; and PCB-1242 and PCB-1260 in
18 landfill leachate.

19 5. Normally no final remedial action would begin until
20 after Seattle had completed the RI/FS and Ecology had completed
21 a Cleanup Action Plan (CAP) regarding the chosen cleanup
22 alternative. Normally the CAP would include a discussion of
23 Ecology's reasons for the final action, a response to any
24 significant comment, any new data and any significant changes
25 in the proposed remedial action plan.

1 6. However, in this case, Ecology has determined that
2 capping the landfill, completing a gas extraction system, and
3 completing the surface water management system prior to the ROD
4 will provide immediate protection to the public health, welfare
5 and the environment.

6 7. Ecology has informed Seattle that the capping, gas
7 extraction and surface water system constructed or to be
8 constructed by Seattle hereunder may be subject to modification
9 or revision if the completed RI/FS contains significant new
10 information not currently known to Ecology and substantially
11 different from information presently known which changes the
12 technical evaluation of landfill conditions and appropriate
13 remedial actions at the landfill.

14 8. Seattle has the capability and has indicated a
15 willingness to perform the work described herein.

16 9. All elements of an action under Chapter 70.105D RCW
17 are met to wit:

18 a. The Site is a "facility" as defined in RCW
19 70.105D.020(3).

20 b. Past, present and potential migration of hazardous
21 substances from the facility constitute an actual or
22 potential "release" as defined in RCW 70.105D.020(10).

23 c. Seattle, as owner/operator of the Seattle Midway
24 Landfill, is a potentially liable person as defined in RCW
25 70.105D.020(8).

26

CONSENT DECREE

1 d. On the basis of findings from investigations and all
2 other information available to date, Ecology determined
3 that there has been soil and surface water contamination
4 on-site, as well as migration of groundwater and landfill
5 gas from the landfill and that said releases other than
6 landfill gas will continue to pose a threat or potential
7 threat to human health or the environment unless abated or
8 mitigated.

9 e. Pursuant to RCW 70.105D.030, if there is a
10 reasonable basis to believe that a release or threatened
11 release of a hazardous substance may exist, Ecology may
12 require potentially liable persons to conduct remedial
13 actions, including investigations, to remedy releases or
14 threatened releases of hazardous substances.

15 10. To minimize leachate production and to expedite
16 cleanup action at the landfill, Seattle is proceeding with the
17 work described herein prior to implementation of this Consent
18 Decree.

19 11. Seattle has consultants familiar with the landfill,
20 has performed six prior phases of the remedial action required
21 at the landfill and has indicated a willingness to proceed
22 immediately with this final phase of the remedial action at the
23 landfill. Seattle can now proceed with remedial action in a
24 more expeditious manner than if Ecology were to proceed with
25 the work set out herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VIII. ECOLOGY DETERMINATION

Based on the foregoing Findings of Fact, Ecology has concluded that execution of this Decree will be conducive to prompt, efficient performance of the remedial actions set out herein, and result in a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.040(4)(a).

XI. DEFINITIONS

A. Model Toxics Control Act (MTCA), Chapter 2, laws of 1989: An act (Initiative No. 97), Chapter 70.105D RCW of Washington State, relating to the cleanup of hazardous waste sites.

B. CERCLA as amended by SARA: The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. Section 9601 et seq. which has been amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.

C. National Contingency Plan (NCP): 40 C.F.R. Part 300 as published in the Federal Register 47912 on November 20, 1985, and as revised and amended, Federal Register, Vol. 55, pg. 8666 on March 8, 1990, (see EPA proposed rule December 21, 1988). The National Oil and Hazardous Substances Pollution Contingency Plan which describes the process for conducting a remedial response.

1 D. Remedial Action: As defined by RCW 70.105D.020(11),
2 any action or expenditure consistent with the purposes of the
3 MTCA to identify, eliminate, or minimize any threat or
4 potential threat posed by hazardous substances to human health
5 or the environment including any investigative and monitoring
6 activities with respect to any release or threatened release of
7 a hazardous substance and any health assessments or health
8 effects studies conducted in order to determine the risk or
9 potential risk to human health and in particular shall mean all
10 work required by this Consent Decree and all appendices and
11 attachments, plans and schedules and all amendments to any of
12 the above.

13 E. Feasibility Study: The process of identifying,
14 evaluating, and selecting remedial action alternatives as
15 described in EPA document "Guidance for Conducting Remedial
16 Investigations and Feasibility Studies under CERCLA" (Interim
17 Final, October 1988, OSWER Directive 9355.3-01).

18 F. Remedial Investigation: Data collection and site
19 characterization activities that determine the nature and
20 extent of the contamination sufficient to determine the need
21 for and to identify appropriate remedial actions, as outlined
22 in the NCP and as described in the EPA document listed in E of
23 this section.

24 G. Facility: "Facility," as defined by RCW
25 70.105D.020(3) means (a) any building, structure,

1 installation, equipment, pipe or pipeline (including any pipe
2 into a sewer or publicly owned treatment works), well, pit,
3 pond, lagoon, impoundment, ditch, landfill, storage container,
4 motor vehicle, rolling stock, vessel, or aircraft, or (b) any
5 site or area where a hazardous substance, other than a consumer
6 product in consumer use, has been deposited, stored, disposed
7 of, or placed, or otherwise come to be located.

