

This site is listed in ISIS as:
"Hamilton Street Bridge"
111 N. Erie St.
Spokane, WA
ID# 84461527
-K. Scanlan

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SEP 12 2002
SUPERIOR COURT
SPOKANE, COUNTY, WN

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,
Plaintiff,

v.

AVISTA CORPORATION, and
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY
COMPANY,
Defendants.

NO. 02205445-0

CONSENT DECREE

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the
3 Washington State Department of Ecology (Ecology) and the Defendants is to provide for
4 remedial action at a facility where there has been a release or threatened release of hazardous
5 substances. The facility is known as the Hamilton Street Bridge Site and is shown in the Site
6 Map in Exhibit A. This Decree requires the Defendants to undertake the remedial actions
7 specified in Section 8 of the Final Cleanup Action Plan (CAP) attached to this Decree as
8 Exhibit B. Ecology has determined that these actions are necessary to protect public health and
9 the environment.

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

15 C. In signing this Decree, the Defendants agree to its entry and agree to be bound
16 by its terms.

17 D. By entering into this Decree, the parties do not intend to discharge nonsettling
18 parties from any liability they may have with respect to matters alleged in the complaint. The
19 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
20 sums expended at the Site, including but not limited to sums expended under this Decree.

21 E. This Decree shall not be construed as proof of liability or responsibility for any
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;
23 provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any
24 proceeding to enforce this Decree.

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

1 II. JURISDICTION

2 A This Court has jurisdiction over the subject matter and over the parties pursuant
3 to Chapter 70 105D RCW, the Model Toxics Control Act (MTCA).

4 B Authority is conferred upon the Washington State Attorney General by RCW
5 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
6 notice and any required hearing, Ecology finds the proposed settlement would lead to a more
7 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a
8 settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

11 D Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(16),
12 of Ecology's determination that Defendants are potentially liable persons for the Site and that
13 there has been a release or threatened release of hazardous substances at the Site.

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

16 F Defendants have agreed to undertake the actions specified in this Decree and
17 consent to the entry of this Decree under the MTCA.

18 III. PARTIES BOUND

19 This Decree shall apply to and be binding upon the signatories to this Decree (the
20 Parties), their successors and assigns. The undersigned representative of each party hereby
21 certifies that he or she is fully authorized to enter into this Decree and to execute and legally
22 bind such party to comply with the Decree. Defendants agree to undertake all actions required
23 by the terms and conditions of this Decree and not to contest state jurisdiction regarding this
24 Decree. No change in ownership or corporate status shall alter the responsibility of the
25 defendants under this Decree. Defendants shall provide a copy of this Decree to all agents,
26 contractors and subcontractors retained to perform work required by this Decree and shall

1 ensure that all work undertaken by such contractors and subcontractors will be in compliance
2 with this Decree

3 IV. DEFINITIONS

4 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms
5 in this Decree.

6 A. Site: The Site, referred to as the Hamilton Street Bridge Site, is located at 111
7 North Erie Street, Spokane, Washington. The Site is made up of three adjacent properties: one
8 owned by The Burlington Northern and Santa Fe Railway Company (BNSF) and two others
9 owned by Spokane River Properties, LP (SRP). It also includes easements and limited parcels
10 formerly owned by SGP that were deeded to the Washington State Department of
11 Transportation (WSDOT) for the placement of the footings for the Hamilton Street Bridge. It
12 is currently where Brown Building Materials is located and is situated beneath the Hamilton
13 Street James E. Keefe Bridge along the Spokane River. The Site is more particularly described
14 in the detailed site diagram that is included as Exhibit A to this Decree.

15 B. Parties: Refers to the Washington State Department of Ecology (Ecology) and
16 the Defendants, collectively.

17 C. Defendants: Refers collectively to Avista Corporation, and The Burlington
18 Northern and Santa Fe Railway Company.

