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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LEICHNER BROTHERS LAND
RECLAMATION CORPORATION,

Defendant.

96 2 03081 7
NO. _____

CONSENT DECREE

COPY
ORIGINAL FILED

JUL 17 1996

JoAnne McBride, Clerk, Clark Co.

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MISSING

INTRODUCTION

1
2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology), and Leichner Brothers Land
4 Reclamation Corporation (Leichner) is to provide for remedial action at a facility where
5 there has been a release or threatened release of hazardous substances, and to protect the
6 public health, welfare, and environment. To accomplish these objectives and to resolve the
7 matter constructively and without litigation, Leichner consents to the actions required by
8 this Decree.

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

15 C. In signing this Decree, Leichner agrees to its entry and agrees to be bound
16 by its terms.

17 D. By entering into this Decree, the Parties do not intend to discharge
18 nonsettling Parties from any liability they may have with respect to matters alleged in the
19 complaint. Leichner and Ecology retain the right to seek reimbursement; in whole or in
20 part from any responsible entities for sums expended for remedial action at the Site.

21 E. Except in proceedings between the Parties regarding the interpretation or
22 enforcement of this Decree, this Decree shall not (a) be construed as proof of liability or
23 responsibility for any releases of hazardous substances or costs of remedial action, nor an
24 admission of the factual or legal statements or determinations herein, or (b) be admissible in
25 any judicial or administrative proceeding as proof of liability or an admission of any fact
26 dealt with herein.

1 F. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown:

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

4 **I. JURISDICTION**

5 A. This Court has jurisdiction over the subject matter and over the Parties
6 pursuant to chapter 70.105D RCW, the Model Toxics Control Act (MTCA). Venue is
7 properly laid in Clark County, the location of the property at issue.

8 B. Authority is conferred upon the State of Washington Attorney General by
9 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable party if, after
10 public notice and hearing, Ecology finds the proposed settlement would lead to a more
11 expeditious cleanup of hazardous substances in compliance with cleanup standards under
12 RCW 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a settlement be
13 entered as a consent decree issued by a court of competent jurisdiction.

14 C. Ecology has given notice to Leichner, as provided in RCW 70.105D.020(15),
15 of Ecology's determination that Leichner is a potentially liable person with respect to the
16 Site and that there has been a release or threatened release of hazardous substances at the
17 Site.

18 D. Ecology has determined that past activities at the Site have given rise to a
19 release of hazardous substances, which requires remedial action pursuant to chapter
20 70.105D RCW.

21 E. The actions to be taken pursuant to this Decree are necessary to protect the
22 public health, welfare, and the environment.

23 F. By entering into this Decree, Leichner agrees not to challenge the jurisdiction
24 of Ecology in any proceeding to enforce this Decree. Leichner has agreed to voluntarily
25 undertake the actions specified in this Decree and consents to the issuance of this Decree,
26 pursuant to chapter 70.105D RCW.

1 **II. PARTIES BOUND**

2 This Decree shall apply to and be binding upon the signatories to this Decree
3 (Parties), their successors and assigns. The undersigned representative of each party hereby
4 certifies that he or she is fully authorized to enter into this Decree and to execute and
5 legally bind such party to comply with the Decree. Leichner agrees to undertake all actions
6 required by the terms and conditions of this Decree and not to contest state jurisdiction in
7 any proceeding to enforce this Decree. No change in ownership or corporate status shall
8 alter the responsibility of Leichner under this Decree. Leichner shall make a copy of this
9 Decree available to each of its agents, including all contractors and subcontractors retained
10 to perform work contemplated by this Decree, and shall condition any contract for such
11 work on compliance with this Decree.

12 **III. DEFINITIONS**

13 A. Decree: Refers to this Consent Decree and each of the exhibits to the
14 Decree. All exhibits are integral and enforceable parts of this Consent Decree.

15 B. Parties: Refers to the Washington State Department of Ecology or its
16 successor and Leichner Brothers Land Reclamation Corporation.

17 C. Site: Refers to the Leichner Brothers Land Reclamation Corporation landfill
18 located near Vancouver, Washington and surrounding areas where hazardous substances
19 have come to be located. The Site is more particularly described in Exhibit A to this
20 Decree, which is a detailed site diagram. By this reference, Exhibit A is incorporated into
21 this Decree.