8 H. Hazardous Substance - as defined in RCW
9 70.105D.020(5), means:

10 (a) Any dangerous or extremely hazardous waste as
11 defined in RCW 70.105.010(5) and (6), or any dangerous or
12 extremely dangerous waste designated by rule pursuant to ch.
13 70.105 RCW;

14 (b) Any hazardous substance as defined in RCW
15 70.105.010(14) or any hazardous substance as defined by rule
16 pursuant to ch. 70.105 RCW;

17 (c) Any substance that, on the effective date of this
18 Section, is a hazardous substance under Section 101(14) of the
19 federal cleanup law, 42 U.S.C. Section 9601(14);

20 (d) Petroleum or petroleum products; and

21 (e) Any substance or category of substances, including
22 solid waste decomposition products, determined by the director
23 by rule to present a threat to human health or the environment
24 if released into the environment.

25
26

1 I. Day: For the purposes of this Decree, day refers to a
2 calendar day.

3 J. "Consent Decree" means this Decree and all Exhibits
4 and Appendices attached hereto.

5 K. "Ecology" means the Washington Department of
6 Ecology.

7 L. "Seattle" means The City of Seattle, a municipal
8 corporation organized and existing under the laws of the State
9 of Washington.

10 M. "Work Plan" shall mean the design plans and their
11 attachments, which describes the remedial actions to be
12 undertaken at and around the landfill, and includes the plans
13 and specifications revised to include the one-foot clay layer
14 specified in section XI.B.1., all change orders negotiated to
15 the construction contract and which materially affect the work
16 and which are approved by Ecology, and construction schedule
17 prepared by the contractor according to the project
18 specifications.

19 N. "Response Costs" means any past and future costs
20 incurred by Ecology pursuant to the Chapter 70.105D RCW
21 including oversight costs.

22 O. "Scope of Work ('SOW')" means the scope of work for
23 implementation of the remedial design, remedial action, and
24 operation and maintenance of the remedial action at the
25 landfill, as set forth herein.

26
CONSENT DECREE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

X. STATEMENT OF FACTS

A. Site Location and Status

The project area in this matter (the "Site"), is known as the Midway Landfill Site, and is located within the Kent city limits. The land areas comprising the Midway Landfill are represented by King County Assessor's tax parcel numbers, which are listed with the owner and which are set out in detail in Appendix A. Seattle is the current owner of the Midway Landfill and adjacent property shown in Figure 1, which is attached hereto and incorporated herein by this reference.

Additionally, the scope of the Site as defined herein includes the areal extent of the plume of contamination in groundwater, areal extent of the area of gas movement, and all other locations that extend outside of the boundaries described above which have been found to be contaminated as a result of the Midway Landfill.

In October 1984, the Midway Landfill was nominated to the National Priority List (NPL). The landfill was placed on the NPL in 1986.

B. Facility History and Operations

From 1947 to 1966, the landfill was operated as a gravel pit. The pit originally was adjacent to a peat bog, Lake Meade, located northeast of the center of the landfill. In January 1966, the City of Seattle leased the property and began using it as a landfill. During operations at the landfill, an

1 estimated three million cubic yards of solid waste were
2 deposited. This waste covers approximately 40 acres and is up
3 to 130 feet deep in places. The facility stopped accepting
4 waste in October 1983.

5 **C. Previous Site Investigations**

6 In 1984 and 1985, Seattle conducted field investigations
7 which showed the presence of surface water contamination
8 on-site and contaminated groundwater and landfill gas outside
9 the landfill boundary. The findings of groundwater
10 contamination lead to the listing of the Midway Landfill on the
11 National Priority List. In 1985, Ecology conducted site
12 inspections and found concentrations of methane gas in nearby
13 structures. Both Seattle and Ecology have conducted extensive
14 field investigations for landfill gas since that time.

15 In October 1986, Seattle signed a "Response Order By
16 Consent" with Ecology and agreed to conduct a remedial
17 investigation/feasibility study for the Midway Landfill.

18 **XI. SCOPE OF WORK**

19 The work to be performed under this Decree will be
20 consistent with draft regulations filed January 3, 1990, WAC
21 173-340-400 and 173-340-430.

22 Seattle consents and agrees to finance and perform the
23 following remedial action projects for the Midway Landfill, as
24 set out in this Decree, including:

- 1 1. Design and construction of a landfill cover, as
2 described in Section XI.B. below.
- 3 2. Construction of a gas extraction system, including
4 facilities both on and off of the landfill.
- 5 3. Construction of a surface water management system.
- 6 4. Preparation of an Operation and Maintenance Manual
7 for all remedial action projects implemented at the
8 landfill as a part of this Decree.

9 **A. Work Performed To Date**

10 As of the effective date of this Consent Decree, Seattle
11 has completed the planning, design, and construction of the
12 following remedial action projects at the Midway Landfill:

13 1. Gas Extraction System. The landfill gas extraction
14 system at the Midway Landfill consists of the following
15 elements: on-site facilities include vertical wells for
16 extracting landfill gas, temporary and permanent motor blower
17 and flare systems to extract and combust the extracted gas, and
18 temporary manifold pipe systems to connect the wells to the
19 motor blower and flare system; off-site facilities include
20 construction of individual gas extraction units consisting of a
21 vertical well, motor blower, filter, and exhaust pipe to
22 extract gas from areas outside of the landfill boundary.

23 Construction of 135 on-site gas extraction wells at 80
24 locations in and around the landfill perimeter was completed
25 between October 1985 and October 1989. Construction of the

1 temporary motor blower and flare and temporary manifold systems
2 was completed in the spring of 1986. Construction of the
3 permanent motor blower and flare system was completed in March
4 1990. Construction of seventeen off-site gas extraction well
5 units was completed as an Interim Remedial Measure (IRM)
6 between January 1986 and January 1988.

