

FS 2015

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

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

QUENDALL TERMINALS, a Joint  
Venture, comprised of  
Altino Properties, Inc., a  
Washington corporation, and  
Puget Timber, Inc., a  
Washington corporation,  
et al.,

Defendant.

No. DE-92TC-N335

CONSENT DECREE

INTRODUCTION

A. In entering into this Consent Decree, the mutual objectives of the Washington State Department of Ecology ("Ecology") and Quendall Terminals, a Joint Venture comprised of Altino Properties, Inc., a Washington corporation, and Puget Timber, Inc., a Washington corporation, ("participating defendants") is to commence remedial action at a facility where hazardous substances have been deposited, placed, stored, or otherwise released. This Decree requires the participating defendant to undertake the remedial action defined herein.

1           B.    The Complaint in this action is being filed  
2 simultaneously with this Consent Decree ("Decree"). There has  
3 not been an Answer filed, nor has there been a trial on any  
4 issue of fact or law in this case. However, the parties to  
5 this Decree wish to address the issues raised in the  
6 plaintiff's Complaint. In addition, the parties to the Decree  
7 agree that settlement of these matters without litigation is  
8 reasonable and in the public interest, and the entry of this  
9 Decree is the most appropriate means of addressing these  
10 matters. There are liable parties who are electing not to  
11 participate in this settlement.

12           C.    The participating defendants, by executing this  
13 Decree, agree to its entry and agree to be bound by its terms  
14 without prejudice to any rights that it may have as to  
15 non-participating liable parties or as to unnamed third parties  
16 hereto.

17           D.    By entering into this Decree, the parties hereto do  
18 not intend to discharge the non-settling parties from any  
19 liability they may have with respect to matters alleged in the  
20 Complaint, or as between the parties hereto which are not fully  
21 and completely established hereunder.

22           E.    The Court is fully advised of the reasons for entry  
23 of this Decree, and good cause having been stated herein:

24           IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

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I. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the parties participating hereto pursuant to ch. 90.48 RCW, and ch. 70.105B RCW. Under RCW 70.105B.070(1), whenever Ecology has reason to believe that a release or threatened release of a hazardous substance will require remedial action, it shall notify potentially liable persons with respect to the release or threatened release and provide potentially liable persons a reasonable opportunity to propose a settlement agreement providing for remedial action. Pursuant to RCW 70.105B.070(5), where Ecology and a potentially liable person reach such an agreement, the agreement shall be filed with the appropriate superior court as a proposed consent decree, subject to a 30-day public comment period.

B. On the basis of the testing and analysis described in the Statement of Facts, infra, and Ecology's files and records, Ecology has determined that past disposal or management practice or practices at the Site have resulted in a release of hazardous substances, which release is causing contamination of surface and ground waters, and the release will continue to cause contamination unless the release is abated and/or mitigated.

C. The participating defendant is a potentially liable party for the Site pursuant to RCW 70.105B.040. Ecology has

1 notified the liable parties, including participating  
2 defendants, of its determination. As a result, the  
3 participating defendant has agreed to undertake the action  
4 specified in the Decree and consents to the issuance of this  
5 Decree, pursuant to ch. 90.48 RCW, and ch. 70.105B RCW.

6 D. Actions taken pursuant to this Decree are necessary  
7 to protect the public health, welfare, and environment.

## 8 II. PARTIES BOUND

9 This Decree shall apply to and be binding upon the  
10 signatories to this Decree (parties), their heirs, successors  
11 and assigns. The undersigned representative of each party  
12 hereby certifies that he or she is fully authorized to enter  
13 into this Decree and to execute and legally bind such party to  
14 comply with the Decree. Each participating defendant agrees to  
15 undertake all actions required by the terms and conditions of  
16 this Decree and to not contest State jurisdiction regarding  
17 this Decree. No change in ownership of corporate stock or of  
18 the Site or of corporate status shall alter the responsibility  
19 of the participating defendants under this Decree. Each  
20 participating defendant shall provide a copy of this Decree to  
21 each contractor and/or subcontractor retained to perform work  
22 contemplated by this Decree and shall condition any contract  
23 for such work to be in compliance with this Decree.

