

Manne Power

CO TO JUDGE

Judge Rothstein

... copy of the
... document to which this
... is attached, to the attorneys of
... of plaintiff, defendant, on the
5th day of Nov. 1987

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AUG 07 1987
FEB 24 1988

UNITED STATES ATTORNEY
Laura Weiss

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
BY SB

JAN 29 1988

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
BY SB

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ENTERED
ON DOCKET

FEB - 1 1988

By Deputy SB

cc:c.

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

CONSENT DECREE

1988 FEB - 3 18:02

FILED

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this case on March 8, 1985, under Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and the Refuse Act, 33 U.S.C. § 407, alleging that the defendants illegally discharged pollutants and refuse

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ATTORNEY GENERAL'S OFFICE
ECOLOGY DIV.
OLYMPIA

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

CONSENT DECREE - 1
(0499F)

Handwritten initials

1 from ship repair facilities into the Duwamish River and Lake
2 Union in Seattle, Washington; and

3 WHEREAS, the State of Washington Department of Ecology
4 ("Ecology"), as plaintiff in intervention, has alleged that
5 defendants have violated Section 301(a) of the Clean Water Act,
6 33 U.S.C. § 1311(a), the Refuse Act, 33 U.S.C. § 407, and RCW
7 90.48.080 and 90.48.160; and

8 WHEREAS, the United States and the State of Washington and
9 the defendants agree that the defendants shall not discharge
10 without a permit into the Duwamish River and Lake Union spent
11 sandblasting abrasives, chipped paint, rust and other debris and
12 shall conduct all of their operations at their Duwamish River and
13 Lake Union facilities in compliance with the Clean Water Act and
14 the Refuse Act; and

15 WHEREAS, defendants have received from Ecology the required
16 National Pollutant Discharge Elimination System ("NPDES") permit;

17 WHEREAS, defendants have been assessed a fine of Two Hundred
18 Thousand Dollars (\$200,000.00) in a related criminal matter,
19 namely, United States of America v. Richard C. Woeck, et al.,
20 CR86-128D; and

21 WHEREAS, the defendants agree to remove and dispose of the
22 spent sandblasting abrasives, chipped paint, rust, and other
23 debris which has accumulated beneath their drydock at the Lake
24 Union facility; and

25 WHEREAS, defendants are debtors in possession as defined by
26 Title 11 of the United States Code and are subject to the

1 jurisdiction of the United States Bankruptcy Court for the
2 Western District of Washington ("Bankruptcy Court") and the
3 scrutiny of all their creditors; and

4 WHEREAS, both plaintiffs and the defendants recognize that
5 the public interest is best served by the entry of this Consent
6 Decree and this settlement avoids difficult and expensive
7 litigation; and

8 WHEREAS, the plaintiffs and the defendants, by their
9 undersigned representatives, have each agreed to the making of
10 this Consent Decree:

11 NOW, THEREFORE, it is Ordered as follows:

12
13 I

14 JURISDICTION

15 This Court has subject matter jurisdiction over this matter
16 and personal jurisdiction over the signatories consenting
17 hereto. Each signatory submits itself to the jurisdiction of the
18 Court for all matters relating to this Consent Decree.

19
20 II

21 PARTIES BOUND

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

1 document. Defendants shall, within five (5) days of the entry of
2 this Consent Decree, attach a copy of this Consent Decree to the
3 deed to the Lake Union and Duwamish River facilities and real
4 property which are the subjects of the Complaint in this case.
5 Upon the termination of the Consent Decree, the Consent Decree
6 shall be removed from the deeds.

7
8 III

9 EFFECT OF PERMITS

10 The defendants shall operate their Duwamish River and Lake
11 Union facilities in compliance with the applicable NPDES permits
12 issued by Ecology.