7 2. Surface Water Management System. The surface water
8 management system at the Midway Landfill consists of the
9 following elements: preparation of a Surface Water Management
10 Plan; site grading to control surface water drainage and
11 construction of a 10-million gallon surface water detention
12 pond (the On-Site Grading and Drainage Project); construction
13 of a pipeline and outfall to convey the discharged surface
14 water to McSorley Creek, also called the North Fork of Smith
15 Creek (the Off-Site Drainage with Hwy 99 Project); and
16 construction of a pump station and diversion system to divert
17 surface water runoff from I-5 and surrounding areas out of the
18 landfill and into the detention pond (the East I-5 Pump Station
19 Project).

20 Preparation of a detailed Surface Water Management Plan
21 was completed in June 1987. Construction of the On-Site
22 Grading and Drainage Project was completed in June 1989.
23 Construction of the Off-Site Drainage with Hwy 99 Project was
24 completed in January 1989. Construction of the East/I-5 Pump
25 Station Project was completed in April 1990.

26 CONSENT DECREE

1 The planning and design of each of these projects was
2 reviewed and approved by Ecology prior to construction. Any
3 supporting documents for these projects previously approved and
4 which are listed in Appendix B are hereby incorporated into
5 this Decree by reference.

6 **B. Work To Be Performed**

7 Within thirty (30) days of the effective date of this
8 Decree, or as soon thereafter as weather conditions will
9 permit, Seattle shall begin work on the Landfill Cover and
10 Final Gas Manifold Projects as described below. While Ecology
11 has approved the concept for these projects, Ecology has not
12 yet approved the design drawings, specifications, and project
13 manual for the addition of one foot of clayey silt or silty
14 clay as described herein:

15 1. Landfill Cover. The work to be performed for this
16 Decree consists of construction of a multi-layered landfill
17 cover system comprised of the following layers (from bottom to
18 top):

- 19 a. One foot of clayey silt/silty clay or amended soil
20 material with a permeability not greater than 1×10^{-7}
21 cm/sec, as measured after placement.
- 22 b. 50-mil synthetic membrane
- 23 c. Geonet drainage layer.
- 24 d. One foot of sand.

25
26

1 e. One foot of topsoil planted with shallow rooted
2 grasses.

3 The placement of the clayey silt/silty clay will be
4 limited to the central area of the landfill. The north slope
5 along the detention pond and the east slope along I-5 will
6 receive the 50-mil synthetic membrane (textured) only because
7 of the difficulty in placing the clayey silt/silty clay on the
8 steep slopes.

9 2. Final Gas Manifold System. The work to be performed
10 for this Decree consists of construction of a permanent
11 manifold piping system which links the on-site gas extraction
12 wells to the permanent motor blower and flare system. The gas
13 manifold system shall include construction of a collection
14 system for condensate from the gas pipelines. The final gas
15 manifold system constitutes the final element for completion of
16 the on-site landfill gas extraction system.

17 Any supporting documents for these projects previously
18 approved and which are listed in Appendix B are hereby
19 incorporated into this Decree by reference. While Ecology has
20 approved the concept for these projects, Ecology has not yet
21 approved the design drawings, specifications, and project
22 manual for the addition of one foot of clayey silt or silty
23 clay as described herein.

24 3. Final Project Reports. Seattle shall prepare a final
25 project report for each remedial action project constructed at

1 the landfill which shall include the following elements:
2 record drawings documenting the work as constructed, and a
3 narrative report identifying deviations from the approved plans
4 and specifications.

5 4. Landfill Operation and Maintenance Manual.
6 Seattle shall prepare a comprehensive Operation and Maintenance
7 Manual which incorporates both short-term and long-term
8 operation and maintenance requirements for all remedial action
9 projects constructed at the Midway Landfill under the terms of
10 this Decree. Seattle shall prepare a draft manual and shall
11 submit five copies to Ecology for review. Seattle shall make
12 revisions as appropriate and submit five (5) copies of the
13 final manual to Ecology.

14 C. Work Plan

15 Within thirty (30) days of the effective date of this
16 Decree, Seattle shall submit to Ecology a proposed work plan
17 for the two projects listed in Section XI.B. above. For the
18 purposes of this Decree, the work plan shall consist of a cover
19 letter with the following attachments: a copy of all plans and
20 specifications revised to include the one foot clay layer
21 specified in Section XI.B.1. above; all change orders to the
22 construction contract negotiated prior to the effective date of
23 this Decree and approved by Ecology; an organization chart for
24 Seattle's management staff assigned to the project, including
25 the senior staff of the construction contractor retained by

26

1 Seattle to construct the projects; and a construction schedule
2 prepared by the contractor according to the project
3 specifications.

4 Within fifteen (15) days of the receipt of the work plan
5 Ecology shall notify Seattle, in writing, of Ecology's approval
6 or disapproval of the work plan. In the event of any
7 disapproval, Ecology shall specify, in writing, both the
8 deficiencies and any Ecology recommended modifications
9 regarding the work plan.

10 Within fifteen (15) days of the receipt of Ecology's
11 notification of the work plan disapproval or recommended
12 modification, Seattle shall amend and submit to Ecology a
13 revised work plan. If deemed appropriate, Ecology may allow
14 additional time to respond to the notification. Any
15 disagreement shall be resolved pursuant to Section XX,
16 Resolution of Disputes.