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III. STATEMENT OF FACTS

DESCRIPTION

A. The real property which is the subject of this Decree and which shall be referred to as "subject property" is legally described as:

That portion of Government Lot 5 in Section 29, Township 24 North, Range 5 East, W.M. and shoreland adjoining lying Westerly of the Northern Pacific Railroad Right of Way and Southerly of a line described as follows:

Beginning at the quarter corner on the South line of said Section 29; thence North 89°58'36" West along the South line of said Lot 5 1113.01 feet to the Westerly line of said Northern Pacific Railroad Right of Way; thence North 29°44'54" East 849.62 feet along said Right of Way line to a point hereinafter referred to as point A; thence continuing North 29°44'54" East 200.01 feet to the true point of beginning of the line herein described; thence South 56°28'50" West 222.32 feet to a point which bears North 59°24'56" West 100.01 feet from said Point A; thence North 59°24'56" West to the inner harbor line and the end of said line description; Also that portion of said Government Lot 5 lying Southeasterly of Lake Washington Boulevard, Westerly of Secondary State Highway Number 2A and Northwesterly of the Right of Way of Public State Highway Number 1 as established by Deed recorded under Auditor's File No. 5687408.

TITLE HISTORY

B. The Subject Property was part of a homestead that was patented in 1874 to Jeremiah D. Sullivan. This homestead was conveyed to James Colman by Deed in 1876. While several conveyances were attempted, because of foreclosures, the Subject Property remained in the Colman family until conveyed to Peter C. Reilly by Deed on March 23, 1916. Peter C. Reilly's interest passed on to Reilly Tar & Chemical, Inc., an

1 Indiana corporation. From 1916 until 1971, the Subject  
2 Property was under the ownership of the Reilly family or  
3 entities controlled by the Reilly family.

4 C. Quendall Terminals acquired the Subject Property by  
5 real estate contract in 1971, which was paid in full and the  
6 purchase completed and the real property interest conveyed by  
7 Warranty Deed in 1975. The instruments of conveyance include a  
8 Real Estate Contract, Supplemental Agreement, and Statutory  
9 Warranty Deed.

10 D. Before Lake Washington was lowered in 1916, the  
11 upland portion of the Site was occupied by a shingle mill.  
12 Subsequently, the Quendall Terminals Site was developed for  
13 creosote manufacturing by Republic Creosote in 1916. Republic  
14 Creosote, which became Reilly Tar and Chemical, initially  
15 operated a small, coal tar creosote manufacturing facility from  
16 1916, at the earliest, to approximately 1969. The creosote  
17 manufacturing facilities were gradually expanded over time to  
18 the largest areal extent in the 1950's. Following 40 years of  
19 expansion, the facility went into gradual decline until closure  
20 in 1969.

#### 21 OPERATIONAL HISTORY

22 E. Coal tar creosote was manufactured at Quendall  
23 Terminals by a destructive distillation process using coal tar  
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1 as a raw material. Coal tar was routinely purchased from the  
2 Seattle Gas Company, located on Lake Union, and shipped to  
3 Reilly Tar and Chemical. The coal tar was pumped through a  
4 transfer line at the end of the former receiving pipe dock to  
5 storage tanks on the Site.

6 F. During the handling of the material and the finished  
7 product, creosote, much of the property became saturated with  
8 both the raw material and creosote. This saturation penetrated  
9 the surface and has impacted ground water on the Site. These  
10 releases occurred throughout the operational life of the  
11 creosote manufacturing facility. Similarly, sludge and scale  
12 from reaction vessels were routinely disposed of on Site.  
13 Disposal occurred over large portions of the Site in  
14 conjunction with filling, grading, and site stabilization  
15 activities.

