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**STATE OF WASHINGTON
PEND OREILLE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.
TECK WASHINGTON INCORPORATED,

Defendant.

NO. _____

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Teck Washington Incorporated (Teck) under this Decree is to provide for
4 remedial action at a facility where there has been a release or threatened release of hazardous
5 substances. This Decree requires Teck to perform the following remedial action(s) at Teck's
6 Pend Oreille Mine Tailings Disposal Facilities Nos. 1 and 2 Site (Site) (See Exhibit A):

7 1) Regrade tailings at Tailings Disposal Facilities Nos. 1 and 2 (TDF-1 and
8 TDF-2) for slope stability and stormwater control.

9 2) Install, operate, and maintain a cover system over TDF-1 and TDF-2
10 including re-vegetation of the tailings facilities.

11 3) Construct a sedimentation basin for Creek #2 to capture sediment prior to
12 migration toward the Pend Oreille River.

13 4) Provide for groundwater and surface water monitoring to assess cover
14 system performance in accordance with the Compliance Monitoring Plan, which will be
15 approved by Ecology.

16 5) Provide for and maintain institutional controls in the form of restrictive
17 covenants, fences, and signs.

18 Ecology has determined that these actions are necessary to protect human health and the
19 environment.

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

25 C. By signing this Decree, the Parties agree to its entry and agree to be bound by its
26 terms.

1 D. By entering into this Decree, the Parties do not intend to discharge non-settling
2 parties from any liability they may have with respect to matters alleged in the Complaint. The
3 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
4 sums expended under this Decree.

5 E. This Decree shall not be construed as proof of liability or responsibility for any
6 releases of hazardous substances or cost for remedial action nor an admission of any facts;
7 provided, however, that Teck shall not challenge the authority of the Attorney General and
8 Ecology to enforce this Decree.

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

11 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

12 **II. JURISDICTION**

13 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
14 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

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

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

22 D. Ecology has given notice to Teck of Ecology's determination that Teck is a PLP
23 for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

24 E. The actions to be taken pursuant to this Decree are necessary to protect human
25 health and the environment.

26 F. This Decree has been subject to public notice and comment.

1 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
2 hazardous substances at the Site in compliance with the cleanup standards established under
3 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

4 H. Teck has agreed to undertake the actions specified in this Decree and consents to
5 the entry of this Decree under MTCA.

6 III. PARTIES BOUND

7 This Decree shall apply to and be binding upon the Parties to this Decree, their
8 successors and assigns. The undersigned representative of each party hereby certifies that he or
9 she is fully authorized to enter into this Decree and to execute and legally bind such party to
10 comply with this Decree. Teck agrees to undertake all actions required by the terms and
11 conditions of this Decree. No change in ownership or corporate status shall alter Teck's
12 responsibility under this Decree. Teck shall provide a copy of this Decree to all agents,
13 contractors, and subcontractors retained to perform work required by this Decree, and shall
14 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
15 this Decree.

16 IV. DEFINITIONS

17 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
18 WAC 173-340-200 shall control the meanings of the terms in this Decree.

19 A. Site: The Site is referred to as Pend Oreille Mine Tailings Disposal Facilities
20 Nos. 1 and 2. The Site is generally located approximately 2 miles north of Metaline Falls,
21 Washington. The Site is more particularly described in the Site Diagram (Exhibit A). The Site
22 constitutes a Facility under RCW 70.105D.020(5).

23 B. Parties: Refers to the State of Washington, Department of Ecology and Teck
24 Washington Incorporated.

25 C. Teck: Refers to Teck Washington Incorporated.
26

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

4 E. Hazardous Substances: Are those substances which are defined in
5 RCW 70.105D.020(7).

6 F. Effective Date: Shall be the date specified in Section XXX.

7 V. FINDINGS OF FACTS

8 Ecology makes the following findings of fact without any express or implied admissions
9 of such facts by Teck.

10 A. The Pend Oreille Mine was in operation from 1952 until mining operations
11 ceased in 1977. At the time of closure, the Bunker Hill Company owned the mine. Between
12 the years 1977 to 1986, the Bunker Hill Company, Pintlar, and GRC Exploration continued to
13 operate pumps to prevent mine flooding as well as perform exploration around the mine. From
14 1986 to 1988, the mine was allowed to flood. In 1988, Resource Finance Corporation
15 entered into an option-purchase agreement with Pintlar and began to dewater the mine.
16 The Resource Finance Corporation purchased the mine and mill along with 13,000 acres of
17 contiguous mineral holdings in 1990. Cominco American Incorporated became the owner of
18 the mine in 1996.