17 Within fifteen (15) days of the final approval of the work
18 plan, Seattle shall commence work on those activities not
19 completed prior to this Decree and thereafter complete all
20 tasks by the dates indicated in subsection D of this section.
21 If the schedule of the work plan or the performance of tasks
22 specified in the work plan developed by Seattle indicates that
23 the time frame(s) is an impractical or infeasible period in
24 which to perform the tasks, then Ecology and Seattle agree to
25 reconsider the time frames established herein through Section
26

1 XXII, Extension of Schedule, and if necessary, amend the Decree
2 through Section XXI, Amendment of Consent Decree. The approved
3 work plan shall be attached to and incorporated into this
4 Decree as part of Appendix B.

5 This work plan and each element thereof shall be
6 designated, implemented and completed in accordance with the
7 NCP as defined herein and in accordance with the requirements
8 of CERCLA as amended by SARA; Chapter 70.105D RCW; all
9 applicable federal, state and local laws and regulations; and
10 all applicable EPA guidance documents.

11 In the event amendments to the NCP and/or the Chapter
12 70.105D RCW or other applicable and relevant laws, regulations,
13 and guidance documents become effective after the effective
14 date of this Decree and prior to completion of the remedial
15 actions specified herein which materially affect the right or
16 obligation of any party or construction documents or schedules
17 of the Decree, the Parties agree to negotiate in good faith a
18 written amendment to the Decree to provide for such changes, if
19 deemed necessary.

20

21

22

23

24

25

26

1 D. **Schedule**

2 1. Seattle shall submit final project reports for the
3 projects completed prior to the effective date of this Decree
4 to Ecology no later than July 31, 1990.

5 2. Seattle shall complete all construction work
6 performed under this Consent Decree no later than September 30,
7 1991. The final project report for the landfill cover and
8 final gas manifold construction project shall be submitted to
9 Ecology not later than sixty (60) days after construction is
10 considered complete by Seattle's Senior Construction Engineer.

11 3. Seattle shall submit the draft Operations and
12 Maintenance Manual to Ecology for review not later than May 1,
13 1991. Ecology understands and accepts that the draft
14 Operations and Maintenance Manual may not be complete with
15 respect to the cover and final gas manifold projects. Ecology
16 agrees to submit any review comments to Seattle within sixty
17 (60) days of receipt of the draft manual. Seattle shall make
18 revisions as appropriate. Seattle shall in any event submit a
19 final manual to Ecology within sixty (60) days of receipt of
20 Ecology's comments or within 60 days of completion of
21 construction of the cover and manifold, which ever occurs
22 later. If deemed appropriate by Ecology, additional time may
23 be allowed to Seattle to address Ecology's comments.

24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XII. DESIGNATED PROJECT MANAGERS

On or before the entry of this Decree, Ecology and Seattle shall each designate a project manager and alternate. Each project manager shall be responsible for overseeing the implementation of this Decree. The Ecology project manager will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Seattle and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project managers or alternate if the project manager for either party is not available. The project managers may designate staff contacts for all or portions of the implementation of the remedial work required by this Decree.

Seattle and Ecology may change their respective project managers or alternates without amending this Decree by notifying the counterpart designated project manager, in writing, at least ten (10) days prior to the change.

The project manager for Ecology is:

Russ Darr
Washington State Department of Ecology
Hazardous Waste Investigation and Cleanup
Program
Mail Stop PV-11, Woodland Square
Olympia, WA 98504-8711
(206) 438-3043

1 The project manager for Seattle is:

2
3 Lin Robinson
4 City of Seattle
5 Solid Waste Utility
6 Suite 505
7 710 2nd Avenue
8 Seattle, WA 98104
9 (206) 684-7687

7 **XIII. PERFORMANCE**

8 All construction work performed pursuant to this Decree
9 shall be under the oversight, as necessary, of a professional
10 engineer or qualified hydrogeologist, or equivalent. Seattle
11 shall notify Ecology as to the identity of such engineer(s) or
12 hydrogeologist(s), and of any contractors and subcontractors to
13 be used in carrying out the terms of this Decree, in advance of
14 their involvement at the Midway Landfill. All contractors and
15 Seattle construction management staff shall meet federal and
16 state health and safety laws regarding construction work
17 conducted on an NPL site. This provision is not intended to
18 and does not relieve any contractor, subcontractor, or
19 consultant of any responsibility, liability or obligation under
20 contract with Seattle.

21 **XIV. ACCESS**

22 Ecology and its authorized representative shall have the
23 authority to enter and freely move about all property at the
24 Midway Landfill at all reasonable times for the purposes of,
25 inter alia: inspecting records, operation logs, and contracts

1 related to the work being performed pursuant to this Decree;
2 reviewing the progress in carrying out the terms of this
3 Decree; conducting such tests or collecting samples as Ecology
4 or the project manager may deem necessary; using a camera,
5 sound recording, or other documentary type equipment to record
6 work done pursuant to this Decree; and verifying the data
7 submitted to Ecology by Seattle. Ecology shall make a
8 reasonable effort to notify Seattle ten (10) days in advance of
9 any field sampling event. All consultants and contractors with
10 access to the Midway Landfill pursuant to this paragraph shall
11 comply with the Ecology reviewed and accepted health and safety
12 plans.

13 Any new off-site access locations necessary for remedial
14 activities must be identified in writing and such information
15 must be submitted to Ecology. Seattle has obtained all
16 necessary permits and easements for access to private property
17 for the purpose of conducting necessary off-site remedial
18 activities. If, after diligent efforts, Seattle is unable to
19 achieve additional access, Ecology will use its best efforts,
20 consistent with its legal authority under the Chapter 70.105D
21 RCW, to assist Seattle in obtaining such access. Seattle shall
22 comply with the Chapter 70.105D RCW with respect to entry on
23 real property not owned by Seattle.