16 G. Once coal tar was processed into creosote, the  
17 creosote was stored in tankage until shipment either by ship or  
18 by rail. The bulk of creosote product was pumped through the  
19 transfer line to ships docking at the terminal. A large  
20 portion of the non-creosote waste, "heavy-ends," were also sold  
21 as paving and waterproofing tar. However, Reilly Tar and  
22 Chemical did not track the disposition of non-valued waste  
23 products. Therefore, an accounting of these materials was not  
24 maintained.

1 H. Since 1969, the Quendall Terminals Site has been  
2 operated commercially as a log-decking operation and as a used  
3 oil storage facility. As a log-decking facility, no chemical  
4 usage occurred at the Site. Used oil storage occurred during  
5 the years 1969 to 1978 in those existing tanks that remained on  
6 the Site after the shutdown of creosote manufacturing by Reilly  
7 Tar and Chemical. There is evidence of spills or leaks from  
8 storage of used oil in above ground tankage during the years  
9 1969 to 1978.

#### 10 CONTAMINANT SUMMARY

11 I. Although numerous geotechnical investigations have  
12 been conducted at Quendall Terminals, only one investigation to  
13 determine the extent of hazardous materials in soils and ground  
14 water on site has been conducted. Additionally, an offshore  
15 sediment investigation of potential hazardous wastes was also  
16 conducted by the EPA in 1983. Previous geotechnical and site  
17 development activities did not directly address hazardous  
18 wastes, although references to oil or creosote odors was  
19 reported in these subsurface investigations.

20 J. The 1983 subsurface hazardous waste investigation  
21 consisted of advancing 18 shallow borings and monitoring wells  
22 across the Site and four trenches with a combined length of  
23 approximately 250 feet and was conducted by Woodward-Clyde,  
24 Consulting Engineers. Soils and ground water were principally  
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1 tested for polynuclear aromatic hydrocarbons (PAH's) and the  
2 volatile organics benzene, toluene, and xylene isomers (BTX).

3 K. PAH's were found throughout the Site at depths  
4 principally from 3 to 10 feet in soils. Soils below the 10  
5 foot depth have not been tested. In several circumstances, PAH  
6 levels exceeded 1 $\frac{1}{2}$  or 10,000,000 parts per billion (ppb).  
7 Although PAH contamination was largely found throughout the  
8 Site, the highest levels were generally concentrated in areas  
9 of industrial activity. These areas include the main creosote  
10 manufacturing and storage corridor roughly extending from the  
11 eastern property boundary due west to the dock and trestle  
12 pipeline. Areas of secondary contamination include the former  
13 May Creek channel south of the main contaminant corridor and an  
14 area north where a large sump received contaminated water in  
15 the form of reactor condensate and related effluent discharges.  
16 The May Creek channel is evaluated to have received intractable  
17 sludge and related manufacturing by-products not suitable for  
18 reprocessing or sale.

19 L. Ground water at the Site was also shown to be contam-  
20 inated in the main industrial contaminant corridor with very  
21 high levels of volatile organics (BTX) in addition to lower  
22 molecular weight PAH's such as naphthalene. The lower  
23 molecular weight PAH's are more soluble in water and are more  
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1 readily detected in the method of detection utilized in the  
2 1983 study.

3 M. Although analytical methods employed in the 1983  
4 subsurface investigation to measure PAH concentrations were  
5 non-specific as to molecular weights, the levels of PAH's and  
6 BTX compounds in both soil and water matrices are still high,  
7 recognizing the non-specific analytical methods chosen for the  
8 study.

9 N. Offshore sediment sampling was also conducted by the  
10 EPA in the vicinity of the dock and pipeline trestle in 1983.  
11 A large spill of either coal tar or creosote was reported to  
12 have occurred in the 1930's during transfer operations. It was  
13 reported that the heavier than water contaminants coated the  
14 lake bottom, but only a small remnant of this spill was  
15 detected in the EPA study. However, high levels of PAH's  
16 persist in the offshore sediments of Lake Washington in the  
17 Quendall dock area as revealed by the EPA study.