19 B. Cominco American Incorporated changed its name to Teck Cominco American
20 Incorporated in July 2001. Teck Cominco American Incorporated changed its name to Teck
21 American Incorporated in October 2008. Also in October 2008, mine operations were placed
22 under Teck Washington Incorporated. For purposes of this Decree, all such entities are referred
23 to as “Teck.”

24 C. Teck resumed operations of the Pend Oreille Mine in January 2004. In February
25 2009, the mine was placed into care and maintenance, which remains the status of the mine as
26 of the date of entry of this Decree. Teck remains the current owner of the mine property.

1 D. Tailings are the fine material that remains following ore processing and metal
2 extraction. The tailings from the Pend Oreille Mine were directly discharged to the Pend
3 Oreille River prior to 1967. After 1967, three tailings disposal facilities were used for tailings
4 disposal from the Pend Oreille Mine. Tailings from the process mill were transported via a
5 starter dam to the tailing disposal facilities. TDF-1 covers approximately 18 acres and was used
6 from 1967 to 1974. TDF-2 was used from 1974 to 1975 and covers approximately 9 acres.
7 Tailings Disposal Facility No. 3 (TDF-3) was used from 1975 until mine closure in 1977.
8 TDF-3 encompasses about 20 acres. TDF-3 is not part of the Site.

9 E. To prepare for the resumption of operations at the mine, Teck constructed a new
10 tailings disposal facility over TDF-3. In constructing the new disposal facility, TDF-3 was
11 covered with a geomembrane liner system that includes two (2), sixty (60) mil, high density
12 polyethylene liners. The new facility's liner system essentially functions as a cover system for
13 TDF-3. In addition, monitoring wells were installed downgradient of TDF-3 and have been
14 supplemented since construction of the new tailings disposal facility.

15 F. The tailings in TDF-1 and TDF-2 are from the same ore horizon as most of the
16 tailings in TDF-3 and were processed by the same mill. Analysis of the existing tailings in
17 TDF-3 show high levels of lead, zinc, arsenic, and cadmium and the tailings exhibit the
18 Washington State dangerous waste characteristic for lead toxicity by failure of the toxicity
19 characteristic leaching procedure (TCLP) (ENSR 1999a).

20 G. Credible evidence that releases of hazardous substances to the environment
21 associated with the TDF-1 and TDF-2 have occurred at the Site is contained in the following
22 documents:

- 23 • Dames & Moore, 1997. Seep Water Analysis from Tailings Pond No.1.
24 Letter Report to Cominco American, Spokane, Washington. Spokane,
Washington.
- 25 • Dames & Moore, 1999. Focused Groundwater Assessment Tailings Storage
26 Facility No. 3. Pend Oreille Mine Metaline Falls, Washington. Spokane,
Washington.