24 **XV. SAMPLING, DATA REPORTING AND AVAILABILITY**

25 Seattle shall make the results of all sampling, laboratory
26

1 reports, and/or test results generated by it, or on its behalf,
2 available to Ecology and shall submit these results once
3 quality assurance data is received by Seattle (unless immediate
4 action is required) or in progress reports submitted in
5 accordance with Section XIV, Progress Reports.

6 At the request of Ecology, Seattle shall allow split or
7 duplicate samples to be taken by Ecology and/or its authorized
8 representatives of any samples collected by Seattle pursuant to
9 the implementation of this Decree unless Ecology fails to make
10 available a representative for this purpose. Seattle shall
11 make a reasonable effort to notify Ecology ten (10) days in
12 advance of any field sampling activity (sample collection,
13 drilling, excavation, etc.). Ecology shall allow split or
14 duplicate samples to be taken by Seattle or its authorized
15 representatives of any samples collected by Ecology pursuant to
16 the implementation of this Decree, unless Seattle fails to make
17 available a representative for this purpose. Ecology shall
18 make a reasonable effort to notify Seattle ten (10) days in
19 advance of any field sampling activity.

20 XVI. PROGRESS REPORTS

21 Commencing with entry of this Decree, Seattle shall submit
22 to Ecology written monthly progress reports which describe the
23 actions it has taken during the previous month to implement the
24 requirements of this Decree. Progress reports shall also
25 describe the activities scheduled to be taken during the next
26

1 month. All progress reports shall be submitted by the tenth
2 day of the month in which they are due commencing in the first
3 month after the effective date of this Decree. The progress
4 reports shall include a detailed statement of the manner and
5 extent to which the requirements and time schedules set out in
6 the work plan and this Decree are being met. Unless otherwise
7 agreed, progress reports and any other documents submitted
8 pursuant to this Decree shall be sent by certified mail,
9 return-receipt requested, or overnight parcel delivery
10 (signature required), to Ecology's project manager.

11 XVII. RETENTION OF RECORDS

12 Seattle shall preserve, during the pendency of this Decree
13 and for ten (10) years from the date of completion of
14 compliance monitoring all final documents in its possession
15 relevant to the implementation of this Decree, unless relieved
16 of this obligation by operation of law. Upon request of
17 Ecology, Seattle shall make all non-archived records available
18 to Ecology and allow access for review. All archived records
19 shall be made available to Ecology within thirty (30) days.

20 XVIII. PROVISION OF OTHER DOCUMENTS

21 Upon Ecology's request, Seattle shall provide Ecology with
22 copies of Midway Landfill final plans, final task memoranda,
23 including memoranda recording minor field modifications,
24 recommendations for further action, quality assurance memoranda
25 and audits, final reports, raw data filed into laboratory
26

1 analytical reports and any other documents which relate in any
2 way to the facility, including those pertaining to any studies
3 relevant to but not specifically required by this Decree.

4 **XIX. TRANSFER OF INTEREST IN PROPERTY**

5 No voluntary conveyance or relinquishment of title,
6 easement, leasehold, or other interest in any portion of the
7 landfill shall be consummated without provision for continued
8 operation and maintenance of any containment system, treatment
9 system, or monitoring system installed or implemented pursuant
10 to this Decree.

11 Upon entry of this Decree, and to the extent Seattle is
12 the owner of the real property described in Appendix A, Seattle
13 shall place a notice in the records of real property kept by
14 the county auditor stating that said property was used as a
15 landfill and was on the National Priorities List. Prior to
16 transfer of any legal or equitable interest in all or any
17 portion of the landfill real property, Seattle shall serve a
18 copy of this Decree upon any prospective purchaser, lessee,
19 transferee, assignee, or other successor in interest of the
20 property; and, at least thirty (30) days prior to any transfer,
21 Seattle shall notify Ecology of said contemplated transfer.

22 **XX. RESOLUTION OF DISPUTES**

23 Seattle and Ecology's project managers shall use their
24 best efforts informally and in good faith to resolve all
25 disputes or differences of opinion. If, however, disputes
26

1 arise between Seattle and Ecology concerning modifications,
2 disapprovals, or decisions made pursuant to this Decree, which
3 the project managers are unable to resolve informally, either
4 Ecology shall present a written notice of such dispute to
5 Seattle or Seattle shall present a written notice of such
6 dispute to Ecology.

7 If Seattle objects to any Ecology disapproval, proposed
8 modification, or decision made pursuant to this Decree, it
9 shall notify Ecology in writing of its objections within
10 fifteen (15) days of receipt of such notice. Thereafter, the
11 Parties shall confer in an effort to resolve informally the
12 dispute. This informal dispute resolution process should start
13 with the Ecology section head and Seattle Landfill Closure
14 Director. If these individuals are unable to resolve the
15 dispute, the issue shall be elevated to the Ecology Program
16 Manager and Seattle Solid Waste Utility Director. The final
17 level of informal dispute resolution shall involve the Ecology
18 Assistant Director of Waste Management and Seattle's Director
19 of the Engineering Department.

20 If, through this informal dispute resolution process,
21 agreement cannot be reached on the dispute within thirty (30)
22 days after receipt by Ecology of such objections, Ecology shall
23 promptly provide a written statement of its decision to
24 Seattle.

25
26

1 If Ecology's final written decision is unacceptable to
2 Seattle, then Seattle has the right to submit the dispute to
3 the Court for resolution. The Parties agree that one judge may
4 retain jurisdiction over this case and shall, as necessary,
5 resolve any dispute arising under this Decree.

