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Lakepoint/Kenmore Ind. Park site

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KING COUNTY
SUPERIOR COURT

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PIONEER TOWING COMPANY, INC.,

Respondent.

NO. 01-2-22187-6SEA

CONSENT DECREE

F.g # 2348

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CONSENT DECREE

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OF ECOLOGY

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology), and Pioneer Towing Company, Inc.
4 (Pioneer Towing) is to provide for remedial action at a facility where there has been a release
5 or threatened release of hazardous substances. This Decree requires Pioneer Towing to
6 undertake the following remedial action(s):

7 1. Implement the Cleanup Action Plan, summarized in Section VI of this
8 Decree and attached hereto as Exhibit B, and

9 2. Provide for public participation.

10 Ecology has determined that these actions are necessary to protect public health and the
11 environment.

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

17 C. In signing this Decree, Pioneer Towing agrees to its entry and agrees to be
18 bound by its terms.

19 D. By entering into this Decree, the parties do not intend to discharge nonsettling
20 parties from any liability they may have with respect to matters alleged in the complaint. The
21 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
22 sums expended under this Decree.

23 E. This Decree is not an admission of and shall not be construed against Pioneer
24 Towing as proof of liability or responsibility for any releases of hazardous substances or cost
25

1 for remedial action nor an admission of any facts; provided, however, that the Pioneer Towing
2 shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

3 F. The Court is fully advised of the reasons for entry of this Decree, and good
4 cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
5 FOLLOWS:

6 II. JURISDICTION

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

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

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

17 D. Ecology has given notice to Pioneer Towing, as set forth in RCW
18 70.105D.020(16), of Ecology's determination that Pioneer Towing is a potentially liable person
19 for the Site and that there has been a release or threatened release of hazardous substances at
20 the Site.

21 E. The actions to be taken pursuant to this Decree are necessary to protect public
22 health, welfare, and the environment and to comply with the MTCA and Chapter 173-340
23 WAC.

24 F. Pioneer Towing has agreed to undertake the actions specified in this Decree and
25 consents to the entry of this Decree under the MTCA.

1 G. Ecology has determined that this Decree is not based upon circumstances
2 unique to Pioneer Towing within the meaning of RCW 70.105.040(4)(e)(ii).

3 **III. PARTIES BOUND**

4 This Decree shall apply to and be binding upon the signatories to this Decree (parties),
5 their successors and assigns. The undersigned representative of each party hereby certifies that
6 he or she is fully authorized to enter into this Decree and to execute and legally bind such party
7 to comply with the Decree. Pioneer Towing agrees to undertake all actions required by the
8 terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree.
9 No change in ownership or corporate status shall alter the responsibility of the Pioneer Towing
10 under this Decree. Pioneer Towing shall provide a copy of this Decree to all agents,
11 contractors and subcontractors retained to perform work required by this Decree and shall
12 ensure that all work undertaken by such contractors and subcontractors will be in compliance
13 with this Decree.

14 **IV. DEFINITIONS**

15 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms
16 in this Decree.

17 A. Site: The Site, referred to as Kenmore Industrial Park, is located in King
18 County, southwest of the intersection of NE Bothell Way and 68th Avenue NE. The Site is
19 further described in Exhibit A, a Site map, and Exhibit E, a legal description of the property.

20 B. Parties: Refers to the Washington State Department of Ecology and Pioneer
21 Towing.

22 C. Pioneer Towing: Refers to the Pioneer Towing Company Inc. The registered
23 agent for Pioneer Towing is Mr. Gary Sergeant.

1 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
2 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
3 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

4 V. STATEMENT OF FACTS

5 Ecology makes the following finding of facts without any express or implied
6 admissions by Pioneer Towing.

7 1. Pioneer Towing is the owner of real property located in King County,
8 Washington southwest of the intersection of NE Bothell Way and 68th Avenue NE, and known
9 as the Kenmore Industrial Park (hereinafter the Site).

10 2. The Site is approximately forty-five acres in size and is more particularly
11 described in Exhibits A (Site Map) and E (Legal Description) which are incorporated herein by
12 reference.