18 O. While participating defendants do not stipulate to  
19 the validity or accuracy of all of the facts stated above, it  
20 does acknowledge that these contentions are premised on inves-  
21 tigatory data sufficient to address the Site in the manner  
22 herein proposed. It is further stipulated that this Court has  
23 jurisdiction and that this Decree should be entered.  
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3 IV. WORK TO BE PERFORMED

4 Exhibit 2 to this Decree is a work plan describing the  
5 remedial work which will take place under this Decree. The  
6 work consists of a preliminary site investigation of the  
7 Quendall Terminal Site located at 4503 Lake Washington Boule-  
8 vard North, Renton, Washington 98055, and legally described on  
9 Exhibit 1 hereto. The preliminary investigation shall consti-  
10 tute one phase of the remedial investigation of the Site.

11 All exhibits to this Decree are integral and enforceable  
12 parts of the Decree. The defendant, by signing this Decree,  
13 agrees to complete the preliminary investigation described in  
14 Exhibit 2 according to the schedule contained therein.

15 V. DESIGNATED PROJECT COORDINATORS

16 On or before the entry of this Decree, Ecology and the  
17 participating defendant shall each designate a project coordi-  
18 nator. Each project coordinator shall be responsible for  
19 overseeing the implementation of this Decree. The Ecology  
20 project coordinator will be Ecology's designated representative  
21 at the Site. To the maximum extent possible, communications  
22 between Ecology and the participating defendant and all docu-  
23 ments, including reports, approvals, and other correspondence  
24 concerning the activities performed pursuant to the terms and  
25 conditions of this Decree, shall be directed through one  
26 project coordinator.

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2 Any participating party may change its respective project  
3 coordinator. To the extent possible, written notification  
4 shall be given to the other party, in writing, at least ten  
5 (10) calendar days prior to the change.

6 The project coordinator for Ecology is:

7 Gail Colburn  
8 NWRO, Ecology  
4350 - 150th Avenue N.E.  
Redmond, WA 98052-5301

9 The project coordinator for the participating defendant  
10 is:

11 Michael Lloyd  
12 Woodward-Clyde Consultants  
2810 One Union Square  
13 Seattle, WA 98101

14 VI. ACCESS

15 Ecology or any Ecology authorized representative shall  
16 have the authority to enter and freely move about all property  
17 at the Site at all reasonable times for the purposes of, inter  
18 alia: inspecting records, operation logs, and contracts  
19 related to the work being performed pursuant to this Decree;  
20 reviewing the progress in carrying out the terms of this  
21 Decree; conducting such tests or collecting samples as Ecology  
22 or the project coordinator may deem necessary; using a camera,  
23 sound recording, or other documentary type equipment to record  
24 work done pursuant to this Decree; and verifying the data  
25 submitted to Ecology by the defendant. Ecology shall, upon

1 request, split any samples that it elects to take during an  
2 inspection unless the participating defendant fails to make  
3 available a representative for the purpose of splitting sam-  
4 ples. All parties with access to the Site pursuant to this  
5 paragraph shall comply with approved health and safety plans.  
6 At all times the participating parties shall comply with  
7 specified sampling protocols established in the Scope of Work,  
8 Exhibit 2.

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10 VII. PUBLIC RECORD NOTICE

11 To the extent the participating defendant is the owner of  
12 the real property on which a release of significant hazardous  
13 substance has occurred, the participating defendant shall place  
14 a notice in the records of real property kept by the county  
15 auditor consistent with RCW 70.105B.160. Prior to transfer of  
16 any legal or equitable interest in all or any portion of the  
17 property, the participating defendant shall serve a copy of  
18 this Decree and a written statement pursuant to RCW  
19 70.105B.160(4) upon any prospective purchaser, lessee, trans-  
20 feree, assignee, or other successor-in-interest of the property  
21 and, at least thirty (30) days prior to any transfer, shall  
22 notify Ecology of said contemplated transfer.