- 1 • ENSR, 1999a. Analysis of Data of the Pend Oreille Tailings Impoundment
2 #3 February 1999 Sampling Study. Letter to Mr. Keith Stoffel, Washington
3 Department of Ecology. Fort Collins, Colorado.
- 4 • ENSR, 1999e. Geochemical Evaluation of Pend Oreille Mine Monitoring
5 Wells. Report prepared for Cominco American Inc., Spokane, Washington.
6 Redmond, Washington.
- 7 • ENSR, 2000. Final Environmental Impact Statement Pend Oreille Mine
8 Project. Report prepared for Washington Department of Ecology, Spokane,
9 Washington. Redmond, Washington.
- 10 • Maxim Technologies, Inc 1998. MTCA/Dangerous Waste Characterization
11 Preliminary Results No. 3 Tailings Impoundment. Letter to Dave
12 Godlewski, Environmental Manager, Cominco American, Inc. Spokane,
13 Washington. Spokane, Washington.
- 14 • URS Corporation, 2008. Pend Oreille Mine TDF-1 and TDF-2
15 Hydrogeology Data Review. Memorandum prepared for Teck Cominco
16 American Incorporated.
- 17 • URS Corporation, 2009. Supplemental Monitoring Well Installation and
18 Groundwater Monitoring Pend Oreille Mine TDF-1 and TDF-2. Report
19 prepared for Teck American Incorporated.
- 20 • URS Corporation, 2010, Supplemental Remedial Investigation/Feasibility
21 Study Pend Oreille Mine TDF-1 and TDF-2, Metaline Falls, WA.

22 H. Tailings from TDF-1 and TDF-2 are exposed at the surface, making hazardous
23 substances potentially available for direct contact; release to surface water through erosion; and
24 release to groundwater through infiltration.

25 I. The tailings hazardous substance (metals) concentrations exceed cleanup levels
26 set to be protective of human health and ecological receptors for tailings, groundwater, and
surface water.

As a result of this evidence, Ecology has identified Teck as a PLP for releases of
hazardous substances at TDF-1 and TDF-2 at the Pend Oreille Mine.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect human health and the environment
from the known release, or threatened release, of hazardous substances or contaminants at, on,
or from the Site.

1 A. Teck will conduct a final cleanup action at the Site by implementing the Cleanup
2 Action Plan (CAP), Exhibit B, in accordance with the schedule and terms of the Scope of Work
3 and Schedule, Exhibit C, and all other requirements of this Decree. This includes, but is not
4 limited to, the following actions:

5 1) Regrade tailings at TDF-1 and TDF-2 for slope stability and stormwater
6 control.

7 2) Install, operate, and maintain a cover system over TDF-1 and TDF-2
8 including re-vegetation of the tailings facilities.

9 3) Construct a sedimentation basin for Creek #2 to capture sediment prior to
10 migration toward the Pend Oreille River.

11 4) Provide for groundwater and surface water monitoring to assess cover
12 system performance in accordance with the Compliance Monitoring Plan, which will be
13 approved by Ecology.

14 5) Provide for and maintain institutional controls in the form of restrictive
15 covenants, fences, and signs.

16 B. Teck agrees not to perform any remedial actions outside the scope of this Decree
17 unless the Parties agree to modify, as necessary, the CAP (Exhibit B) and/or the Scope of Work
18 and Schedule (Exhibit C) to cover these actions. All plans or other deliverables submitted by
19 Teck for Ecology’s review and approval under the Scope of Work and Schedule (Exhibit C),
20 shall upon Ecology’s approval, become integral and enforceable parts of this Decree. All
21 actions undertaken by Teck under this Decree shall be performed in accordance with Chapter
22 70.105D RCW and Chapter 173-340 WAC unless otherwise provided herein.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 William J. Fees
4 Department of Ecology
4601 North Monroe
5 Spokane, WA 99205-1296
(509) 329-3589

6 The project coordinator for Teck is:

7 Kevin Dunn
8 Teck Washington Incorporated
P.O. Box 7
9 1382 Pend Oreille Mine Road
Metaline Falls, WA 99153
10 (509) 445-5348

11 Each project coordinator shall be responsible for overseeing the implementation of this
12 Decree. Ecology’s project coordinator will be Ecology’s designated representative for the Site.
13 To the maximum extent possible, communications between Ecology and Teck and all
14 documents, including reports, approvals, and other correspondence concerning the activities
15 performed pursuant to the terms and conditions of this Decree shall be directed through the
16 project coordinators. The project coordinators may designate, in writing, working level staff
17 contacts for all or portions of the implementation of the work to be performed required by this
18 Decree.

19 Any party may change its respective project coordinator. Written notification shall be
20 given to the other party at least ten (10) calendar days prior to the change.