13 3. A landfill operated at the Site under King County Unclassified Use permits,
14 numbers P-69-138 and 118-72-P, from 1969 until the landfill closed in 1976. The landfill
15 received primarily wood construction debris. The landfill was limited by permit to receiving
16 wood, rubble, brick, broken concrete, plaster, glass, dirt and gravel. Disposal of paper,
17 garbage, organic material, solid and liquid chemicals, all liquid oil or other petroleum products
18 and car bodies was prohibited as an express condition of permit approval. However, there is
19 evidence that prohibited materials may have been disposed of at the landfill. As described in
20 the Remedial Investigation/Feasibility Study (RI/FS), the landfill material is 15 to 20 feet deep
21 over native peat and organic silt soils and covers most of the Site. Previous Site operations
22 also included various industrial park uses.

23 4. In 1992, Ecology performed a Site Hazard Assessment (SHA) at the Site. The
24 SHA identified several areas of concern: temporary waste piles maintained by Sterling
25 Asphalt, the former landfill, and a truck wash-out impoundment. With the exception of the

1 landfill, the areas of potential concern have been the subject of independent remedial actions
2 and are no longer considered areas of concern.

3 5. AGRA Earth and Environmental (AGRA), the technical consultant for Pioneer
4 Towing, characterized the nature and extent of soil and ground water contamination at the Site
5 in a RI/FS submitted to Ecology in October 1998 and revised in June 2001. Based on the
6 RI/FS, Ecology finds that there is a release or threat of release of "hazardous substances" from
7 the landfill, specifically, that the landfill contains hazardous substances including but not
8 limited to lead, arsenic, and possibly petroleum hydrocarbons at levels above MTCA cleanup
9 standards that pose a threat to human health and the environment.

10 6. Based on the RI, the following contaminants of concern (COC) were selected
11 for evaluation in the FS:

12 a. Lead and arsenic were detected above their respective Method B soil
13 cleanup calculations based on protection of groundwater, but dissolved arsenic concentrations
14 did not exceed chronic aquatic criteria for surface water; and

15 b. Diesel- and oil-range TPH were detected using standard analysis techniques
16 at levels slightly above the Method A cleanup standard in soil and groundwater samples from
17 across the southern filled two-thirds of the Site. Use of the Draft TPH Method silica gel
18 cleanup procedure to eliminate natural hydrocarbons from groundwater samples, however,
19 resulted in no petroleum hydrocarbon detection above the MTCA Method A cleanup standard.

20 The proposed cleanup standards for the COCs (lead, arsenic, and petroleum
21 hydrocarbons) are presented in the CAP. The groundwater cleanup levels are currently met at
22 the proposed point of compliance.

23 7. The Site is included on Ecology's Hazardous Site List, and Ecology has
24 concluded that remedial action is required at the Site.

1 8. Pioneer Towing Company, the owner of the Site, voluntarily accepts status as a
2 potentially liable person pursuant to WAC 173-340-500(5).

3 9. Wellington Lakepointe proposes to redevelop the Site for residential and
4 commercial uses.

5 VI. WORK TO BE PERFORMED

6 This Decree contains a program designed to protect public health, welfare and
7 the environment from the known release, or threatened release, of hazardous substances or
8 contaminants at, on, or from the Kenmore Industrial Park Site. Pioneer Towing agrees to take
9 the remedial actions which are described in detail in the Cleanup Action Plan (CAP), Exhibit B
10 to this Decree, and to perform all work in accordance with Chapter 173-340 WAC, as provided
11 below. The work to be performed will be carried out in conjunction with redevelopment of the
12 Site, occur in phases, and be implemented in accordance with the Schedule set out in Exhibit
13 C. If redevelopment of the entire site is completed, Pioneer Towing shall complete the cleanup
14 described in the CAP for the entire Site and obtain Ecology certification for all phases in
15 accordance with Section XXVI of this Decree. If redevelopment of the Site is initiated but is
16 not completed, Pioneer Towing shall complete the cleanup described in the CAP for the
17 redeveloped phases, obtain Ecology certification of the redeveloped phase(s) in accordance
18 with Section XXVI of this Decree, and implement the remedial actions set forth in the CAP for
19 continued industrial use for the portion of the Site that remains industrial. If the Site is not
20 redeveloped to commercial/residential uses and remains entirely industrial, Pioneer Towing
21 shall implement only the remedial actions set forth in the CAP for continued industrial use. A
22 summary of the work program to be performed is as follows:

23 A. Task 1: Develop engineering design for the development project structures that
24 will form and constitute the landfill cap:

25 1. Submit a Draft Engineering Design Report to Ecology;

1 2. Submit a Final Engineering Design Report to Ecology.