13
14 IV

15 REMOVAL AND DISPOSAL OF POLLUTANTS

16 The defendants shall remove from beneath and near the Lake
17 Union facilities the spent sandblasting debris and any other
18 pollutants which emanated from defendants' facility ("debris")
19 and are resting on the bottom of Lake Union. Removal procedures
20 shall be designed to minimize contact of the debris with the
21 surrounding water. Removal and disposal shall be carried out in
22 a manner consistent with all applicable local, state, and federal
23 laws and regulations. The work shall be completed according to
24 the following schedule:

25 A. No later than thirty (30) days after entry of the
26 Consent Decree, defendants shall establish, based on soundings or

1 other methods, the physical extent of the deposited debris at the
2 Lake Union site. Defendants shall provide a chart of the Lake
3 Union facility showing the areas covered by the sandblasting
4 debris to a depth of one (1) inch or more and indicating
5 topographically the probable depths throughout such areas.

6 B. Not later than sixty (60) days after entry of the
7 Consent Decree, defendants shall establish, based on corings or
8 other methods, the physical and chemical characteristics of the
9 debris as those characteristics relate to the efficacy of various
10 removal methods, including, but not limited to, "open bucket"
11 dredging and vacuum dredging, the necessity and utility of silt
12 curtains, or other protective measures, and of various disposal
13 methods including, but not limited to, landfilling.

14 C. No later than ninety (90) days after entry of the
15 Consent Decree, defendants shall evaluate various methods of
16 removal and disposal to determine both the efficacy and probable
17 costs. Not later than one hundred and twenty (120) days after
18 entry of the Consent Decree, defendants shall identify the
19 methods to be employed and shall prepare and submit to EPA and
20 Ecology a removal and disposal plan which reflects the findings
21 of the foregoing evaluations. The plan shall identify all
22 necessary permits or approvals needed to commence the work and
23 shall include a detailed time schedule for completion.

24 D. Not later than thirty (30) days after approval of the
25 plan by EPA and Ecology, defendants shall submit to the
26 appropriate authorities with copies to EPA and Ecology complete

1 applications for any necessary permits, approvals, or
2 authorizations (e.g., CWA Section 404 Dredge and Fill permits,
3 Washington Department of Fisheries Hydraulic Improvement permits,
4 shoreline management permits, county/local disposal permits,
5 etc.). If EPA and Ecology disapprove of defendants' removal and
6 disposal plan, defendants shall submit a revised plan addressing
7 the deficiencies stated in the written notice of disapproval or
8 in any decision issued by the Court pursuant to Paragraph VII of
9 this Consent Decree. The revised plan shall be submitted within
10 sixty (60) days of the notice of disapproval or the decision of
11 the Court.

12 E. Not later than fifteen (15) days after receipt of the
13 necessary permits, approvals, or authorizations, defendants shall
14 call for bids for removal and disposal pursuant to the approved
15 plan. Defendants shall immediately notify EPA and Ecology of the
16 receipt of each such permit, approval, or authorization.

17 F. Not later than one hundred fifty (150) days after the
18 call for bids in subparagraph IV.E above, defendants shall
19 complete all activities in the approved plan.

20 G. Not later than sixty (60) days after completion of the
21 approved plan, defendants shall conduct a survey to assure not
22 less than ninety percent (90%) removal of the debris and submit a
23 full report on the removal and disposal of the debris, including
24 the results of this survey, to EPA and Ecology. All reports,
25 plans, approvals, disapprovals, and other documents to be
26 submitted pursuant to this Decree shall be sent to designated

W

1 Project Coordinators. EPA, Ecology, and defendants shall each
2 designate one Project Coordinator and shall promptly inform the
3 other parties of that designation. All communications and
4 correspondence concerning the activities performed pursuant to
5 this Consent Decree shall be directed through the Project
6 Coordinators.

7
8 V

9 STIPULATED PENALTIES

10 Defendants agree to pay stipulated penalties of: (1) Five
11 Hundred Dollars (\$500) for each day of delay in meeting the dates
12 specified in subparagraphs IV.A, B, C, D, and G, above; and
13 (2) Two Thousand Dollars (\$2,000.00) for each day of delay in
14 meeting the dates specified in subparagraphs IV.E and F. Payment
15 of stipulated penalties are subject to approval by the Bankruptcy
16 Court. The defendants shall seek such approval within
17 thirty (30) days of a violation and shall pay the penalties
18 within thirty (30) days of such approval by cashier's or
19 certified check made payable to the Treasurer of the
20 United States of America and delivered to the Office of the
21 United States Attorney for the Western District of Washington.