6 In the event Seattle presents an issue to the Court for
7 review, the Court shall review the action or decision of
8 Ecology on the basis of whether such action or decision was
9 arbitrary and capricious and render a decision based on such
10 standard of review. Ecology and Seattle agree to only utilize
11 the dispute resolution process in good faith and agree to
12 expedite, to the extent possible, the dispute resolution
13 process whenever it is used. Where either party utilizes the
14 dispute resolution in bad faith or for purposes of delay, the
15 other party may seek sanctions.

16 Implementation of these dispute resolution procedures
17 shall not provide a basis for delay of any activities required
18 in this Decree, unless Ecology agrees in writing to a schedule
19 extension or the Court so orders. Stipulated penalties shall
20 not begin to accrue during pendency of good faith dispute
21 resolution procedures.

22 **XXI. AMENDMENT OF CONSENT DECREE**

23 This Decree may only be amended by a written stipulation
24 among all the Parties to this Decree that is entered by the
25
26

1 Court. Such amendment shall become effective upon entry by the
2 Court.

3 Amendment of this Consent Decree is not required for minor
4 change orders or minor field work orders that do not materially
5 affect the scope of work. Major design change or field work
6 orders that materially change the scope of work or conceptual
7 design will require amendment of this Decree.

8 Amendment of this Decree is not required for change of
9 designated project managers.

10 **XXII. EXTENSION OF SCHEDULE**

11 If any event occurs which may cause or has caused a delay
12 in or deviation from achievement of the requirements of this
13 Decree, Seattle shall promptly notify Ecology's project manager
14 orally and shall, within five (5) working days of oral
15 notification to Ecology, notify Ecology in writing of:

16 1. The anticipated duration and cause of the delay or
17 deviation.

18 2. The measures that have been or will be taken to
19 prevent or minimize the delay or deviation.

20 3. The timetable by which Seattle proposes to carry out
21 such measures.

22 A. An extension of schedule shall be granted only when a
23 request for an extension is submitted in a timely fashion and
24 good cause exists for granting the extension. A requested
25 extension shall not be effective until approved by Ecology.

1 Ecology shall act upon any written request for extension within
2 thirty (30) days. It shall not be necessary to formally amend
3 this Decree pursuant to Section XXI, Amendment of Consent
4 Decree, when a schedule extension is granted.

5 B. The burden shall be on Seattle to demonstrate to the
6 satisfaction of Ecology that the request for such extension has
7 been submitted in a timely fashion and that good cause exists
8 for granting the extension. Good cause includes, but is not
9 limited to, the following:

10 1. Circumstances beyond the reasonable control and
11 despite the due diligence of Seattle including delays caused by
12 unrelated third parties or Ecology such as, but not limited to,
13 delays by Ecology in reviewing, approving, or modifying
14 documents submitted by Seattle; or

15 2. Acts of God, including fire, flood, blizzard, extreme
16 temperatures, storm, wave or water conditions, or other
17 unavoidable casualty; or

18 3. Endangerment as described in Section XXIV,
19 Endangerment. However, neither increased costs of performance
20 of the terms of the Decree nor changed economic circumstances
21 shall be considered circumstances beyond the reasonable control
22 of Seattle; or

23 4. Lack of access.

24 C. Ecology may extend the schedule for a period not to
25 exceed ninety (90) days, except where an extension is needed as

26

1 a result of the items listed below. Ecology may extend the
2 schedule in excess of 90 days for the following reasons:

3 1. Delays in the issuance of a necessary permit which
4 was timely applied for or, if necessary, to comply with permit
5 conditions; or

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

8 3. Other circumstances deemed exceptional or
9 extraordinary by Ecology; or

10 4. Endangerment as described in Section XXIV,
11 Endangerment; or

12 5. The need to protect the environment or public health.
13 Ecology shall give Seattle written notice in a timely
14 fashion of any extensions granted or denied pursuant to the
15 Decree.

16 D. If Seattle does not meet the requirements in the
17 Plans and Specifications detailing the scope of work as set out
18 in the work plan described in Section XI.B. and C herein,
19 Ecology reserves the right to require the work cease until
20 Seattle and Ecology agree to an appropriate course of action.
21 Ecology shall provide Seattle with five (5) days written notice
22 prior to requiring Seattle to cease work. Said written notice
23 shall state specifically the work not meeting requirements set
24 forth in the project plans and specifications.

25
26

1 shall pay the civil penalty within sixty (60) days of receipt
2 of notification from Ecology or as may be required after the
3 completion of any dispute resolution under Section XX,
4 Resolution of Disputes. Ecology may waive stipulated penalties
5 when it deems appropriate.

6 D. Any disagreement over the factual basis for issuance
7 of a penalty under this Section shall be resolved through the
8 dispute resolution clause. In the event Seattle disagrees with
9 the result of the dispute resolution process, Seattle may seek
10 relief from the Court. Any penalty issued pursuant to this
11 Section shall not be appealable to the Pollution Control
12 Hearings Board.

13 XXIV. ENDANGERMENT

14 In the event Ecology determines or concurs in a
15 determination by another local, state, or federal agency that
16 activities implementing or in noncompliance with this Decree,
17 or any other circumstances or activities, are creating or have
18 the potential to create a danger to the health or welfare of
19 the people on the Midway Landfill or in the surrounding area or
20 to the environment, Ecology shall order Seattle to stop further
21 implementation of this Decree for such period of time as needed
22 to abate the danger or may petition the Court for an order as
23 appropriate. During any stoppage of work under this Section,
24 the obligations of Seattle with respect to the work ordered to
25 be stopped shall be suspended and the time periods for

1 performance of that work, as well as the time period for any
2 other work dependent upon the work which is stopped, shall be
3 extended, pursuant to Section XXII, Extension of Schedule, for
4 such period of time as Ecology determines is reasonable under
5 the circumstances.