2 B. Task 2: Implement the Cleanup Action Plan:

3 1. Construct in phases the development project structures that form the
4 engineered cap over portions of the upland area of the property;

5 2. Implement physical measures in areas not yet redeveloped and in areas
6 not currently under construction to limit access and potential exposure to landfilled debris at
7 the Site.

8 3. Implement Site modifications outside the engineered cap that reflect
9 habitat preservation and enhancement goals;

10 4. Implement institutional controls, including a deed notice;

11 5. Implement a worker safety and health plan per WAC 173-340-810(2);

12 6. Record a deed restriction as shown in Exhibit F (Restrictive Covenant)
13 for the completion of each phase; and

14 7. Conduct long-term groundwater monitoring at the points of compliance
15 in accordance with the Ecology Environmental Information Data Submittal Guide.

16 C. Task 3: Provide for public participation:

17 1. Implement the Public Participation Plan.

18 D. Task 4: Prepare and submit to Ecology bimonthly progress reports:

19 1. Include in the bimonthly progress reports a summary of actions taken,
20 problems encountered, and progress made on the work during the past two months;

21 2. Include in the bimonthly progress reports a summary of anticipated
22 activities for upcoming months and explanation of any problems with meeting the project
23 Schedule.

24 E. Task 5: Submit groundwater sampling data to Ecology.

25

1 Pioneer Towing agrees not to perform any remedial actions outside the scope of this
2 Decree unless the parties agree to amend the Cleanup Action Plan or this Section to cover these
3 actions. All work conducted under this Decree shall be done in accordance with ch. 173-340
4 WAC unless otherwise provided herein.

5 VII. DESIGNATED PROJECT COORDINATORS

6 The project coordinator for Ecology is:

7 Ching-Pi Wang
8 Department of Ecology, NW Region
9 3190 160th Avenue SE
10 Bellevue, WA 98008-5452
11 Telephone (425) 649-7135

12 The project coordinator for Pioneer Towing is:

13 Gary Sergeant
14 P.O. Box 82298
15 Kenmore, WA 98028
16 Telephone (425) 486-2756

17 Each project coordinator shall be responsible for overseeing the implementation of this
18 Decree. The Ecology project coordinator will be Ecology's designated representative at the
19 Site. To the maximum extent possible, communications between Ecology and Pioneer Towing
20 and all documents, including reports, approvals, and other correspondence concerning the
21 activities performed pursuant to the terms and conditions of this Decree, shall be directed
22 through the project coordinators. The project coordinators may designate, in writing, working
23 level staff contacts for all or portions of the implementation of the remedial work required by
24 this Decree. The project coordinators may agree to minor modifications to the work to be
25 performed without formal amendments to this Decree. Minor modifications will be
documented in writing by Ecology.

1 Any party may change its respective project coordinator without amendment of this
2 Decree. Written notification shall be given to the other parties at least ten (10) calendar days
3 prior to the change.

4 VIII. PERFORMANCE

5 All work performed pursuant to this Decree shall be under the direction and
6 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
7 experience and expertise in hazardous waste site investigation and cleanup. Any construction
8 work must be under the supervision of a professional engineer. Pioneer Towing shall notify
9 Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of
10 any contractors and subcontractors to be used in carrying out the terms of this Decree, in
11 advance of their involvement at the Site.

12 IX. ACCESS

13 Ecology or any Ecology authorized representatives shall have the authority to enter and
14 freely move about all property at the Site at all reasonable times for the purposes of, *inter alia*,
15 inspecting records, operation logs, and contracts related to the work being performed pursuant
16 to this Decree; reviewing Pioneer Towing's progress in carrying out the terms of this Decree;
17 conducting such tests or collecting such samples as Ecology may deem necessary; using a
18 camera, sound recording, or other documentary type equipment to record work done pursuant
19 to this Decree; and verifying the data submitted to Ecology by Pioneer Towing. Without
20 limitation on Ecology's rights under this section, Ecology will provide Pioneer Towing
21 advance notice of its entry onto the Site when feasible. All parties with access to the Site
22 pursuant to this paragraph shall comply with approved health and safety plans. Ecology shall
23 make available to Pioneer Towing the results of all sampling, laboratory reports, photographs,
24 videos, and other test results generated by Ecology or on its behalf.