22
23 VI

24 ACCESS

25 Until the termination of this Consent Decree, EPA and
26 Ecology or their contractors shall have access during normal

1 working hours to the defendants' Lake Union facilities for the
2 purpose of inspecting any operations covered by the terms of this
3 Consent Decree. The right of access provided in this Paragraph
4 is in addition to any other right of access provided by law.
5

6 VII

7 FORCE MAJEURE

8 If any event occurs which causes delay in the achievement of
9 the requirements of this Consent Decree, defendants shall
10 promptly notify the EPA and Ecology Project Coordinators orally
11 within twenty-four (24) hours and shall, within seven (7) days of
12 such oral notification, notify EPA and the state in writing of
13 the anticipated length and cause of the delay, the measures taken
14 and to be taken by defendants to prevent and minimize the delay,
15 and the timetable by which defendants intend to implement these
16 measures. If defendants demonstrate that the delay or
17 anticipated delay has been or will be caused solely by
18 circumstances beyond their control and despite their due
19 diligence, the time for performance hereunder shall be extended
20 for a period equal to the delay resulting from such
21 circumstances. However, neither increased costs for performance
22 of the terms and conditions of this Decree nor changed economic
23 circumstances may be considered circumstances beyond defendant's
24 control. Defendants' failure to supply the information required
25 above within seven (7) days of the oral notification shall
26 constitute a waiver of such claim.

1 The parties, however, recognize that the defendants are
2 subject to orders of the Bankruptcy Court. Accordingly, the
3 unavailability of funds which is caused by an Order of the
4 Bankruptcy Court may be considered a circumstance beyond parties'
5 control. The defendants shall, however, use their best efforts
6 in taking actions or positions before the Bankruptcy Court to
7 assure the availability of funds to complete the work or pay any
8 stipulated penalties required by this Consent Decree.

9
10 VIII

11 MODIFICATION AND DISPUTE RESOLUTION

12 It is the intent of the parties to resolve any problems
13 which may arise quickly and, if necessary, at the facility. If,
14 as a result of the findings of further investigations or changed
15 circumstances, modification of the Consent Decree is sought by
16 any party, the other parties agree to meet (at the facility, if
17 necessary) and attempt to renegotiate the relevant provisions.
18 If agreement is not reached, any dispute may be submitted by a
19 party to the Court for resolution. Stipulated penalties accruing
20 during the pendency of any court procedure shall be payable
21 within thirty (30) days of the Court's decision unless the
22 defendants prevail.

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IX

COMPLIANCE WITH ALL LAWS

Notwithstanding the provisions of this Consent Decree, defendants shall comply with all applicable Federal and State laws and regulations. EPA and Ecology retain full enforcement authority, including the right to seek penalties for past violations of Federal or State law or regulations.

X

TERMINATION

The provisions of this Consent Decree shall cease when the removal and disposal activities required by Paragraph IV are completed, EPA and Ecology approve the work and the final report, and any accrued penalties have been paid. The defendants shall obtain such approval from EPA and Ecology and submit it to the Court as a precondition to termination of this Consent Decree.

XI

CONDITIONAL CONSENT OF THE PARTIES

Pursuant to Department of Justice policy at 28 C.F.R. § 50.7, the United States reserves the right to withdraw its consent to the proposed judgment if public comments indicate that the proposed judgment is inappropriate, improper, or inadequate. If the United States withdraws to consent under this paragraph, the defendants are not bound by any of the provisions of this

1 Decree, and the Decree shall not be admissible as evidence
2 against them in any court proceeding whatsoever.

3 The parties recognize that the Consent Decree is subject to
4 approval by the Bankruptcy Court. The parties shall not be bound
5 by the provisions herein if the Bankruptcy Court disapproves the
6 Consent Decree prior to entry by the Court. Defendants agree to
7 present the proposed Decree to the Bankruptcy Court during the
8 public comment period required by Department of Justice policy at
9 28 C.F.R. § 50.7.

