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Honorable Barbara Rothstein

Per our conversation

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
 Plaintiff,)
 and,)
 STATE OF WASHINGTON, DEPARTMENT)
 OF ECOLOGY,)
 Plaintiff in Intervention,)
 v.)
 MARINE POWER AND EQUIPMENT)
 COMPANY, INC., and WFI INDUSTRIES,)
 INC.,)
 Defendants.)

No. C85-382R

JOINT MOTION FOR
MODIFICATION AND
TERMINATION OF
CONSENT DECREE

COME NOW plaintiffs UNITED STATES OF AMERICA on behalf of
 the Environmental Protection Agency ("EPA") and the STATE OF
 WASHINGTON, DEPARTMENT OF ECOLOGY, ("Ecology"), defendant UNITED
 MARINE SHIPBUILDING, INC., successor in interest to Marine Power
 and Equipment Company, Inc. and WFI Industries, Inc., and
 NORTHLAKE SHIPYARD, INC., purchaser of certain assets previously
 owned by the defendants, (collectively "the Parties") by and
 through their undersigned attorneys, and move for modification
 and termination of the Consent Decree entered January 28, 1988.

This motion is supported by the following stipulated facts:

1 1. On March 8, 1985, the United States, and Ecology by
2 intervention, filed a complaint in federal district court,
3 alleging civil claims for violations of the Clean Water Act, 33
4 U.S.C. § 1311, and the Refuse Act, 33 U.S.C. § 407 ("Complaint")
5 against MARINE POWER AND EQUIPMENT, INC. and WFI INDUSTRIES,
6 INC., United States and State of Washington v. Marine Power and
7 Equipment Company, Inc., No. C85-382R.

8 2. On January 28, 1988, the United States, Ecology and
9 Defendants resolved the matters alleged in the Complaint by entry
10 into a consent decree ("Consent Decree") which imposed
11 obligations on Defendants and on their successors in interest for
12 removal and disposal of spent sand blasting debris and other
13 pollutants resulting from Defendants' operations of a ship
14 painting and repair facility, located at 1441 Northlake Avenue,
15 Seattle, Washington, on the north shore of Lake Union
16 ("facility"). Pursuant to the Consent Decree, a copy of the
17 requirements of the Consent Decree is recorded as part of the
18 deed for the facility.

19 3. At the time of entry of the Consent Decree, Defendants
20 had petitioned the United States Bankruptcy Court, Western
21 District of Washington, for protection under Chapter 11 of the
22 United States Bankruptcy Code, 11 U.S.C. §§ 1101 et seq., Case
23 No. 86-1091. Pursuant to a reorganization plan adopted in that
24 bankruptcy proceeding, United Marine Shipbuilding, Inc. ("United
25 Marine") became the reorganized successor in interest to
26 Defendants and the owner of the facility. Defendants had not

1 fulfilled the obligations of the Consent Decree prior to the
2 reorganization in bankruptcy.

3 4. On January 21, 1994, United Marine filed for protection
4 under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101 et
5 seq., in the United States Bankruptcy Court, Western District of
6 Washington, Case No. 94-00542. As of that date, United Marine
7 had not fulfilled the obligations of the Consent Decree and does
8 not have sufficient unencumbered assets to do so. On March 21,
9 1994, Michael B. McCarty was appointed Trustee in Bankruptcy for
10 United Marine.

11 5. Northlake has entered into an asset purchase agreement
12 for the purchase of the facility from the United Marine estate in
13 bankruptcy, which purchase would cause Northlake to become the
14 successor in interest to Defendants for purposes of the
15 obligations imposed by the Consent Decree.

16 6. Northlake has entered into a prospective purchaser
17 agreement with Ecology under the Washington State Model Toxics
18 Control Act ("MTCA"), which requires it to make a cash payment of
19 \$400,000 to fund cleanup of the contamination resulting from
20 Defendants' operations of the facility, and to deposit a
21 percentage of future profits into a fund dedicated to cleanup of
22 the contamination for a period of up to 15 years, or to complete
23 the cleanup required by the Consent Decree. The prospective
24 purchaser agreement was filed as a consent decree in the State of
25 Washington Superior Court for King County, and was entered by the
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1 court on [DATE], after a public comment period and a public
2 hearing. The prospective purchaser agreement is attached hereto.

3 7. Pursuant to the prospective purchaser agreement,
4 Northlake deposited \$400,000 into an escrow account on [DATE].

5 8. In consideration of Northlake's agreement to fund the
6 cleanup under the terms of the prospective purchaser agreement;
7 Ecology has covenanted not to sue Northlake under MTCA for the
8 present contamination at the facility or for contamination
9 resulting from the operations of the facility by Northlake's
10 predecessors.

11 9. Entry by Northlake into the prospective purchaser
12 agreement with Ecology shall be deemed to discharge the
13 obligations of Northlake under the Consent Decree.

14 THEREFORE, in consideration of Northlake's entry into the
15 prospective purchaser agreement, which agreement has been entered
16 as a consent decree by the State of Washington Superior Court for
17 King County, the parties hereby move this court for modification
18 of paragraph X ("Termination") of the consent decree, to read
19 "[t]he provisions of this Consent Decree shall cease when
20 Northlake enters into, and the State of Washington Superior Court
21 approves by final order, a prospective purchaser agreement with
22 Ecology under the Washington State Model Toxics Control Act
23 setting forth the funding for removal and disposal activities
24 required by Paragraph IV". The parties move additionally for
25 termination of the consent decree in accordance with the
26 stipulated facts recited in this motion.

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28 JOINT MOTION FOR MODIFICATION - Page 4
AND TERMINATION OF CONSENT DECREE

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6 NORTHLAKE SHIPYARD, INC.

7 FORSH & MCCARTY

8 By _____
9 Michael B. McCarty

10 Trustee in Bankruptcy for Defendant
11 UNITED MARINE SHIPBUILDING, INC.

12 UNITED STATES DEPARTMENT OF JUSTICE

13 By _____
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18 WASHINGTON ATTORNEY GENERAL'S OFFICE

19 By _____
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23 Of Counsel: Tim Hamlin,
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