22 D. Non-privileged: Refers to documents not protected by any evidentiary
23 privilege recognized under Washington or federal law.

24 E. Unless otherwise specified, the definitions set forth in WAC 173-340-200
25 control the meaning of the terms used in this Decree.
26

1 IV. STATEMENT OF FACTS

2 For purposes of entering this Decree only, the Parties agree the pertinent facts
3 regarding the history of and previous investigations at this Site are set forth in Sections 1,
4 2, 3, and 4 of the Cleanup Action Plan (CAP), which is attached to this Decree as Exhibit
5 B. By this reference, Exhibit B is incorporated into this Decree.

6 V. WORK TO BE PERFORMED

7 A. This Decree contains a program designed to protect the public health and
8 welfare and the environment from the known release, or threatened release, of hazardous
9 substances at, on, or from the Site. A series of remedial actions completed by Leichner is
10 described in the CAP, attached to this Decree as Exhibit B.

11 B. Leichner agrees not to perform any remedial actions outside the scope of this
12 Decree unless the Parties agree to amend the Decree to cover such actions.

13 C. All work conducted under this Decree shall be done in accordance with
14 chapter 173-340 and chapter 173-304 Washington Administrative Code, unless otherwise
15 provided herein.

16 D. Leichner shall comply with the terms of the post-closure permit to be issued
17 by the Southwest Washington Health District ("Health District"). If the Health District has
18 not issued the permit by September 1, 1996, then Ecology will amend the CAP to include
19 post-closure requirements for the landfill. In addition, no later than thirty (30) days after
20 the effective date of this Decree, Leichner shall submit a compliance monitoring plan to
21 Ecology for review and approval. The compliance monitoring plan shall be prepared as
22 outlined in WAC 173-340-410, and shall include a sampling and analysis plan that meets
23 the requirements of WAC 173-340-820. When approved, Leichner shall comply with the
24 Plan.

1 C. The project coordinator for Ecology is:

2 Rebecca Lawson, P.E.
3 510 Desmond Drive
4 P.O. Box 47775
5 Olympia, WA 98504-7775
6 Phone: (360) 407-6255
7 FAX: (360) 407-6305

8 D. The project coordinators for Leichner are:

9 Kevin Lakey
10 EMCON
11 18912 North Creek Parkway
12 Suite 100
13 Bothell, WA 98011
14 Phone: (206) 485-5000
15 FAX: (206) 486-9766

16 Craig Leichner
17 Leichner Brothers Land Reclamation Corp.
18 9411 NE 946th Avenue
19 Vancouver, WA 98666
20 Phone: (360) 892-9594
21 FAX: (360) 892-8471

*This address
is not
right.*

22 **VIII. PERFORMANCE**

23 All work performed pursuant to this Decree shall be under the direction and
24 supervision, as necessary, of a professional engineer registered with the State of
25 Washington or certified hydrogeologist, or equivalent, with experience and expertise in
26 hazardous waste site investigation and cleanup. Leichner shall notify Ecology in writing of
the identity of such engineer(s) or hydrogeologist(s), and of any contractors and
subcontractors to be used in carrying out the terms of this Decree, in advance of their
involvement at the Site. Such notice shall include a summary of the qualifications of each
engineer, hydrogeologist, contractor, and subcontractor.

27 **IX. ACCESS**

28 Within twenty-four (24) hours of receiving a request for access, Leichner shall
29 provide Ecology, the Health District, and their authorized representatives, entry and access
30 to all property at the Site at all reasonable times for the purposes of, among other things:

1 inspecting non-privileged records, operation logs, contracts, plans, specifications,
2 engineering designs, files, photographs, documents, and other writings, including all
3 sampling and monitoring data, related to remedial action being performed pursuant to this
4 Decree; reviewing the progress in carrying out the terms of this Decree; conducting tests or
5 collecting samples as Ecology or the Health District may deem necessary; using a camera,
6 sound recording, or other documentary type equipment to record work done pursuant to this
7 Decree; and verifying the data submitted to the Health District and Ecology by Leichner.
8 Leichner shall permit any Ecology- or Health District-authorized representative to copy all
9 non-privileged records, files, photographs, documents, and other writings related to
10 remedial action performed pursuant to this Decree, whether located at the Site or
11 elsewhere. All Parties with access to property at the Site pursuant to this paragraph shall
12 comply with approved safety and health plans. Should Leichner fail at any time to provide
13 Ecology or the Health District access under the terms set forth above, then Leichner shall
14 immediately provide to Ecology and the Health District keys allowing access to the Site,
15 including locked well covers at the Site. Provided, however, that except in an emergency,
16 Ecology and the Health District shall still be required to provide Leichner twenty-four (24)
17 hours notice prior to entry onto the Site.