6 In the event Seattle determines that activities undertaken
7 in furtherance of this Decree or any other circumstances or
8 activities are creating an imminent and substantial
9 endangerment to the people on the Midway Landfill or in the
10 surrounding area or to the environment, Seattle shall stop
11 implementation of this Decree for such periods of time
12 necessary for Ecology to evaluate the situation and determine
13 whether Seattle should proceed with implementation of this
14 Decree or whether the work stoppage should be continued until
15 the danger is abated. Seattle shall notify either Ecology
16 field personnel on-site or the project manager as soon as is
17 possible, but no later than twenty-four (24) hours after such
18 stoppage of work. Within five (5) days after such stoppage,
19 Seattle shall provide Ecology with documentation of its
20 analysis in reaching this determination. If Ecology disagrees
21 with Seattle's determination, it may order Seattle to resume
22 implementation of this Decree. If Ecology concurs in the work
23 stoppage, Seattle's obligations shall be suspended and the time
24 period for performance of that work, as well as the time period
25 for any other work dependent upon the work which was stopped,

26

CONSENT DECREE

-38-

1 shall be extended, pursuant to Section XXII, Extension of
2 Schedule, for such period of time as Ecology determines is
3 reasonable under the circumstances. Any disagreements pursuant
4 to this clause shall be resolved through the dispute resolution
5 procedures in Section XX, Resolution of Disputes.

6 **XXV. RESERVATION OF RIGHTS**

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

12 1. In the event Seattle fails to comply with the terms
13 of this Consent Decree; or

14 2. In the event or upon the discovery of a release or
15 threatened release not addressed by this Decree; or

16 3. In the event that the remedial actions are not being
17 constructed to the specifications set forth herein; or

18 4. Upon Ecology's determination that action beyond the
19 terms of this Decree is necessary to abate an emergency
20 situation which threatens the public health or welfare or the
21 environment.

22 Ecology will notify Seattle in writing of the need for any
23 such remedial action and will allow Seattle the option to
24 perform the additional remedial action before Ecology initiates
25 such an action at the site.

26

1 B. Seattle reserves all rights and defenses available in
2 law and in equity regarding liability or responsibility in any
3 proceedings related to the Midway Landfill, other than
4 proceedings by Ecology to enforce this Decree.

5 This Decree shall not be construed in any way as a waiver
6 or limitation on Ecology's or Seattle's right to seek
7 reimbursement from any responsible party, including entities
8 not a signatory to this Decree, for investigative, response,
9 and oversight costs incurred by Ecology or Seattle in
10 connection with activities conducted at the Midway Landfill.

11 **XXVI. COVENANT REOPENERS**

12 Pursuant to RCW 70.105D.040 (4)(c), a reopener to the
13 aforementioned Covenant Not to Sue is necessary which requires
14 amendment of this Decree if factors not known at the time of
15 entry of the settlement agreement are discovered and present a
16 previously unknown threat to human health or the environment.
17 In addition, because final remedial action will begin prior to
18 completion of the RI/FS and Record of Decision, the landfill
19 cap, gas extraction and surface water systems remedial actions
20 may be subject to modification for the reasons set forth below.

21 Therefore, Ecology specifically reserves the opportunity
22 to reopen the Covenant Not to Sue in the following
23 circumstances:

- 24 1. In the event Seattle fails to comply with the terms
25 of this Consent Decree; or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 2. In the event of an emergency; or
- 3. In the event new hazardous substances are found in the landfill which are not presently known and which present a previously unknown threat to human health or the environment; or
- 4. In the event the completed RI/FS contains significant new information that alters the technical evaluation of landfill conditions and appropriate remedial action pursuant to RCW 70.105D.040 (4)(a).

XXVII. CONTRIBUTION PROTECTION

Subject to the Covenant Reopeners and the Reservation of Rights set forth above, Ecology agrees that by entering into and carrying out the terms of this Consent Decree, pursuant to RCW 70.105D(4)(d) Seattle will have resolved its liability to the Ecology for matters covered herein and shall not be liable for claims for contribution regarding matters covered herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XXVIII. INDEMNIFICATION

Insofar as Seattle may be authorized to do so under the laws and constitution of the State of Washington, Seattle agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Seattle, its officers, employees, agents, or contractors in entering into or implementing this Decree, except for claims arising from or on account of the negligent acts or omissions of Ecology, its agents, officers or employees.

XXIX. COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by Seattle pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, insofar as required by law.

XXX. OVERSIGHT COSTS

Seattle agrees to reimburse the State Toxics Control Account of the State of Washington, for all reasonable and appropriate costs expended by Ecology, including oversight costs not to exceed \$125,000 per year, associated with Ecology's activities at the Midway Landfill conducted during the implementation of this Decree. Oversight dollars that are not expended by Ecology during a given year shall not carry

1 over to succeeding years. Within ninety (90) days of the end
2 of each fiscal quarter, Ecology will submit to Seattle a
3 summary statement of Ecology's expenses for the previous
4 quarter, with adequate documentation. Following receipt of the
5 statement and adequate documentation, Seattle shall pay, within
6 ninety (90) days, into the State Toxics Control Account of the
7 State of Washington, the required sum. With respect to the
8 costs incurred by Ecology prior to the work included under the
9 Midway "Response Order by Consent" dated October 3, 1986,
10 Seattle will make payment within 120 days of receipt of
11 satisfactory supporting documentation from Ecology. Ecology
12 has indicated the costs incurred prior to the October 3, 1986,
13 Consent Order total approximately \$1.2 million dollars. The
14 actual amount to be paid by Seattle will be determined after
15 Seattle has verified Ecology's documentation.