21 **VIII. PERFORMANCE**

22 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
23 the supervision and direction of a geologist licensed in the State of Washington or under the
24 direct supervision of an engineer registered in the State of Washington, except as otherwise
25 provided for by Chapters 18.220 and 18.43 RCW.
26

1 All engineering work performed pursuant to this Decree shall be under the direct
2 supervision of a professional engineer registered in the State of Washington, except as
3 otherwise provided for by RCW 18.43.130.

4 All construction work performed pursuant to this Decree shall be under the direct
5 supervision of a professional engineer or a qualified technician under the direct supervision of a
6 professional engineer. The professional engineer must be registered in the State of Washington,
7 except as otherwise provided for by RCW 18.43.130.

8 Any documents submitted containing geologic, hydrologic or engineering work shall be
9 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or
10 RCW 18.43.130.

11 Teck shall notify Ecology in writing of the identity of any engineer(s) and geologist(s),
12 contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this
13 Decree, in advance of their involvement at the Site.

14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have full authority to enter and
16 freely move about all property at the Site that Teck either owns, controls, or has access rights to
17 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
18 contracts related to the work being performed pursuant to this Decree; reviewing Teck's
19 progress in carrying out the terms of this Decree; conducting such tests or collecting such
20 samples as Ecology may deem necessary; using a camera, sound recording, or other
21 documentary type equipment to record work done pursuant to this Decree; and verifying the
22 data submitted to Ecology by Teck. Teck shall make all reasonable efforts to secure access
23 rights for those properties within the Site not owned or controlled by Teck where remedial
24 activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology
25 authorized representative shall give reasonable notice before entering any Site property owned
26 or controlled by Teck unless an emergency prevents such notice. All Parties who access the

1 Site pursuant to this section shall comply with any applicable Health and Safety Plan(s).
2 Ecology employees and their representatives shall not be required to sign any liability release or
3 waiver as a condition of Site property access.

4 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

5 With respect to the implementation of this Decree, Teck shall make the results of all
6 sampling, laboratory reports, and/or test results generated by it or on its behalf available to
7 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in
8 both printed and electronic formats in accordance with Section XI (Progress Reports),
9 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
10 subsequent procedures specified by Ecology for data submittal.

11 If requested by Ecology, Teck shall allow Ecology and/or its authorized representative
12 to take split or duplicate samples of any samples collected by Teck pursuant to the
13 implementation of this Decree. Teck shall notify Ecology seven (7) days in advance of any
14 sample collection or work activity at the Site. Ecology shall, upon request, allow Teck and/or
15 its authorized representative to take split or duplicate samples of any samples collected by
16 Ecology pursuant to the implementation of this Decree, provided that doing so does not
17 interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
18 (Access), Ecology shall notify Teck prior to any sample collection activity unless an emergency
19 prevents such notice.

20 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
21 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be
22 conducted, unless otherwise approved by Ecology.

23 **XI. PROGRESS REPORTS**

24 Teck shall submit to Ecology written monthly Progress Reports that describe the actions
25 taken during the previous month to implement the requirements of this Decree. The Progress
26 Reports shall include the following:

1 XII may be retained in either hard copy or electronic form. Upon request of Ecology, Teck
2 shall make all records available to Ecology and allow access for review within a reasonable
3 time. Nothing in this section shall obviate Teck's obligation(s) to retain records under any
4 other provision of law.

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

6 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
7 interest in any portion of the Site shall be consummated by Teck without provision for
8 continued operation and maintenance of any containment system, treatment system, and/or
9 monitoring system installed or implemented pursuant to this Decree.

10 Prior to Teck's transfer of any interest in all or any portion of the Site, and during the
11 effective period of this Decree, Teck shall provide a copy of this Decree to any prospective
12 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30)
13 days prior to any transfer, Teck shall notify Ecology of said transfer. Upon transfer of any
14 interest, Teck shall ensure that it retains rights of access to the Site sufficient to enable it to
15 continue to comply with the requirements of this Consent Decree and notify all transferees of
16 the restrictions on the use of the property.