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

19 A. Leichner shall make the quality assured results of all sampling, laboratory
20 reports, and test results generated by it or on its behalf pursuant to this Decree available to
21 the Health District and Ecology. Leichner shall submit quality-assured results or, upon
22 request, raw data, in periodic progress reports as provided in Section XI. of this Decree.

23 B. Leichner shall allow Ecology or its authorized representative to take splits
24 or duplicates of any samples collected by Leichner pursuant to this Decree. Except in cases
25 of emergency, Leichner shall notify Ecology five (5) working days in advance of any
26 sample collection at the Site not scheduled in the compliance monitoring plan. In cases of

1 emergency, Leichner shall notify Ecology as soon as possible (and prior to sampling, if
2 practical) of the nature of the emergency and of the type of samples collected. Ecology
3 shall, upon request, allow Leichner or its authorized representative to take splits or
4 duplicates of any samples collected by either of them pursuant to this Decree. All sampling
5 shall be conducted in accordance with the approved sampling and analysis plans. To the
6 extent practicable, and without limitation on Ecology's rights under Section IX, Ecology
7 shall endeavor to notify Leichner five (5) days prior to any planned sample collection
8 activity.

9 **XI. PROGRESS REPORTS**

10 Leichner shall submit to Ecology and the Health District periodic written progress
11 reports that describe the actions taken during the reporting period to implement the
12 requirements of this Decree. The progress reports shall include detailed documentation of
13 any activity conducted on-site, including all quality-assured data and, if requested, raw data
14 received by Leichner during the previous reporting period. All progress reports shall be
15 submitted by the tenth day of the reporting period in which they are due after the effective
16 date of this Decree. Progress reports shall be submitted on a frequency set forth in the
17 approved compliance monitoring plan. Unless otherwise specified, progress reports and
18 any other documents submitted pursuant to this Decree shall be sent by U.S. mail to
19 Ecology's project coordinator at the address given in Section VI.

20 **XII. RETENTION OF RECORDS**

21 Leichner shall preserve, for the duration of this Decree and for ten (10) years from
22 the date of issuance of the notice as provided in Section XXIX, all records, reports,
23 documents, and underlying data in its possession relevant to the implementation of this
24 Decree, and shall insert in contracts with project contractors the same record retention
25 requirement. Upon request by Ecology, Leichner shall make all non-privileged records
26 available to Ecology and shall allow access for review of non-privileged, non-archived

1 documents. Archived non-privileged documents shall be made available within a reasonable
2 time.

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

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

8 B. Prior to transfer of any legal or equitable interest in all or any portion of the
9 Site, Leichner shall serve a copy of this Decree, including all exhibits, upon any
10 prospective purchaser, lessee, transferee, assignee, or other successor in interest of the
11 property; and, at least thirty (30) days prior to any transfer, Leichner shall notify Ecology
12 of said contemplated transfer. The Parties acknowledge that Leichner has entered into an
13 option agreement with Clark County to convey that property within the Site (as more
14 specifically described in Exhibit D, attached hereto and by this reference incorporated
15 herein) to Clark County at Clark County's option, upon issuance by the Health District of a
16 certificate of completion of post-closure pursuant to WAC 173-304-407(7)(c). The parties
17 acknowledge that the Disposal Group, a group of solid waste collection companies affiliated
18 with Leichner currently operating in Clark County, has used part of the Site for activities
19 related to the collection of solid waste in Clark County. The parties further acknowledge
20 that Leichner intends to lease a portion of the Site to BFI, a solid waste management
21 company, to be used for collection company activities of the same sort conducted by the
22 Disposal Group. The parties further acknowledge that Leichner has sold a portion of the
23 Site to Air, Water and Earth, a recycling company. No further notice to Ecology is
24 required for these transactions.