19 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
20 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.
21 The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

22 E. Section: Refers to a portion of this Consent Decree identified by a roman
23 numeral.

24 V. STATEMENT OF FACTS

25 Ecology makes the following finding of facts without any express or implied
26 admissions by Defendants.

1 A The Site, as shown in Exhibit A, is located at 111 North Erie Street in Spokane,
2 Washington and is made up of three adjacent properties: (1) The Burlington Northern and
3 Santa Fe Railway Company (BNSF) property formerly leased by the American Tar Company
4 (ATC); (2) the former Spokane Manufactured Gas Plant (SGP) property previously owned by
5 Avista Corporation (formerly The Washington Water Power Company); and (3) the existing
6 riverfront property previously owned by Chicago Milwaukee & Saint Paul Railroad Company.
7 The property under (2) and (3) above are now owned by Spokane River Properties, LP. The
8 site also includes easements and limited parcels formerly owned by SGP that were deeded to
9 the WSDOT for the placement of footings for the Hamilton Street Bridge.

10 B The SGP began operations at the Site sometime between 1905 and 1909, and
11 was owned by the Union Gas Company. The property was sold to Spokane Gas & Fuel
12 Company in 1909. In 1913, a northern portion of the land was sold to the former Chicago
13 Milwaukee & Saint Paul Railroad (CM&SPR) to facilitate the construction of a track along the
14 riverbank. The riverbank was extended into the river up to a length of 230 ft. to achieve this
15 construction.

16 C SGP manufactured coal gas and carbureted water gas at the Site until 1948.
17 From 1948 to approximately 1956, a propane-air system was operated from the facility for gas
18 mixing, storage, and distribution. The propane-air system was utilized until natural gas was
19 available. Reflecting a change from coal gas manufacturing to natural gas distribution, SGP
20 changed its name to the Spokane Natural Gas Company in 1956. In 1958, the Spokane Natural
21 Gas Company merged with The Washington Water Power Company (WWP). WWP stored
22 and dispersed natural gas at the Site until 1962 or 1963.

23 D Richard Brown leased the SGP property from 1963 to 1978 where he operated
24 Brown Building Materials. He purchased the SGP property in 1978. Mr. Brown also
25 purchased portions of the Site in 1981 that were formerly owned by the CM&SPR. In 1982,
26 the property was deeded to Spokane River Properties, LP, a Washington limited partnership,
with Mr. Brown as the general partner

1 E A coal tar processing operation previously operated on the BNSF property
2 formerly leased by ATC. The operation is believed to have started concurrently with the
3 Spokane Gas Plant in approximately 1905, and continued to formulate or distribute products
4 until 1967. The C.G. Betts Company operated the facility until the early 1930's when the
5 operations were taken over by ATC. The operation produced a variety of hydrocarbon-based
6 products and intermediates including roofing tar, boat pitch, post paint, and naphthalene,
7 among others. The ATC leased the property from BNSF until 1967. Mr. Brown began leasing
8 the property from the BNSF in 1968 and continues to lease the property today.

9 F. In 1987, the United States Environmental Protection Agency (EPA) completed
10 a preliminary assessment of both the SGP property and the BNSF property and recommended
11 additional investigations for the BNSF property. EPA conducted a Comprehensive
12 Environmental Response, Compensation and Liability ACT (CERCLA) screening site
13 investigation of the BNSF property in 1988 and of the SGP property in 1995 and referred both
14 sites to Ecology for consideration.

15 G. An environmental investigation of the Site was conducted by WSDOT in the
16 fall of 1997. The results of this work are presented in the report: *Focused Remedial
17 Investigation and Feasibility Study Report – SR290 Southriver Drive Alignment Report*. The
18 report was prepared by EMCON for WSDOT, August 28, 1998. The study showed the
19 presence of coal tar waste covering an area of two to three acres and extending to a depth in
20 excess of forty feet. The study documented contamination of soil by various hydrocarbons,
21 particularly polycyclic aromatic hydrocarbons (PAHs).