17 **XIV. RESOLUTION OF DISPUTES**

18 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
19 other decision or action by Ecology's project coordinator, or an itemized billing statement from
20 Ecology under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute
21 resolution procedure set forth below.

22 1) Upon receipt of Ecology's project coordinator's initial written decision,
23 or the itemized billing statement, Teck has fourteen (14) days within which to notify
24 Ecology's project coordinator in writing of its objection to the decision or itemized
25 statement.
26

1 2) The Parties' project coordinators shall then confer in an effort to resolve
2 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)
3 days, Ecology's project coordinator shall issue a second written decision.

4 3) Teck may then request regional management review of the decision.
5 This request shall be submitted in writing to the Eastern Region Toxics Cleanup
6 Program Section Manager within seven (7) days of receipt of Ecology's project
7 coordinator's written decision.

8 4) Ecology's Regional Section Manager shall conduct a review of the
9 dispute and shall endeavor to issue a written decision regarding the dispute within thirty
10 (30) days of Teck's request for review.

11 5) If Teck finds Ecology's Regional Section Manager's decision
12 unacceptable, Teck may then request final management review of the decision. This
13 request shall be submitted in writing to the Toxics Cleanup Program Manager within
14 seven (7) days of receipt of the Regional Section Manager's decision.

15 6) Ecology's Toxics Cleanup Program Manager shall conduct a review of
16 the dispute and shall endeavor to issue a written decision regarding the dispute within
17 thirty (30) days of Teck's request for review of the Regional Section Manager's
18 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final
19 decision on the disputed matter.

20 B. If Ecology's final written decision is unacceptable to Teck, Teck has the right to
21 submit the dispute to the Court for resolution. The Parties agree that one judge should retain
22 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.
23 In the event Teck presents an issue to the Court for review, the Court shall review the action or
24 decision of Ecology on the basis of whether such action or decision was arbitrary and capricious
25 and render a decision based on such standard of review.
26

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

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

8 **XV. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing by
11 Ecology and a copy shall be provided to Teck. Substantial changes to the work to be performed
12 shall require formal amendment of this Decree. This Decree may only be formally amended by
13 a written stipulation among the Parties that is entered by the Court, or by order of the Court.
14 Such amendment shall become effective upon entry by the Court. Agreement to amend the
15 Decree shall not be unreasonably withheld by any party.

16 Teck shall submit a written request for amendment to Ecology for approval. Ecology
17 shall indicate its approval or disapproval in writing and in a timely manner after the written
18 request for amendment is received. If the amendment to the Decree is a substantial change,
19 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval
20 of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to
21 a proposed amendment, the disagreement may be addressed through the dispute resolution
22 procedures described in Section XIV (Resolution of Disputes).

23 **XVI. EXTENSION OF SCHEDULE**

24 A. An extension of schedule shall be granted only when a request for an extension
25 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
26

1 deadline for which the extension is requested, and good cause exists for granting the extension.

2 All extensions shall be requested in writing. The request shall specify:

- 3 1) The deadline that is sought to be extended;
- 4 2) The length of the extension sought;
- 5 3) The reason(s) for the extension; and
- 6 4) Any related deadline or schedule that would be affected if the extension
7 were granted.

8 B. The burden shall be on Teck to demonstrate to the satisfaction of Ecology that
9 the request for such extension has been submitted in a timely fashion and that good cause exists
10 for granting the extension. Good cause may include, but may not be limited to:

- 11 1) Circumstances beyond the reasonable control and despite the due
12 diligence of Teck including delays caused by unrelated third parties or Ecology, such as
13 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents
14 submitted by Teck;
- 15 2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
16 or other unavoidable casualty; or
- 17 3) Endangerment as described in Section XVII (Endangerment).

18 However, neither increased costs of performance of the terms of this Decree nor
19 changed economic circumstances shall be considered circumstances beyond the reasonable
20 control of Teck. The parties acknowledge that the Site can be influenced by unfavorable
21 weather conditions during the winter months which could potentially delay the start of,
22 continuation of and completion of remedial work beyond the control of Teck; provided,
23 however, that Teck shall take reasonably foreseeable winter conditions into account in its
24 project planning.