1 XIV. RESOLUTION OF DISPUTES

2 A. If Leichner objects to any Ecology disapproval, proposed modification, or
3 decision made pursuant to this Decree, it shall notify Ecology in writing of its objections
4 within fourteen (14) days after receipt of notice of such disapproval, proposed modification,
5 or decision. Thereafter, the Parties' project coordinators shall confer in an effort to resolve
6 the dispute. If agreement on the dispute is not reached within fourteen (14) days after
7 receipt by Ecology of such objections, Ecology's project coordinator shall promptly provide
8 a written statement of its decision to Leichner.

9 B. Leichner may then request Ecology management review of the decision.
10 This request shall be submitted in writing to the Toxics Cleanup Program Manager within
11 seven (7) days of receipt of Ecology's project coordinator's decision. Ecology's Program
12 Manager shall review the dispute and shall issue a written decision regarding the dispute
13 within thirty (30) days of Leichner's request for review. The Program Manager's decision
14 shall be Ecology's final decision on the disputed matter.

15 C. If Ecology's final written decision is unacceptable to Leichner, Leichner may
16 submit the dispute to the Court for resolution. The Parties agree that one judge should
17 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
18 this Decree.

19 D. If the dispute that Leichner submits to the Court involves an investigative or
20 remedial decision of Ecology under RCW 70.105D.030 or 70.105D.050, then the Court
21 shall review such decision on the basis of whether it was arbitrary and capricious, and shall
22 render a decision based on such standard of review. If the dispute that Leichner submits to
23 the Court involves the interpretation of this Decree or of statute or regulation, then the
24 Court shall afford Ecology's interpretation the deference to which it is entitled under law,
25 and shall render a decision accordingly.

26

1 E. Ecology and Leichner agree to utilize the dispute resolution process only in
2 good faith and agree to expedite, to the extent possible, the dispute resolution process
3 whenever it is used. Where either party utilizes the dispute resolution process in bad faith
4 or for purposes of delay, the other party may seek sanctions.

5 F. Leichner may request an extension of schedule under Section XVI, Extension
6 of Schedule, for any activity that is the subject of dispute resolution proceedings under this
7 section.

8 XV. AMENDMENT OF CONSENT DECREE

9 A. This Decree may be amended only by a written stipulation between the Parties
10 to this Decree that is entered by the Court or by order of the Court. Such amendment shall
11 become effective upon entry by the Court. Agreement to amend shall not be unreasonably
12 withheld by any party to the Decree. If the amendment to the Decree is substantial,
13 Ecology will provide public notice and opportunity for comment.

14 B. Leichner shall submit any request for an amendment to Ecology for approval.
15 Leichner's request shall refer to this section of the Decree, and shall notify Ecology that a
16 response is due within the time periods specified in this paragraph. Ecology shall respond
17 to the request within twenty-one (21) days after the request for amendment is received. In
18 its response, Ecology shall either approve the request, disapprove the request, or specify a
19 date by which Leichner may expect to receive an approval or disapproval. The date
20 specified by Ecology shall be no more than forty-five (45) days after Ecology's receipt of
21 Leichner's request, unless the parties agree to a longer period. Reasons for disapproval
22 shall be stated in writing. If Ecology disapproves any proposed amendment, the
23 disagreement may be addressed through the dispute resolution procedures described in
24 Section XIV of this Decree.

25 C. No guidance, suggestions, or comments by Ecology may be construed as
26 relieving Leichner of its obligation to obtain formal approval as may be required by this

1 Decree. No oral communication from Ecology staff may relieve ~~Leichner of the obligation~~
2 specified herein.

3 D. Ecology shall notify Leichner in writing of any Ecology-proposed amendment
4 and the basis for such proposal. Leichner shall thereafter comply with such modifications,
5 or if it does not agree with those modifications, the disagreement shall be addressed through
6 the dispute resolution procedures described in Section XIV of this Decree.