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

2 With respect to the implementation of this Decree, Pioneer Towing shall make the
3 results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf
4 available to Ecology and shall submit these results in accordance with Section XI of this
5 Decree.

6 In accordance with WAC 173-340-840(5), ground water sampling data shall be
7 submitted according to the Ecology Environmental Information Data Submittal Guide (and any
8 updates or revisions thereto, including succeeding publications). These submittals shall be
9 provided to Ecology in accordance with Section XI of this Decree.

10 If requested by Ecology, Pioneer Towing shall allow split or duplicate samples to be
11 taken by Ecology and/or its authorized representatives of any samples collected by Pioneer
12 Towing pursuant to the implementation of this Decree. Pioneer Towing shall notify Ecology
13 seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall,
14 upon request, allow split or duplicate samples to be taken by Pioneer Towing or its authorized
15 representatives of any samples collected by Ecology pursuant to the implementation of this
16 Decree provided it does not interfere with the Department's sampling. Without limitation on
17 Ecology's rights under Section IX, Ecology shall strive to notify Pioneer Towing seven (7)
18 days in advance of any sample collection activity.

19 **XI. PROGRESS REPORTS**

20 During engineering design and remedial action construction, Pioneer Towing shall
21 submit to Ecology written monthly progress reports which describe the actions taken during
22 the previous month to implement the requirements of this Decree. The progress reports shall
23 include the following:

- 24 A. A list of on-site activities that have taken place during the reporting period;

1 B. Detailed description of any deviations from required tasks not otherwise
2 documented in project plans or amendment requests;

3 C. Description of all deviations from the schedule (Exhibit C) during the current
4 reporting period and any planned deviations in the upcoming reporting period;

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

7 E. All validated data (including laboratory analysis) received by Pioneer Towing
8 during the past reporting period and an identification of the source of the sample; and

9 F. A list of deliverables for the upcoming reporting period if different from the
10 schedule.

11 All progress reports shall be submitted by the tenth day of the reporting period in which
12 they are due after the effective date of this Decree. Unless otherwise specified, progress
13 reports and any other documents submitted pursuant to this Decree shall be sent to Ecology's
14 project coordinator. The frequency of submission of progress reports following remedial
15 action construction shall be reduced to the frequency required in the monitoring plan.

16 XII. RETENTION OF RECORDS

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

1 **XIII. TRANSFER OF INTEREST IN PROPERTY**

2 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
3 or other interest in any portion of the Site shall be consummated without provision for
4 continued operation and maintenance of any containment system, treatment system, and
5 monitoring system installed or implemented pursuant to this Decree.

6 Prior to transfer of any legal or equitable interest in all or any portion of the property,
7 Pioneer Towing shall provide either a copy of the Consent Decree or a written disclosure
8 statement of the status of the Site that includes notice of the availability of and instructions for
9 obtaining a copy of the Consent Decree to any prospective purchaser, lessee, transferee,
10 assignee, or other successor in interest of the property. Pioneer Towing shall provide a copy of
11 the Consent Decree to any purchaser or transferee that undertakes responsibility for continued
12 operation and maintenance of any containment system, treatment system, or monitoring system
13 installed or implemented pursuant to this Decree. For all other purchasers, lessees, transferees,
14 assignees, or other successors in interest of the property, a disclosure statement shall be
15 contained in the real estate purchase agreement, the lease agreement, the Public Offering
16 Statement ("POS"), or other applicable transfer document. The disclosure statement shall
17 contain language substantially to the effect that: 1) the property is a former landfill that is
18 subject to a consent decree, 2) remedial actions were undertaken to address environmental
19 concerns associated with the former landfill, 3) property owners and other persons holding an
20 interest in the property may not interfere with the remedy or measures related to the cleanup,
21 and 4) copies of the Consent Decree are available by request. Pioneer Towing shall also file a
22 copy of the Consent Decree with the property record. Pioneer Towing shall notify Ecology at
23 least thirty (30) days prior to any transfer of a fee interest in the Property, excluding any
24 transfers of a fee interest in a condominium unit, a lease or rental of an apartment unit, or a
25 commercial lease of less than 50,000 square feet.

1 within thirty (30) days after any of the following: (i) Pioneer Towing receives written notice
2 that Ecology does not agree to submit the dispute to mediation; (ii) after mediation, Pioneer
3 Towing receives a written statement from Ecology that is unacceptable to Pioneer Towing; or
4 (iii) Ecology fails to issue the final decision described earlier in this paragraph. The parties
5 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve
6 any dispute arising under this Decree.