25 C. Ecology shall act upon any written request for extension in a timely fashion.
26 Ecology shall give Teck written notification of any extensions granted pursuant to this Decree.

1 A requested extension shall not be effective until approved by Ecology or, if required, by the
2 Court. Unless the extension is a substantial change, it shall not be necessary to amend this
3 Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is granted.

4 D. An extension shall only be granted for such period of time as Ecology
5 determines is reasonable under the circumstances. Ecology may grant schedule extensions
6 exceeding ninety (90) days only as a result of:

- 7 1) Delays in the issuance of a necessary permit which was applied for in a
8 timely manner;
- 9 2) Other circumstances deemed exceptional or extraordinary by Ecology; or
- 10 3) Endangerment as described in Section XVII (Endangerment).

11 **XVII. ENDANGERMENT**

12 In the event Ecology determines that any activity being performed at the Site is creating
13 or has the potential to create a danger to human health or the environment, Ecology may direct
14 Teck to cease such activities for such period of time as it deems necessary to abate the danger.
15 Teck shall immediately comply with such direction.

16 In the event Teck determines that any activity being performed at the Site is creating or
17 has the potential to create a danger to human health or the environment, Teck may cease such
18 activities. Teck shall notify Ecology's project coordinator as soon as possible, but no later than
19 twenty-four (24) hours after making such determination or ceasing such activities. Upon
20 Ecology's direction, Teck shall provide Ecology with documentation of the basis for the
21 determination or cessation of such activities. If Ecology disagrees with Teck's cessation of
22 activities, it may direct Teck to resume such activities.

23 If Ecology concurs with or orders a work stoppage pursuant to this section, Teck's
24 obligations with respect to the ceased activities shall be suspended until Ecology determines the
25 danger is abated, and the time for performance of such activities, as well as the time for any
26 other work dependent upon such activities, shall be extended, in accordance with Section XVI

1 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
2 circumstances.

3 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
4 contractors to take or require appropriate action in the event of an emergency.

5 **XVIII. COVENANT NOT TO SUE**

6 A. Covenant Not to Sue: In consideration of Teck's compliance with the terms and
7 conditions of this Decree, Ecology covenants not to institute legal or administrative actions
8 against Teck regarding the release or threatened release of hazardous substances covered by this
9 Decree. This covenant shall be effective as of the Effective Date of this Consent Decree.

10 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
11 and those hazardous substances that Ecology knows are located at the Site as of the date of
12 entry of this Decree. This Decree does not cover any other hazardous substance or area.
13 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

14 This Covenant Not to Sue shall have no applicability whatsoever to:

- 15 1) Criminal liability;
16 2) Liability for damages to natural resources; and
17 3) Any Ecology action, including cost recovery, against PLPs not a party to
18 this Decree.

19 If factors not known at the time of entry of the settlement agreement are discovered and
20 present a previously unknown threat to human health or the environment, the Court shall amend
21 this Covenant Not to Sue.

22 B. Reopeners: Ecology specifically reserves the right to institute legal or
23 administrative action against Teck to require it to perform additional remedial actions at the Site
24 and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the following
25 circumstances:
26

1 Covenant shall restrict future uses of the Site. Teck shall provide Ecology with a copy of the
2 recorded Restrictive Covenant within thirty (30) days of the recording date.

3 **XXI. FINANCIAL ASSURANCES**

4 Pursuant to WAC 173-340-440(11), Teck shall maintain sufficient and adequate
5 financial assurance mechanisms to cover all costs associated with the operation and
6 maintenance of the remedial action at the Site, including institutional controls, compliance
7 monitoring, and corrective measures.

