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

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
B. AND C.B. ENTERPRISES, INC.,  
  
Defendant.

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NO.  
CONSENT DECREE

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology) and B. and C.B. Enterprises, Inc. (Defendant), is to remediate a release or threatened release of hazardous substances at the Bethel former Texaco Site.

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

C. In signing this Decree, the Defendant agrees to its entry and agrees to be bound by its terms.

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

II. JURISDICTION

A. This Court has jurisdiction over the subject matter and personal jurisdiction over the parties pursuant to the Model Toxics Control Act (ch. 70.105D RCW).

1 B. Ecology has authority pursuant to RCW 70.105D.040(4)  
2 to file this Consent Decree with the appropriate superior  
3 court after appropriate public notice and comment.

4 C. On the basis of the sampling and analysis described  
5 in the Statement of Facts, Section V, and information  
6 contained in Ecology files and records, Ecology has determined  
7 that a release of hazardous substances has occurred at the  
8 Site.

9 D. Ecology has determined that the Defendant is a  
10 potentially liable person (PLP) with respect to the Site  
11 pursuant to RCW 70.105D.040. The Defendant has been given  
12 notice of Ecology's determination, and has had opportunity to  
13 comment thereon. In a document submitted to Ecology, the  
14 Defendant acknowledged its status as a PLP with respect to  
15 this Site.

16 E. The Defendant has applied to Ecology for financial  
17 assistance under WAC 173-340-560. Based on the Defendant's  
18 application, Ecology has determined the Defendant is eligible  
19 for funding. Ecology has also determined that making  
20 available funding under the circumstances described in  
21 Section VIII of this Decree will achieve a more expeditious or  
22 enhanced cleanup than would otherwise occur and will prevent  
23 or mitigate unfair economic hardship.

1 F. Entering this Decree will result in a more  
2 expeditious cleanup of the Site and is appropriate given the  
3 use of funding at the Site.

4 G. The actions to be taken pursuant to this Decree are  
5 necessary to protect the public health, welfare and the  
6 environment.

7 III. PARTIES BOUND

8 This Decree shall apply to and be binding upon B. and  
9 C.B. Enterprises, Inc. and Ecology, and their successors and  
10 assigns. The undersigned representative of each party hereby  
11 certifies that he/she is fully authorized to enter into this  
12 Decree and to execute and legally bind such party to comply  
13 with the Decree. The parties agree to undertake all action  
14 required by the terms and conditions of this Decree and the  
15 Defendant agrees not to contest state jurisdiction regarding  
16 this Decree. No change in ownership or corporate status shall  
17 alter the responsibility of the Defendant under this Decree.

18 IV. DEFINITIONS

19 A. "Site" refers to the property located at 4831 Bethel  
20 Avenue S.E., Port Orchard, Washington, and to the surrounding  
21 area where petroleum has come to be located.

22 B. "Remedial action costs" refer to those direct and  
23 indirect costs incurred by Ecology under this Consent Decree.  
24 Such costs include work performed by Ecology or its  
25 contractors for investigations, remedial actions, and order

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1 preparation, negotiations, oversight, and administration.  
2 Ecology costs also include costs of direct activities; e.g.,  
3 employee salary, laboratory costs, travel costs, contractor  
4 fees, and employee benefit packages; and agency indirect costs  
5 of direct activities.

6 C. "Days" refers to calendar days unless specified  
7 otherwise.

8 D. "Parties" refers to the Department of Ecology and B.  
9 and C.B. Enterprises, Inc.

10 E. The definitions set forth in ch. 70.105D RCW and  
11 ch. 173-340 WAC shall control the meanings of other terms used  
12 in this Decree.

#### 13 V. STATEMENT OF FACTS

14 Ecology makes the following findings of fact:

15 A. B. and C.B. Enterprises, Inc. is the current owner  
16 of property located at 4831 Bethel Avenue S.E., Port Orchard,  
17 Washington. A 50 ft. x 50 ft. section of this property was  
18 deeded to the Kitsap County Sewer District in 1991 for the  
19 construction of a pump station. From the 1930s or 1940s  
20 through 1988, various petroleum product operations existed at  
21 this location. The most recent such operation was a Texaco  
22 service station, which closed in September 1988. In December  
23 1988, the underground storage tanks used by the station were  
24 removed. The property is now vacant.