7 **XVI. EXTENSION OF SCHEDULE**

8 A. An extension of schedule may be granted only when a request for an
9 extension is submitted in a timely fashion and good cause exists for granting the extension.
10 All extensions shall be requested in writing. The request shall specify the reason(s) the
11 extension is needed. A requested extension shall not be effective until approved by Ecology
12 or the Court. Ecology shall act upon any written request for extension in a timely fashion.
13 It shall not be necessary to formally amend this Decree pursuant to Section XV when a
14 schedule extension is granted.

15 B. The burden shall be on Leichner to demonstrate to the satisfaction of Ecology
16 that the request for extension has been submitted in a timely fashion and that good cause
17 exists for granting the extension. Good cause includes, but is not limited to, the following:

18 (1) Circumstances beyond the reasonable control and despite the due
19 diligence of Leichner, including delays caused by unrelated third Parties or by Ecology,
20 such as delays by Ecology in reviewing, approving, or modifying documents submitted by
21 Leichner; or

22 (2) Acts of God, including earthquake, fire, flood, blizzard, extreme
23 temperatures, storm, abnormal wave or water conditions, or other unavoidable casualty; or

24 (3) Endangerment as described in Section XVII.
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26

1 the Site as of the date of entry of this Decree. This covenant is not applicable to any other
2 hazardous substance or area and the state retains all of its authority relative to such
3 substances and areas.

4 C. In the following circumstances the State of Washington may exercise its full
5 legal authority to address releases of hazardous substances at the Site notwithstanding the
6 Covenant Not to Sue set forth above:

- 7 (1) If Leichner fails to comply with the terms and conditions of this
8 Decree, including all exhibits, and, after written notice of
9 noncompliance, fails to come into compliance immediately;
- 10 (2) If factors not known at the time of entry of this Decree, including
11 factors listed in WAC 173-340-420(2), are discovered and Ecology
12 determines, in light of these factors, that further remedial action is
13 necessary at the Site to protect human health or the environment, and
14 Leichner, after notice, fails to take the necessary action within a
15 reasonable time; or
- 16 (3) If conditions at the Site cause an endangerment to human health or the
17 environment under Section XVII. of this Consent Decree, and
18 Leichner, after notice, fails to eliminate the endangerment within a
19 reasonable time.

20 D. The Covenant Not to Sue set forth above shall have no applicability
21 whatsoever to:

- 22 (4) Criminal liability;
- 23 (5) Liability for damages to natural resources;
- 24 (6) Any Ecology action against potentially liable persons not a party to
25 this Decree.
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XIX. LAND USE RESTRICTIONS

Leichner agrees that the restrictive covenant, attached hereto as Exhibit C and by this reference incorporated herein, shall be recorded with the office of the Clark County Auditor within 10 days of the entry of this Decree and shall restrict future uses of the Site. After completion of the remedial action required by this Decree, and when the criteria in WAC 173-340-440 are met, the Health District may recommend to Ecology that the restrictive covenant be removed. With Ecology’s prior written approval, Leichner, or its successor(s), may record an instrument that provides that the restrictive covenant provided in Exhibit C shall no longer limit uses of the Site or be of any further force or effect.

XX. INDEMNIFICATION

Leichner agrees to indemnify and save and hold the State of Washington, the Health District, their employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Leichner, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, Leichner shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the state, in implementing the activities pursuant to this Decree. Nor shall Leichner indemnify the Health District nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the Health District, or the employees or agents of the Health District, in implementing the activities pursuant to this Decree.

XXI. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by Leichner pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements, if any, to obtain necessary permits.

1 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
2 70.94, 70.95, 75.20, and 90.58 RCW and of any laws requiring or authorizing local
3 government permits or approvals for the remedial action under this Decree that are known
4 to be applicable at the time of entry of the Decree have been included in Exhibit B, the
5 Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

6 Leichner has a continuing obligation to determine whether additional permits or
7 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
8 action under this Decree. In the event either Leichner or Ecology determines that
9 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be
10 required for the remedial action under this Decree, it shall promptly notify the other party
11 of this determination. If Ecology so requires, Leichner shall promptly consult with the
12 appropriate state and/or local agencies and provide Ecology with written documentation
13 from those agencies of the substantive requirements those agencies believe are applicable to
14 the remedial action. Ecology shall make the final determination on the additional
15 substantive requirements that must be met by Leichner and how Leichner must meet those
16 requirements. Once established by Ecology, the additional requirements shall be
17 enforceable requirements of this Decree. Leichner shall not begin or continue remedial
18 action potentially subject to the additional requirements until Ecology makes its final
19 determination.