8 Within sixty (60) days of the effective date of this Decree, Teck shall submit to Ecology
9 for review and approval an estimate of the following costs that it will incur in carrying out the
10 terms of this Decree: costs associated with the operation and maintenance of the cleanup
11 action, including institutional controls, compliance monitoring, and corrective measures.
12 Within sixty (60) days after Ecology approves the aforementioned cost estimate, Teck shall
13 provide proof of financial assurances sufficient to cover all such costs in a form acceptable to
14 Ecology.

15 Teck shall adjust the financial assurance coverage and provide Ecology's project
16 coordinator with documentation of the updated financial assurance for:

17 1) Inflation, annually, within thirty (30) days of the anniversary date of the
18 entry of this Decree; or if applicable, the modified anniversary date established in
19 accordance with Section XXI.B., or if applicable, ninety (90) days after the close of
20 Teck's fiscal year if the financial test or corporate guarantee is used; and

21 2) Changes in cost estimates, within thirty (30) days of issuance of
22 Ecology's approval of a modification or revision to the CAP that result in increases to
23 the cost or expected duration of remedial actions. Any adjustments for inflation since
24 the most recent preceding anniversary date shall be made concurrent with adjustments
25 for changes in cost estimates. The issuance of Ecology's approval of a revised or
26

1 modified CAP will revise the anniversary date established under this section to become
2 the date of issuance of such revised or modified CAP.

3 3) The amount of financial assurance may be subject to a downward
4 adjustment on an annual basis as portions of the remedial action are completed.

5 **XXII. INDEMNIFICATION**

6 Teck agrees to indemnify and save and hold the State of Washington, its employees, and
7 agents harmless from any and all claims or causes of action for death or injuries to persons or
8 for loss or damage to property to the extent arising from or on account of acts or omissions of
9 Teck, its officers, employees, agents, or contractors in entering into and implementing this
10 Decree. However, Teck shall not indemnify the State of Washington nor save nor hold its
11 employees and agents harmless from any claims or causes of action to the extent arising out of
12 the negligent acts or omissions of the State of Washington, or the employees or agents of the
13 State, in entering into or implementing this Decree.

14 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

15 A. All actions carried out by Teck pursuant to this Decree shall be done in
16 accordance with all applicable federal, state, and local requirements, including requirements to
17 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
18 federal, state, or local requirements that the agency has determined are applicable and that are
19 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

20 B. Pursuant to RCW 70.105D.090(1), Teck is exempt from the procedural
21 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
22 requiring or authorizing local government permits or approvals. However, Teck shall comply
23 with the substantive requirements of such permits or approvals. The exempt permits or
24 approvals and the applicable substantive requirements of those permits or approvals, as they are
25 known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).
26

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

16 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
17 exemption from complying with the procedural requirements of the laws referenced in RCW
18 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for
19 the State to administer any federal law, the exemption shall not apply and Teck shall comply
20 with both the procedural and substantive requirements of the laws referenced in RCW
21 70.105D.090(1), including any requirements to obtain permits.

22 **XXIV. REMEDIAL ACTION COSTS**

23 Teck shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
24 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
25 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
26 and Decree preparation, negotiation, oversight and administration. These costs shall include

1 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
2 include costs of direct activities and support costs of direct activities as defined in WAC
3 173-340-550(2). Ecology has accumulated [**\$ Amount to be specified as of decree filing**] in
4 remedial action costs related to this facility as of [**decree filing date**]. Payment for this amount
5 shall be submitted within thirty (30) days of the effective date of this Decree. For all costs
6 incurred subsequent to [**decree filing date**], Teck shall pay the required amount within thirty
7 (30) days of receiving from Ecology an itemized statement of costs that includes a summary of
8 costs incurred, an identification of involved staff, and the amount of time spent by involved
9 staff members on the project. A general statement of work performed will be provided upon
10 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),
11 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of
12 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
13 monthly.

14 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
15 authority to recover unreimbursed remedial action costs by filing a lien against real property
16 subject to the remedial actions.

17 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

18 If Ecology determines that Teck has failed without good cause to implement the
19 remedial action, in whole or in part, Ecology may, after notice to Teck, perform any or all
20 portions of the remedial action that remain incomplete. If Ecology performs all or portions of
21 the remedial action because of Teck's failure to comply with its obligations under this Decree,
22 Teck shall reimburse Ecology for the costs of doing such work in accordance with Section
23 XXIV (Remedial Action Costs), provided that Teck is not obligated under this section to
24 reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this
25 Decree.