1 B. In May 1990, the Kitsap County Health Department  
2 received a complaint of possible petroleum contamination in  
3 groundwater in the vicinity of the former Texaco station.  
4 Mrs. Tilly Tripp, the complainant, reported that the  
5 contaminated water was coming from her private domestic well  
6 located at 4940 Bethel Road S.E., Port Orchard, Washington.  
7 The Health Department investigated the complaint, and found  
8 levels of benzene and xylene in excess of cleanup standards  
9 both in the Tripp well and in a private domestic well at the  
10 Peterson residence, located at 4830 Bethel Road S.E., Port  
11 Orchard, Washington. The Tripp and Peterson residences were  
12 supplied with bottled water temporarily, and later the wells  
13 at those residences were outfitted with point of entry carbon  
14 filtration systems.

15 C. In June 1990, Ecology began a remedial investigation  
16 of contamination at the Site. Ecology gathered water well  
17 reports, then measured water levels in, and collected water  
18 samples from, selected domestic wells. Ecology also installed  
19 eight monitoring wells, collected soil samples during the  
20 installation of those monitoring wells, and then collected  
21 water samples from the monitoring wells. The results of the  
22 remedial investigation are set forth in Groundwater  
23 Contamination Assessment, Bethel Wells, Port Orchard,  
24 Washington, prepared by the Department of Ecology in August  
25 1991. Briefly, however, the investigation revealed that the

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1 Tripp and Peterson wells have levels of benzene and/or total  
2 xylenes above cleanup standards. Much higher levels of both  
3 contaminants have been found in monitoring wells installed at  
4 the former Texaco station, which is upgradient of the Tripp  
5 and Peterson wells. Soil samples taken from the site of the  
6 former Texaco station also contained levels of benzene, total  
7 xylenes, toluene, and ethylbenzene that exceeded cleanup  
8 standards for soils.

9 D. Ecology also investigated possible sources of the  
10 groundwater contamination. Two likely sources were the former  
11 Texaco service station and a BP mini-mart located directly  
12 north of the former Texaco station. Tightness tests performed  
13 on the three underground storage tanks and lines at the BP  
14 station showed all tanks and lines to be tight. Ecology also  
15 sampled the two leak detection monitoring wells that were  
16 installed by BP when it constructed the mini-mart. None of  
17 the target compounds were detected in the samples taken.  
18 Based on this data, on the fact that the northernmost boundary  
19 of the contaminant plume is downgradient of the BP mini-mart,  
20 and on the fact that the highest levels of target compounds  
21 were detected in soils surrounding the location of the former  
22 Texaco station's underground storage tanks, Ecology determined  
23 that the former Texaco station was a probable source of the  
24 contamination.

1 VI. WORK TO BE PERFORMED

2 A. Scope of Work

3 Ecology shall direct the remedial action at the Site  
4 according to the following scope of work:

5 1. Evaluate the existing data from previous  
6 environmental investigations and other information pertinent  
7 to the Site.

8 2. Continue to maintain the point of entry systems at  
9 the Tripp residence and Petersen residence until contaminant  
10 levels drop below cleanup levels.

11 3. Continue to collect quarterly groundwater samples  
12 from the five domestic wells downgradient of the Site, until  
13 there is no potential threat to human health or environment

14 4. Conduct public participation for the state remedial  
15 investigation report in a manner consistent with  
16 WAC 173-340-600(12)(c).

17 5. Select a cleanup action in accordance with WAC  
18 173-340-360. The cleanup action shall include at a minimum:  
19 protection of human health and the environment, compliance  
20 with cleanup standards, compliance with applicable state and  
21 federal laws and provisions for compliance monitoring.