23 VIII. RESOLUTION OF DISPUTES

24 If the participating defendant objects to any Ecology  
25 disapproval, proposed modification, or decision made pursuant  
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1 to this Decree, it shall notify Ecology in writing of its  
2 objections within fourteen (14) calendar days of receipt of  
3 such notice. Thereafter the parties shall confer in an effort  
4 to resolve the dispute. If agreement cannot be reached on the  
5 dispute within fourteen (14) calendar days after receipt by  
6 Ecology of such objections, Ecology shall promptly provide a  
7 written statement of its decision to the participating defen-  
8 dant.

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10 If Ecology's final written decision is unacceptable to the  
11 participating defendant, that defendant has the right to submit  
12 the dispute to the Court for resolution. The parties to this  
13 Consent Decree agree that one department of the superior court  
14 should retain jurisdiction over this case and shall, as neces-  
15 sary, resolve any dispute arising under this Decree. In the  
16 event the participating defendant presents an issue to the  
17 Court for review, the Court shall review the action or decision  
18 of Ecology on the basis of whether such action or decision was  
19 arbitrary and capricious and render a decision based on such  
20 standard of review. Ecology and the participating defendant  
21 agree to only utilize the dispute resolution process in good  
22 faith and agree to expedite, to the extent possible, the  
23 dispute resolution process whenever it is used.

#### 24 IX. OTHER ACTIONS

25 Ecology reserves its rights to institute remedial

1 action(s) at the Site and subsequently pursue cost recovery and  
2 Ecology reserves its rights to issue orders and/or penalties  
3 pursuant to available statutory authority under the following  
4 circumstances:

5 1. Where the defendant fails to adhere to any require-  
6 ment of this Decree;

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

9 3. Upon Ecology's determination that action beyond the  
10 terms of this Decree is necessary to abate an imminent and  
11 substantial endangerment to the public health or welfare or the  
12 environment;

13 4. Upon the occurrence or discovery of a situation  
14 beyond the scope of this Decree as to which Ecology would be  
15 empowered to perform any remedial action or to issue an order  
16 and/or penalty. This Decree is limited in scope to the precise  
17 geographic site described in Exhibit A and to those contami-  
18 nants identified in the reports referenced in the Statement of  
19 Facts upon which this Decree is premised for entry.

20 X. EFFECTIVE DATE

21 This Decree is effective upon the date it is entered by  
22 the superior court.  
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XI. OVERSIGHT COSTS

DEPT. OF ECOLOGY  
CASHIERING SECTION

The participating defendant agrees to reimburse Ecology for Ecology's reasonable and appropriate costs associated with Ecology's activities at the Site conducted during implementation of this Consent Decree. Within ninety (90) days of the end of each fiscal quarter, Ecology will submit to the defendant a statement of Ecology's expenses for the previous quarter. Following receipt of this statement, the defendant shall pay, within ninety (90) days, the required sum to Ecology. The parties have agreed that a proper measure for oversight costs is 15% of the project costs.

XII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Consent Decree will be subject to public notice and comment under RCW 70.105.070(5). Ecology reserves the right to withdraw or withhold its consent to the proposed final order if (1) the comments received by Ecology disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate, and (2) the comments disclosing such facts or considerations were not considered by the state prior to execution of the Consent Decree.

If the Court withholds or withdraws its consent, this Decree shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and

1 without prejudice. In such an event, no party shall be bound  
2 by the requirements of this Decree.  
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5 QUENDALL TERMINALS

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

6  
7 By R.A. Johnson

By Nancy Ellison  
NANCY ELLISON  
Northwest Regional Manager  
Department of Ecology

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9 Date: 9-27-88

Date: 10/25/88

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