20 Ecology shall ensure that notice and opportunity to comment is provided to the
21 public and appropriate agencies prior to establishing the substantive requirements under this
22 section.

23 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
24 exemption from procedural compliance with the laws listed in RCW 70.105D.090(1) would
25 result in the loss of approval from a federal agency which is necessary for the State to
26 administer any federal law, the exemption shall not apply, and Leichner shall comply with

1 both the procedural and substantive requirements of the laws referenced in RCW
2 70.105D.090(1), including any requirements to obtain permits.

3 **XXII. COST REIMBURSEMENT**

4 A. Leichner agrees to pay costs incurred by Ecology pursuant to this Decree.
5 These costs shall include work performed by Ecology or its contractors for, or on, the Site
6 under Ch. 70.105D RCW both prior to and subsequent to the issuance of this Decree for
7 investigations, remedial actions, and Decree preparation, negotiations, oversight and
8 administration. Ecology costs shall include costs of direct activities and support costs of
9 direct activities as defined in WAC 173-340-550(2). Leichner agrees to pay the required
10 amount within ninety (90) days of receiving from Ecology an itemized statement of costs
11 that includes a summary of costs incurred, an identification of involved staff, and the
12 amount of time spent by involved staff members on the project. A general statement of
13 work performed will be provided upon request. Itemized statements shall be prepared
14 quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized
15 statement will result in interest charges at the rate of twelve percent per annum.

16 B. Leichner shall not be required to pay permit fees under RCW 90.48.465 or
17 ch. 177-216 WAC because it is already paying Ecology oversight costs pursuant to this
18 section.

19 **XXIII. CLAIMS AGAINST THE STATE**

20 Leichner hereby agrees that it will not seek to recover any costs incurred in
21 implementing this Decree from the State of Washington or the Health District. Provided,
22 however, that this section does not apply to any grant funding that may be available.

23 **XXIV. FINANCIAL ASSURANCES**

24 A. Leichner has submitted to Ecology and the Health District an estimate of the
25 costs that it will incur in carrying out the terms of this Decree, including operation and
26 maintenance and compliance monitoring. Within 60 days of Ecology's review and approval

1 of this estimate, Leichner shall provide a copy of the revised Disposal Agreement executed
2 by Leichner, Clark County and the City of Vancouver that provides financial assurance
3 sufficient to cover all such costs and a mechanism for payment of the costs, or another
4 financial assurance mechanism acceptable to Ecology. The agreement will be attached to
5 this Decree as Exhibit E, and by reference incorporated herein.

6 B. Leichner shall update the estimated cost of performing its obligations under
7 this Decree every year. If the estimated cost of performance increases beyond the amount
8 in the fund created by the Disposal Agreement, then the provisions of the Disposal
9 Agreement addressing shortfalls will be triggered.

10 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

11 If Ecology determines that Leichner has failed without good cause to implement the
12 remedial action required by this Decree, Ecology may, after notice to Leichner, perform
13 any or all portions of the remedial action that remain incomplete.

14 If Ecology performs all or portions of the remedial action because of Leichner's
15 failure to comply with its obligations under this Decree, Leichner shall reimburse Ecology
16 for the costs of doing such work within thirty (30) days of receipt of demand for payment
17 of such costs, provided that the work done is consistent with this Decree. Interest at the
18 rate of twelve (12) percent per annum will accrue on any costs not reimbursed within thirty
19 (30) days of receipt of demand for payment.

20 **XXVI. RESERVATION OF RIGHTS**

21 By agreeing to the entry of this Decree, Leichner and Ecology agree to abide by its
22 terms. Although the Parties believe that the recitals contained in the Decree are accurate,
23 the execution and performance of the Decree is not, however, an admission by Leichner of
24 any fact or liability for any purpose other than in proceedings between the Parties regarding
25 the interpretation or enforcement of this Decree. Leichner's performance under the Decree
26 does not waive or prejudice its right to raise any claims or defenses, not limited to defenses

1 | under RCW 70.105D.040, that may be asserted in the event of further administrative
2 | proceedings or litigation not associated with, or related to, this Decree. Nor is the
3 | execution or the performance of the Decree an agreement by Leichner to take any action at
4 | the Site other than that described in this document.