22 6. Make the Cleanup Action Plan available for public  
23 review and comment in accordance with WAC 173-340-600 prior to  
24 finalizing a cleanup action plan.

1           7. Implement the Cleanup Action Plan to remediate soil  
2 and groundwater. Design, construct, and operate the site  
3 cleanup and monitoring in a manner that is consistent with the  
4 Cleanup Action Plan.

5           8. Document all observations, conditions, and results in  
6 a final report with at least four copies, one for the  
7 Defendant and three for Ecology.

8           B. The obligations undertaken by Ecology pursuant to  
9 this Decree need not be met unless sufficient funds are  
10 available to Ecology to meet those obligations. Ecology has  
11 discretion to decide whether funds available to it will be  
12 used for remedial action at this Site, or for some other  
13 purpose. Such exercise of discretion by Ecology shall not be  
14 subject to judicial review except as may be allowed by law.

15           C. The parties may determine in the future that it  
16 would be more expeditious for Defendant instead of Ecology to  
17 perform some of the tasks identified in this section. In that  
18 event, Defendant may request that Ecology agree to amend this  
19 Decree to allow Defendant to perform such work. Defendant's  
20 request shall be in writing and directed to Ecology's project  
21 manager. If Ecology concurs that performance by the Defendant  
22 instead of Ecology is appropriate, the parties may request  
23 that the Court amend this Decree as provided in section XII  
24 below.

1 D. Additional PLPs may be named with respect to this  
2 Site. Any remedial action required at this Site may be  
3 performed by the additional PLPs, rather than by Ecology.

4 VII. DESIGNATED PROJECT COORDINATOR

5 The project coordinator for Ecology is:

6 Annette Petrie (206) 649-7257  
7 Department of Ecology  
8 Northwest Regional Office  
3190 - 160th Avenue S.E.  
Bellevue, WA 98008-5452

9 The project coordinator shall be responsible for overseeing  
10 the implementation of this Decree. To the maximum extent  
11 possible, communications between Ecology and the Defendant,  
12 and all documents, including reports, approvals, and other  
13 correspondence concerning the activities performed pursuant  
14 the terms and conditions of this Decree, shall be directed  
15 through the project coordinator. Ecology shall attempt to  
16 notify Defendant prior to changing project coordinators.

17 VIII. REIMBURSEMENT OF ECOLOGY'S COSTS

18 A. Ecology has determined that the Defendant is  
19 eligible for full funding. Consequently, the Defendant's  
20 obligation to reimburse Ecology for its remedial action costs  
21 will be satisfied by use of funds from the toxics control  
22 account.

23 B. Ecology's determination regarding full funding  
24 applies only to the Defendant and is not transferable to any  
25

1 other person, including any subsequent purchaser of  
2 Defendant's property.

3 C. Ecology's determination that Defendant is eligible  
4 for funding is not a funding commitment. Actual funding will  
5 depend upon the availability of funds.

6 D. Ecology's determination regarding full funding was  
7 based on financial information supplied to Ecology in  
8 September 1991. Ecology reserves the right to reevaluate its  
9 determination regarding full funding if it receives  
10 information suggesting that Defendant's financial situation  
11 has changed. Defendant shall promptly make available upon  
12 request by Ecology any and all information pertaining to its  
13 financial situation. The parties agree that if Ecology  
14 determines that Defendant is no longer eligible for full  
15 funding, this Decree will be of no further force or effect and  
16 the parties will enter into negotiations for a new Decree.

17 IX. ACCESS

18 Ecology or any Ecology authorized representative or  
19 contractor hired by Ecology, shall have the authority to enter  
20 and freely move about the Site at all reasonable times for the  
21 purposes of performing, or monitoring the performance of,  
22 remedial action at the Site.

23 X. TRANSFERENCE OF PROPERTY

24 A. No voluntary conveyance or relinquishment of  
25 Defendant's title, easement, leasehold, or other interest in

1 any portion of the Site shall be consummated without provisio  
2 for continued performance of all of Defendant's obligations  
3 under this Decree. If an involuntary conveyance or  
4 relinquishment of such interest occurs, the Defendant shall,  
5 if possible, give prior written notice of this Decree to the  
6 transferee.