7 C. For disputes that involve Ecology's investigative and remedial decisions, and
8 others covered by RCW 70.105D.060, the Court shall uphold Ecology's decisions unless the
9 decisions were arbitrary and capricious or the Court determines that that another standard of
10 review is appropriate and Ecology's decisions are not in accord with such standard.

11 D. The parties agree to only utilize the dispute resolution process in good faith and
12 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
13 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
14 the other party may seek sanctions.

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

18 **XV. AMENDMENT OF CONSENT DECREE; ADDING PARTIES**
19 **TO THE DECREE**

20 Except for an extension granted pursuant to Section XVI below or technical revisions
21 to Section VI (Work to be Performed) as detailed in the CAP (Exhibit B) that affect the nature
22 or scope of remedial work and do not represent a substantial change, this Decree may only be
23 amended by a written stipulation among the parties to this Decree that is entered by the Court
24 or by order of the Court. Such amendment shall become effective upon entry by the Court.
25 Agreement to amend shall not be unreasonably withheld by any party to the Decree.

1 Pioneer Towing shall submit any request for an amendment to Ecology for approval.
2 Ecology shall indicate its approval or disapproval in a timely manner after the request for
3 amendment is received. If the amendment to the Decree is substantial, Ecology will provide
4 public notice and opportunity for comment. Reasons for the disapproval shall be stated in
5 writing. If Ecology does not agree to any proposed amendment, the disagreement may be
6 addressed through the dispute resolution procedures described in Section XIV of this Decree.
7 Technical revisions to Section VI or the CAP affecting the nature or scope of remedial work
8 that do not represent a substantial change, may be made by mutual agreement of the parties or
9 by procedures established in the CAP without approval of the Court.

10 When Pioneer Towing contemplates conveyance of the Site, or a portion of the Site, to
11 a proposed successor in interest that agrees to undertake compliance with the terms and
12 conditions of this Decree and to become a party to this Decree, Pioneer Towing may request
13 that the Decree be amended to add such successor in interest as a party to the Decree. Ecology
14 shall consent to the amendment adding the proposed successor in interest as a party to the
15 Decree unless it finds that Pioneer Towing or the proposed successor in interest are in violation
16 or will be in violation of a material term of the Decree. An amendment to make a proposed
17 successor in interest a party to the Decree shall not by itself require public notice or comment.

18 In the event that a successor in interest becomes a party to this Decree, Ecology shall look first
19 to such successor for performance of the requirements of this Decree, unless Ecology
20 determines that such successor will not comply with the requirements of this Decree.

21 XVI. EXTENSION OF SCHEDULE

22 A. An extension of schedule shall be granted only when a request for an extension
23 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
24 deadline for which the extension is requested, and good cause exists for granting the extension.
25

1 All extensions shall be requested in writing. The request shall specify the reason(s) the
2 extension is needed.

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

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

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

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

18 3. Endangerment as described in Section XVII; or

19 4. Other circumstances agreed to by Ecology to be exceptional or
20 extraordinary.

21 However, neither increased costs of performance of the terms of the Decree nor
22 changed economic circumstances shall be considered circumstances beyond the reasonable
23 control of Pioneer Towing.

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

1 Decree or whether the work stoppage should be continued until the danger is abated. Pioneer
2 Towing shall notify Ecology's project coordinator as soon as possible, but no later than twenty-
3 four (24) hours after such stoppage of work, and thereafter provide Ecology with
4 documentation of the basis for the work stoppage. If Ecology disagrees with Pioneer Towing's
5 determination, it may order Pioneer Towing to resume implementation of this Decree. If
6 Ecology concurs with the work stoppage, Pioneer Towing's obligations shall be suspended and
7 the time period for performance of that work, as well as the time period for any other work
8 dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of
9 this Decree, for such period of time as Ecology determines is reasonable under the
10 circumstances. Any disagreements pursuant to this section shall be resolved through the
11 dispute resolution procedures in Section XIV.