5 | **XXVII. PERIODIC REVIEW**

6 | As provided in this section, from time to time during the term of this Decree as
7 | remedial action proceeds at the Site, including but not limited to implementation of the
8 | approved post-closure plans, the Parties agree to review all data accumulated as a result of
9 | site monitoring. Periodic review shall occur at a minimum at least every five years during
10 | the term of this Decree. During the periodic review, Ecology and Leichner shall conduct a
11 | review of the status of the remedial action at the Site and the need, if any, for further
12 | remedial action at the Site. The Health District shall be invited to participate in such
13 | reviews.

14 | **XXVIII. PUBLIC PARTICIPATION**

15 | A Public Participation Plan is attached to this Decree as Exhibit F and is by
16 | reference incorporated herein. Ecology shall maintain the responsibility for public
17 | participation with respect to the Site. However, Leichner shall cooperate with Ecology and
18 | shall:

19 | A. Prepare drafts of public notices and fact sheets at important stages of the
20 | remedial action, such as the submission of work plans and the completion of engineering
21 | design. Ecology will finalize (including editing if necessary) and distribute such fact sheets
22 | and prepare and distribute public notices of Ecology's presentations and meetings;

23 | B. Notify Ecology's project coordinator prior to issuance of all press releases
24 | and fact sheets and before major meetings on the remedial action (as with the public or
25 | local government);
26 |

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

4 D. In cooperation with Ecology, arrange and/or continue information
5 repositories to be located at the Southwest Washington Health District in Vancouver,
6 Washington and at Ecology's Southwest Regional Office in Lacey, Washington. At a
7 minimum, copies of all public notices, fact sheets, and press releases, the post-closure
8 permit to be issued by the Health District, the Compliance Monitoring Plan, all quality
9 assured groundwater, surface water, soil sediment, and air monitoring data, remedial action
10 plans, supplemental remedial planning documents, and all other similar documents relating
11 to performance of the remedial action required by this Decree shall be promptly placed in
12 these repositories.

13 **XXIX. DURATION OF DECREE**

14 This Decree shall remain in effect and the remedial program described in this
15 Decree shall be maintained and continued until Leichner receives from Ecology written
16 notice that the requirements of this Decree have been satisfactorily completed, or until the
17 Court directs that the Decree be terminated.

18 **XXX. EFFECTIVE DATE**

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

20 **XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

21 This Decree has been the subject of public notice and comment under RCW
22 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead
23 to a more expeditious cleanup of hazardous substances at the Site, in compliance with
24 applicable cleanup standards.
25
26

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

5 For State of Washington,
6 Department of Ecology

For State of Washington
Attorney General's Office

7 *Mary A. Burg* ^{6/25/96}
8 MARY BURG _{Date}
9 Program Manager
Toxics Cleanup Program

Tanya Barnett _{June 25, 1996}
TANYA BARNETT _{Date}
WSBA #17491
Assistant Attorney General