7 B. Within 90 days of entry of this Decree, the  
8 Defendant shall record a restrictive covenant in the title  
9 records to that portion of the Site over which Defendant holds  
10 fee title. Within 30 days of filing the restrictive covenant  
11 with the Kitsap County Auditor, the Defendant shall forward a  
12 copy of the restrictive covenant to Ecology. The restrictive  
13 covenant shall state that a Consent Decree entered in the  
14 above-captioned proceeding imposes the following restrictions  
15 on the use and improvement of the Site:

16 1. Any activity on the property owned by Defendant that  
17 may interfere with remedial action at the Site is prohibited.

18 2. The owner of the property at 4831 Bethel Avenue  
19 S.E., Port Orchard, Washington shall give written notice to  
20 Ecology, or any successor agency, of the owner's intent to  
21 convey any interest in the property. No conveyance of any  
22 interest in the property may be consummated by the owner  
23 without adequate and complete provision for the continued  
24 performance of all obligations undertaken by the Defendant  
25 pursuant to this Consent Decree.

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1 3. No ground water may be taken for domestic purposes  
2 from any well on the property owned by Defendant.

3 4. The owner of the property at 4831 Bethel Avenue  
4 S.E., Port Orchard, Washington shall allow the authorized  
5 representatives of Ecology, or any successor agency, to enter  
6 the property at reasonable times for the purpose of conducting  
7 remedial actions.

8 5. Following satisfaction of this Decree, the owner of  
9 the property at 4831 Bethel Avenue S.E., Port Orchard,  
10 Washington and the owner's successors and assigns have the  
11 right to record an instrument stating that the restrictive  
12 covenant no longer limits use of the property and/or is of no  
13 further force or effect, provided that any such instrument may  
14 be recorded only with the consent of Ecology, or any successor  
15 agency, which consent may be given only after public notice  
16 and comment.

17 6. The restrictive covenant also shall state that said  
18 restrictions run with the land.

19 XI. DISPUTE RESOLUTION

20 The Defendant may request Ecology to resolve disputes  
21 that may arise during the implementation of this Consent  
22 Decree. Such request shall be in writing and directed to the  
23 Ecology Project Coordinator. Ecology resolution of the  
24 dispute shall be binding and final. The Defendant is not  
25 relieved of any requirement of this Consent Decree during the

1 pendency of the dispute and remains responsible for timely  
2 compliance with the terms of the Consent Decree unless  
3 otherwise provided by Ecology in writing.

4 XII. AMENDMENT OF CONSENT DECREE

5 Any amendment to this Decree must be in writing and  
6 signed by the parties. Such amendment shall become effective  
7 when entered by the Court. If the amendments to the Decree  
8 are substantial, Ecology will provide additional public notice  
9 and opportunity for public comment.

10 XIII. INDEMNIFICATION

11 The Defendant agrees to indemnify and save and hold the  
12 State of Washington, its employees and agents harmless from  
13 any and all claims or causes of action for death or injuries  
14 to persons or for loss or damage to property arising from or  
15 on account of acts or omissions of the Defendant, its  
16 officers, employees, agents, or contractors in entering into  
17 and implementing this Decree. However, the Defendant shall  
18 not indemnify the State of Washington nor save nor hold its  
19 employees and agents harmless from any claims or causes of  
20 action brought by third parties arising out of the negligent  
21 acts or omissions of the State of Washington, or the employees  
22 or agents of the State, in implementing the activities  
23 pursuant to this Decree.



1 and without prejudice. In such an event, no party shall be  
2 bound by the requirements of this Decree. It is so agreed  
3 this \_\_\_\_ day of \_\_\_\_\_, 1992.

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Carol L. Fleskes  
CAROL FLESKES, Program Manager  
Toxics Cleanup Program  
Washington State  
Department of Ecology

Clifford Boerner  
B. AND C.B. ENTERPRISES, INC.  
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