12 **XVIII. OTHER ACTIONS**

13 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently
14 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take
15 any other enforcement action pursuant to available statutory authority under the following
16 circumstances:

- 17 1. Where Pioneer Towing fails, after notice, to comply with any
18 requirement of this Decree;
- 19 2. In the event or upon the discovery of a release or threatened release not
20 addressed by this Decree;
- 21 3. Upon Ecology's determination that action beyond the terms of this
22 Decree is necessary to abate an emergency situation which threatens public health or welfare or
23 the environment; or
- 24 4. Upon the occurrence or discovery of a situation beyond the scope of this
25 Decree as to which Ecology would be empowered to perform any remedial action or to issue

1 an order and/or penalty, or to take any other enforcement action. This Decree is limited in
2 scope to the geographic Site described in Exhibit A and Exhibit E and to those contaminants
3 which Ecology knows to be at the Site when this Decree is entered.

4 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
5 resources resulting from the release or threatened release of hazardous substances from
6 Kenmore Industrial Park.

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

9 XIX. RESERVATION OF RIGHTS

10 Pioneer Towing reserves all of its rights and defenses with respect to any actions
11 against Pioneer Towing that are outside the scope of this Decree. By agreeing to this Decree,
12 Pioneer Towing and Ecology agree to abide by its terms. The execution and performance of
13 the Decree is not, however, an admission by Pioneer Towing of any fact or liability for any
14 purpose.

15 XX. INDEMNIFICATION

16 Pioneer Towing agrees to indemnify and save and hold the State of Washington, its
17 employees, and agents harmless from any and all claims or causes of action for death or
18 ~~injuries to persons or for loss or damage to property arising from or on account of acts or~~
19 omissions of Pioneer Towing, its officers, employees, agents, or contractors in entering into
20 and implementing this Decree. However, the Defendant shall not indemnify the State of
21 Washington nor save nor hold its employees and agents harmless from any claims or causes of
22 action arising out of the State of Washington's, or any of its agencies', status as a potentially
23 liable person with respect to contamination at the Site or from any claims or causes of action
24 arising out of the intentional misconduct or negligent acts or omissions of the State of
25

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

3 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

4 A. All actions carried out by Pioneer Towing pursuant to this Decree shall be done
5 in accordance with all applicable federal, state, and local requirements, including requirements
6 to obtain necessary permits, except as provided in paragraph B of this section.

7 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
8 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
9 local government permits or approvals for the remedial action under this Decree that are
10 known to be applicable at the time of entry of the Decree have been included in Exhibit G, and
11 are binding and enforceable requirements of the Decree. Pursuant to RCW 70.105D.090(1),
12 Pioneer Towing is exempt from the procedural requirements of 70.94, 70.95, 70.105, 75.20,
13 90.48, and 90.58 RCW and the procedural requirements of any laws requiring or authorizing
14 local government permits or approvals for the remedial action.

15 Pioneer Towing has an obligation to determine whether additional permits or approvals
16 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
17 this Decree. In the event either Pioneer Towing or Ecology determines that additional permits
18 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
19 action under this Decree, it shall promptly notify the other party of this determination.
20 Ecology shall determine whether Ecology or Pioneer Towing shall be responsible to contact
21 the appropriate state and/or local agencies. If Ecology so requires, Pioneer Towing shall
22 promptly consult with the appropriate state and/or local agencies and provide Ecology with
23 written documentation from those agencies of the substantive requirements those agencies
24 believe are applicable to the remedial action. Ecology shall make the final determination on
25 the additional substantive requirements that must be met by Pioneer Towing and on how

1 Pioneer Towing must meet those requirements. Ecology shall inform Pioneer Towing in
2 writing of these requirements. Once established by Ecology, the additional requirements shall
3 be enforceable requirements of this Decree. Pioneer Towing shall not begin or continue the
4 remedial action potentially subject to the additional requirements until Ecology makes its final
5 determination. Any disagreements pursuant to this section shall be resolved through the
6 dispute resolution procedures in Section XIV.

7 Ecology shall ensure that notice and opportunity for comment is provided to the public
8 and appropriate agencies prior to establishing the substantive requirements under this section.

9 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
10 exemption from complying with the procedural requirements of the laws referenced in RCW
11 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
12 for the State to administer any federal law, the exemption shall not apply in such circumstances
13 and Pioneer Towing shall comply with both the procedural and substantive requirements of the
14 particular law referenced in RCW 70.105D.090(1), including any requirement to obtain
15 permits.