10
11 XII

12 COVENANT NOT TO SUE

13 Upon completion of the work specified in Paragraph IV to the
14 satisfaction of EPA and Ecology and the payment of all accrued
15 penalties, the United States and Ecology covenant not to sue
16 defendants for the civil claims alleged in the Complaint.


17
18 XIII

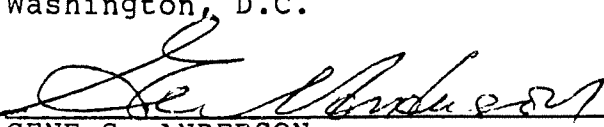
19 RETENTION OF JURISDICTION

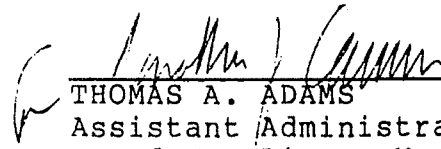
20 This Court shall retain jurisdiction over this matter for
21 the purpose of enabling any party to this Decree to apply to the
22 Court for such orders as may be necessary or appropriate to _
23
24
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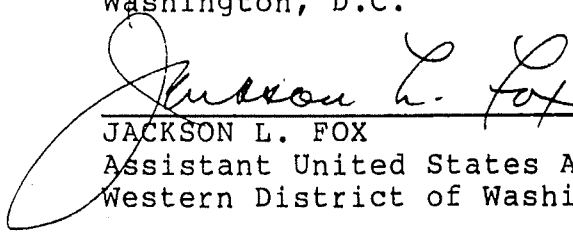
1 interpret, implement or enforce the terms of this Decree, or for
2 any further relief that the interests of justice may require.

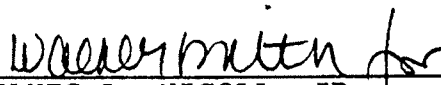
3 FOR THE UNITED STATES OF AMERICA

4 
5 _____
6 ROGER J. MARZULLA, Acting
7 Assistant Attorney General
8 U. S. Department of Justice
9 Land and Natural Resources Division
10 Washington, D.C.


11 
12 _____
13 GENE S. ANDERSON
14 United States Attorney
15 Western District of Washington

16 
17 _____
18 THOMAS A. ADAMS
19 Assistant Administrator for Enforcement
20 and Compliance Monitoring
21 United States Environmental Protection
22 Agency
23 Washington, D.C.

24 
25 _____
26 JACKSON L. FOX
Assistant United States Attorney
Western District of Washington



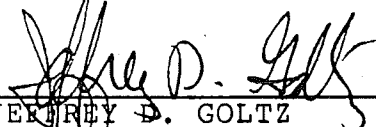
JAMES L. NICOLL, JR.
Environmental Enforcement Section
U.S. Department of Justice




MONICA KIRK
Assistant Regional Counsel, Region 10
United States Environmental Protection
Agency
Seattle, Washington

FOR THE STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

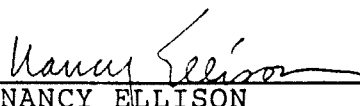
KENNETH O. EIKENBERRY
Attorney General



JEFFREY D. GOLTZ
Assistant Attorney General

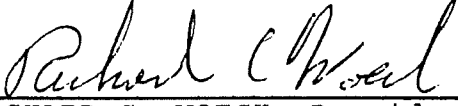


LEE OKARMA REES
Assistant Attorney General



NANCY ELLISON
Northwest Regional Manager

FOR MARINE POWER AND EQUIPMENT
COMPANY, INC., AND WFI INDUSTRIES, INC.



RICHARD C. WOECK, President
Marine Power and Equipment Company, Inc.
and WFI Industries Inc.

DATED and entered this 28th day of January, 1988.



UNITED STATES DISTRICT JUDGE