16 Documentation for payment of oversight costs made to
17 Ecology by Seattle under the terms of this Decree shall be
18 attached to each statement of Ecology's expenses and may
19 include, but not be limited to, the following information:
20 documentation of work performed, as identified by Ecology
21 project index codes, expenses incurred, proof of payment and to
22 whom paid, and consultant and/or contractor invoices. Upon
23 request by Seattle, Ecology will make available to Seattle for
24 verification all reasonable supporting records and documents,

25
26

Ms. Lin Robinson
Seattle Solid Waste Utility
710 Second Avenue
Suite 505, Dexter Horton Bldg.
Seattle, WA 98104

1 not privileged, which supports Ecology's claim for oversight
2 costs.

3 Payment of such sums shall not be construed in any way
4 as evidence of or an admission of liability or responsibility
5 by Seattle in any proceeding. Seattle retains the right to
6 seek reimbursement in whole or in part from any responsible
7 entities for such sums expended.

8 **XXXI. PUBLIC PARTICIPATION**

9 Ecology shall maintain the lead responsibility for public
10 participation at the Site. To date, Ecology and Seattle have
11 completed a public participation plan at the Midway Landfill
12 and have implemented an on-going public participation program
13 for on-going remedial activities at the landfill. Ecology will
14 work cooperatively with Seattle to complete the remaining tasks
15 required under WAC 173-340-600 for activities at the landfill.
16 Ecology may delegate to Seattle all or portions of these tasks:

17 A. Provide information to the public, public notice, and
18 opportunities to comment as specified in WAC 173-340-600 for
19 upcoming activities at the landfill.

20 B. Prepare drafts of press releases, public notices, and
21 fact sheets at important stages of the remedial action, such as
22 the approval of work plans and the selection of a remedial
23 alternative.

24
25
26

1 C. Coordinate press, public notice, and fact sheet
2 releases before major meetings and presentations with the
3 interested public and local government.

4 D. Supply information to the data repositories
5 established at the Kent and Des Moines Public Libraries. For
6 example, work plans, remedial investigation and feasibility
7 study reports, public review documents and other information
8 deemed necessary by Ecology.

9 Seattle and Ecology shall work cooperatively to implement
10 public participation activities for the Site. This shall
11 include participation in public meetings and presentations on
12 the progress of remedial actions at the Site. Participation
13 may be through attendance at public meetings to assist in
14 answering questions or as a presenter.

15 In the event of a disagreement over the contents of any
16 document or action prepared for purposes of public
17 participation, issues shall be resolved in a mutually agreeable
18 manner. Disagreements between Seattle's and Ecology's project
19 managers shall be elevated to their respective section heads or
20 directors for resolution if they cannot be resolved by the
21 project managers.

22 **XXXII. DURATION OF DECREE**

23 This Decree shall remain in effect and the remedial
24 program described in this Decree shall be maintained and
25
26

1 continued until all requirements as specified in Section XI of
2 this Decree have been completed to the satisfaction of Ecology.

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

4 This Decree will be subject to public notice and hearing
5 under the Chapter 70.105D RCW. Ecology reserves the right to
6 withdraw or withhold its consent to the proposed final Decree
7 if new information discloses facts or considerations which
8 indicate that the proposed Decree is inappropriate, improper,
9 or inadequate.

10 If the Court withholds or withdraws its consent, this
11 Decree shall be null and void at the option of any party and
12 the accompanying Complaint shall be dismissed without costs and
13 without prejudice. In such an event, no party shall be bound
14 by the requirements of this Decree.

15 **XXXIV. CONFIDENTIAL INFORMATION**

16 Seattle may claim any exemption from disclosure of public
17 records pursuant to existing law. Such a claim shall be
18 adequately substantiated when the confidentiality claim is
19 made. Quality-assured analytical data shall not be claimed as
20 confidential by Seattle. Information determined to be
21 confidential by Ecology will be afforded the protection
22 specified by law. If no such claim accompanies the information
23 when it is submitted to Ecology, it may be made available to
24 the public.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XXXV. OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity by any party against any person, entity, firm, partnership or corporation not a signatory to this Decree for any liability arising out of, or relating in any way to, the disposal of waste at, or the release of any substance at, to, or from, the Midway Landfill.

XXXVI. SATISFACTION OF THIS DECREE

The provisions of this Decree shall be deemed satisfied upon Seattle's receipt of written certification from Ecology that the program outlined in this Decree has been completed. Ecology's failure to certify completion is subject to the provisions of Section XX of this Decree.

By their signatures hereto, the undersigned represent that they have the authority to bind the parties they represent.

For State of Washington
Department of Ecology

Carol L. Fleskes
CAROL FLESKES
Program Manager
Hazardous Waste
Investigation and Cleanup

Date: May 29, 1990

For State of Washington
Attorney General's Office

Jay J. Manning

JAY J. MANNING
Assistant Attorney General

Date: May 30, 1990

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

For City of Seattle

For City of Seattle
City Attorney's Office

John Thumoto FOR
GARY ZARKER
Director
Seattle Engineering Dept.

Mary Kay Doherty
MARY KAY DOHERTY
Assistant City Attorney

Date: 5/29/90

Date: May, 29, 1990

DATED AND ENTERED this _____ day of _____, 1990.

JUDGE, King County Superior Court

T1/consent/midwaycd

CONSENT DECREE