16 **XXII. REMEDIAL AND INVESTIGATIVE COSTS**

17 Pioneer Towing agrees to pay costs for work performed by Ecology or its contractors
18 for, or on, the Site under Ch. 70.105D-RCW both prior to and subsequent to the issuance of
19 this Decree for investigations, remedial actions, and Decree preparation, negotiations,
20 oversight and administration. Ecology costs shall include costs of direct activities and support
21 costs of direct activities as defined in WAC 173-340-550(2). Pioneer Towing agrees to pay the
22 required amount within ninety (90) days of receiving from Ecology an itemized statement of
23 costs that includes a summary of costs incurred, an identification of involved staff, and the
24 amount of time spent by involved staff members on the project. A statement of work
25 performed will be provided upon request. Itemized statements shall be prepared quarterly.

1 Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement and
2 statement of work performed will result in interest charges at the rate specified in RCW
3 43.17.240. Pioneer Towing reserves the right to review and approve any charges prior to
4 payment. Any dispute regarding costs shall be subject to dispute resolution pursuant to Section
5 XIV. Pioneer Towing reserves the right to pay the undisputed portion of an invoice and not
6 pay the disputed portion.

7 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

8 If Ecology determines that Pioneer Towing has failed without good cause to implement
9 the remedial action, Ecology may, after notice and reasonable opportunity for Pioneer Towing
10 to cure the failure, perform any or all portions of the remedial action that remain incomplete.
11 If Ecology performs all or portions of the remedial action because of Pioneer Towing's failure
12 to comply with its obligations under this Decree, Pioneer Towing shall reimburse Ecology for
13 the costs of doing such work in accordance with Section XXII, provided that Pioneer Towing
14 is not obligated under this section to reimburse Ecology for costs incurred for work
15 inconsistent with or beyond the scope of this Decree.

16 **XXIV. FIVE YEAR REVIEW**

17 As ground water monitoring continues at the Site, the parties agree to review the data
18 accumulated as a result of Site monitoring as often as is necessary and appropriate under the
19 circumstances. The parties agree to meet to discuss the Site status every five years upon
20 request of either Ecology or Pioneer Towing. Ecology reserves the right to seek further
21 remedial action at the Site under appropriate circumstances if necessary to protect public health
22 and the environment. This provision shall remain in effect for the duration of the Decree.

23 **XXV. PUBLIC PARTICIPATION**

24 Prior to entry of this Decree, Pioneer Towing and Ecology prepared and implemented a
25 Public Participation Plan for the Site, attached hereto as Exhibit D, that complied with MTCA

1 and Chapter 173-340 WAC. Ecology shall maintain the responsibility for public participation
2 at the Site. However, Pioneer Towing shall continue to cooperate with Ecology and, if agreed
3 to by Ecology, shall:

4 A. Prepare drafts of public notices and fact sheets at important stages of the
5 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
6 Study reports and engineering design reports. Ecology will finalize (including editing if
7 necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's
8 presentations and meetings;

9 B. Notify Ecology's project coordinator prior to the preparation of all press releases
10 and fact sheets, and before major meetings with the interested public and local governments.
11 Likewise, Ecology shall notify Pioneer Towing prior to the issuance of all press releases and
12 fact sheets, and before major meetings with the interested public and local governments;

13 C. Participate in public presentations on the progress of the remedial action at the
14 Site. Participation may be through attendance at public meetings to assist in answering
15 questions, or as a presenter;

16 D. Provide Ecology with copies of documents for placement in information
17 repositories to be located at the Kenmore Public Library and Ecology's Northwest Regional
18 Office at 190-160th Avenue SE, Bellevue, Washington 98008-5452. At a minimum, copies of
19 all public notices, fact sheets, and press releases; all quality assured ground water, surface
20 water, soil sediment, and air monitoring data; remedial action plans, supplemental remedial
21 planning documents, and all other similar documents relating to performance of the remedial
22 action required by this Decree shall be promptly placed in these repositories.

23 XXVI. CERTIFICATION OF PHASES OF CLEANUP

24 In order to facilitate the timely redevelopment of the Site, Pioneer Towing or any other
25 party to the Decree may request a certification of completion from Ecology for each phase of

1 the cleanup. Within sixty (60) days of receiving such a request, Ecology shall certify in
2 writing that cleanup activities required pursuant to the CAP have been satisfactorily completed
3 for that phase of the cleanup or provide written notice of any additional work required to be
4 completed in order to satisfy the requirements of the Decree.