10 For Leichner Brothers Land Reclamation Corporation

11
12 *Eugene Lechner* _{June 12, 1996}
13 Its President _{Date}

Date

14 Approved as to form:

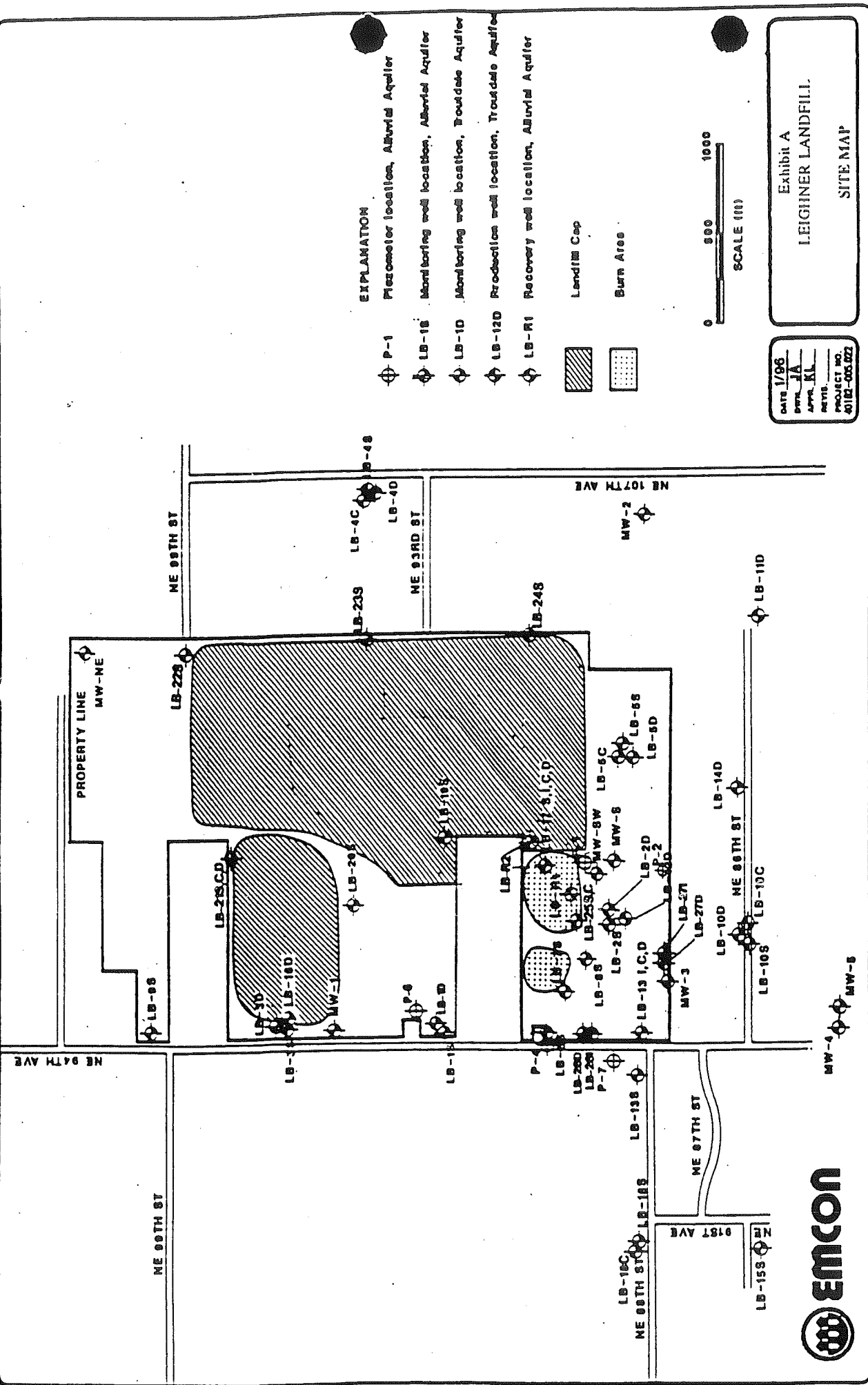
15
16 *Lester Hellerman* _{6/21/96}
17 HELLER, EHRMAN, WHITE _{Date}
& McAULIFFE
18 Attorneys for Leichner Brothers
Land Reclamation Corp.

19 DATED this 17 day of July, 1996.

EDWIN L. DENAIR

JUDGE/COMMISSIONER
Clark County Superior Court

Assage
Dennis A



EXPLANATION

- ⊕ P-1 Piezometer location, Alluvial Aquifer
- ⊕ LB-18 Monitoring well location, Alluvial Aquifer
- ⊕ LB-10 Monitoring well location, Boulders Aquifer
- ⊕ LB-12D Production well location, Troutdale Aquifer
- ⊕ LB-R1 Recovery well location, Alluvial Aquifer

Landfill Cap

Burn Area



DATE 1/96
 DRAWN JA
 APPR. KL
 REVISED
 PROJECT NO. 40102-005.022

Exhibit A
 LEIGHNER LANDFILL
 SITE MAP



EXHIBIT - B

CLEANUP ACTION PLAN

LEICHNER LANDFILL

CLARK COUNTY, WASHINGTON

JUNE 1996