1 Except where necessary to abate an emergency situation, Teck shall not perform any
2 remedial actions at the Site outside those remedial actions required by this Decree, unless
3 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
4 (Amendment of Decree).

5 **XXVI. PERIODIC REVIEW**

6 As remedial action, including groundwater monitoring, continues at the Site, the Parties
7 agree to review the progress of remedial action at the Site, and to review the data accumulated
8 as a result of monitoring at the Site as often as is necessary and appropriate under the
9 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
10 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
11 action at the Site. Ecology reserves the right to require further remedial action at the Site under
12 appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

13 **XXVII. PUBLIC PARTICIPATION**

14 A Public Participation Plan (Exhibit D) is required for this Site. Ecology in conjunction
15 with Teck shall review any existing Public Participation Plan to determine its continued
16 appropriateness and whether it requires amendment.

17 Ecology shall maintain the responsibility for public participation at the Site. However,
18 Teck shall cooperate with Ecology, and shall:

19 A. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of
20 public notices and fact sheets at important stages of the remedial action, such as the submission
21 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and
22 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact
23 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

24 B. Notify Ecology's project coordinator prior to the preparation of all press releases
25 and fact sheets, and before major meetings with the interested public and local governments.
26 Likewise, Ecology shall notify Teck prior to the issuance of all press releases and fact sheets,

1 and before major meetings with the interested public and local governments. For all press
2 releases, fact sheets, meetings, and other outreach efforts by Teck that do not receive prior
3 Ecology approval, Teck shall clearly indicate to its audience that the press release, fact sheet,
4 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

5 C. When requested by Ecology, participate in public presentations on the progress
6 of the remedial action at the Site. Participation may be through attendance at public meetings to
7 assist in answering questions, or as a presenter.

8 D. When requested by Ecology, arrange and/or continue information repositories at
9 the following locations:

- 10 1. Cutter Theater Building
11 302 Park Street
Metaline Falls, WA 99153
- 12 2. Ecology's Eastern Regional Office
13 4601 N. Monroe
Spokane, WA 99205-1296

14 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
15 monitoring data; remedial actions plans and reports, supplemental remedial planning
16 documents, and all other similar documents relating to performance of the remedial action
17 required by this Decree shall be promptly placed in these repositories.

18 **XXVIII. DURATION OF DECREE**

19 The remedial program required pursuant to this Decree shall be maintained and
20 continued until Teck has received written notification from Ecology that the requirements of
21 this Decree have been satisfactorily completed. This Decree shall remain in effect until
22 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section
23 XIX (Contribution Protection) shall survive.

24 **XXIX. CLAIMS AGAINST THE STATE**

25 Teck hereby agrees that it will not seek to recover any costs accrued in implementing
26 the remedial action required by this Decree from the State of Washington or any of its agencies;

1 and further, that Teck will make no claim against the State Toxics Control Account or any local
2 Toxics Control Account for any costs incurred in implementing this Decree. Except as
3 provided above, however, Teck expressly reserves its right to seek to recover any costs incurred
4 in implementing this Decree from any other PLP. This Section does not limit or address
5 funding that may be provided under Chapter 173-322 WAC.

6 **XXX. EFFECTIVE DATE**

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

8 **XXXI. WITHDRAWAL OF CONSENT**

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

13 STATE OF WASHINGTON
14 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

15 _____
16 JAMES J. PENDOWSKI
17 Program Manager
18 Toxics Cleanup Program

ANDREW A. FITZ, WSBA #22169
Senior Counsel

19 Date: _____

Date: _____

20 TECK WASHINGTON INCORPORATED

21 _____
22 MICHAEL AGG
23 Senior Vice President

24 Date: _____

25 ENTERED this ____ day of _____ 20____.

26 _____

JUDGE
Pend Oreille County Superior Court

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