5 **XXVII. DURATION OF DECREE**

6 This Decree shall remain in effect and the remedial program described in the Decree
7 shall be maintained and continued until Pioneer Towing has received written notification from
8 Ecology that the requirements of this Decree have been satisfactorily completed. Ecology shall
9 issue such notification within sixty (60) days after the requirements of this Decree have been
10 satisfactorily completed. Thereafter, the parties within thirty (30) days shall jointly request
11 that the Court vacate this Consent Decree. The provisions set forth in Section XXX
12 (Contribution Protection), Section XXIX (Covenant Not to Sue), Section XX
13 (Indemnification), and other such continuing rights of Pioneer Towing, its successors in
14 interest, or Ecology under this Decree shall survive the termination of the Decree pursuant to
15 this Section. Any disagreements pursuant to this section shall be resolved through the dispute
16 resolution procedures in Section XIV.

17 **XXVIII. CLAIMS AGAINST THE STATE**

18 Pioneer Towing hereby agrees that it will not seek to recover any costs accrued in
19 implementing the remedial action required by this Decree from the State of Washington or any
20 of its agencies, except to the extent that the State of Washington or any of its agencies is a
21 potentially liable person with respect to contamination at the Site; and further, that the Pioneer
22 Towing will make no claim against the State Toxics Control Account or any Local Toxics
23 Control Account for any costs incurred in implementing this Decree. Except as provided
24 above, however, Pioneer Towing expressly reserves its right to seek to recover any costs
25 incurred in implementing this Decree from any other potentially liable person.

1 2. In the event new information becomes available regarding factors
2 previously unknown to Ecology at the time of entry of this Decree, including the nature or
3 quantity of hazardous substances at, or originating from, the Site, and Ecology determines that
4 these factors present a previously unknown threat to human health or environment requiring
5 further remedial action at the Site; provided that if this paragraph becomes operative Ecology
6 will allow Pioneer Towing to propose the further action where such proposal can be made
7 promptly and without endangering human health or the environment; or

8 3. Upon Ecology's determination that action beyond the terms of this
9 Decree is necessary to abate an emergency situation that threatens public health or welfare or
10 the environment.

11 E. Applicability: The Covenant Not to Sue set forth above shall have no
12 applicability whatsoever to:

- 13 1. Criminal liability;
- 14 2. Liability for damages to natural resources;
- 15 3. Liability for contaminated sediments;
- 16 4. Liability for cleanup of contiguous properties owned by Pioneer
17 Towing; or
- 18 5. Any Ecology action against potentially liable persons not a party to this
19 Decree, including cost recovery.

20 XXX. CONTRIBUTION PROTECTION

21 A. By signing this Decree, the parties intend that Pioneer Towing will receive full
22 protection against claims for contribution for matters addressed in this Decree as is provided in
23 RCW 70.105D.040(4)(d) or as is otherwise provided by law.

1 B. In accordance with RCW 70.105D.040(4)(f), this Section XXX shall apply to
2 any owners or operators who are not subject to enforcement by the State under RCW
3 70.105D.040(4)(e).

4 XXXI. EFFECTIVE DATE

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

6 XXXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

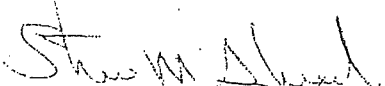
7 This Decree has been the subject of public notice and comment under RCW
8 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to
9 a more expeditious cleanup of hazardous substances at the Site.

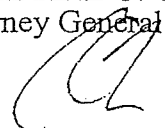
10 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
11 at the option of any party and the accompanying Complaint shall be dismissed without costs
12 and without prejudice. In such an event, no party shall be bound by the requirements of this
13 Decree.

14 The undersigned parties enter into this Consent Decree on the date specified below.

15 STATE OF WASHINGTON
16 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

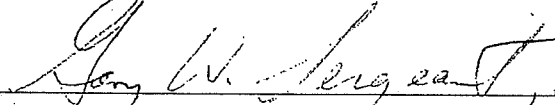
17 
18 STEVE ALEXANDER, Section Head
19 Toxics Cleanup Program, NW Regional Office


ANDREW A. FITZ, WSBA #22169
Assistant Attorney General

20 DATED: 8-9-01

DATED: 8/13/01

21 PIONEER TOWING COMPANY, INC.

22 
23 GARY W. BERGANT, PRESIDENT

24 DATED: 8/7/01

SO ORDERED this _____ day of _____ 2001.

CARLOS VELATEGUI

JUDGE
King County Superior Court

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