22 H. Ecology provided a letter to WSDOT, dated December 18, 1998, under the
23 Voluntary Cleanup Program. The letter summarizes previous investigations, hazardous
24 substance releases, and recommendations for additional investigation. Based on this letter and
25 other Site information, the volume of contaminated soils on the Site was estimated to be over
50,000 cubic yards.

1 I. Avista has performed both historical studies at the Site and field investigative
2 studies of the former Spokane Gas Plant property. The results further defined the lateral
3 boundaries of the soil contamination and showed that the soil contamination does not adversely
4 affect groundwater outside the limits of soil contamination. The results also showed that the
5 Site does not adversely impact the Spokane River sediments and surface water. These studies
6 are presented in the following documents:

7 *Supplemental Investigation – Former Spokane Manufactured Gas Plant*
8 *report.* Prepared by Landau Associates, Inc for the Washington Water Power
9 Company, January 7, 1999.

10 *Historical Information Study – Vicinity of Former Spokane*
11 *Manufactured Gas Plant Property Report.* Prepared by Landau Associates Inc.
12 for Washington Water Power Company, October 23, 1998.

13 *Preliminary Site Investigation – Former Spokane Manufactured Gas*
14 *Plant.* Prepared by Landau Associates, Inc. for the Washington Water Power
15 Company, February 9, 1998.

16 J. In 1998, BNSF performed a field investigation at the property leased by ATC
17 from BNSF. Contaminants related to the coal tar were found in soil samples but were not
18 detected in groundwater samples from monitoring wells installed on the property leased by
19 ATC from BNSF. The results of the study are presented in the following document:

20 *Focused Site Assessment. Former American Tar Company Site,*
21 *Spokane, Washington.* Prepared by GeoEngineers for BNSF, April 30, 1999.

22 K. Avista conducted a second supplemental investigative effort at the Site to obtain
23 additional information about groundwater and soil contamination in 1999. Results showed
24 contaminants associated with manufactured gas plant processes and/or coal tar processing were
25 found in soil samples as deep as eighty feet below ground surface. These contaminants include
26 volatile organic hydrocarbons (VOCs) and semivolatile organic hydrocarbons (sVOCs),
polycyclic aromatic hydrocarbons (PAHs), and metals. Relatively few of these hazardous
substances were detected in groundwater samples analyzed from areas surrounding the soil
contaminated area. The investigations show that any hazardous substances partitioning into
the groundwater are undergoing degradation through physical, chemical, and biological

1 processes. The investigations indicate that the Spokane River is not being adversely impacted
2 by the Site.

3 L. In certified correspondence dated January 15, 1999, Ecology notified Avista and
4 BNSF of the preliminary finding of potential liability and requested comment on those
5 findings. On June 11, 1999, Ecology notified Avista and BNSF of their status as "potentially
6 liable persons" under RCW 70.105D.040.

7 M. In certified correspondence dated June 11, 1999, Ecology notified Brown
8 Building Materials (Spokane River Properties, LP) of the preliminary finding of potential
9 liability and requested comment on these findings. On September 10, 1999, Ecology notified
10 Brown Building Materials (Spokane River Properties, LP) of its status as a "potentially liable
11 person" under RCW 70.105D.040.

12 N. Avista and BNSF entered into an Agreed Order with Ecology on March 13,
13 2000, and completed a Remedial Investigation (RI) and a focused Feasibility Study (FS). The
14 completed RI report is entitled:

15 *Second Supplemental and Remedial Investigation, Hamilton Street*
16 *Bridge Site, Spokane, Washington.* Prepared by Landau Associates, Inc. for
17 Avista Corporation and BNSF, February 2001.

18 The FS examined cleanup alternatives that protect human health and the environment.
19 Remedial alternatives for both groundwater and soils were analyzed to determine which
20 combination of cleanup alternatives would be most appropriate for the Site. Five alternatives
21 were evaluated based on MTCA criteria after an initial screening of processes and alternatives.
22 The FS is presented in the following document:

23 *Feasibility Study Report, Hamilton Street Bridge Site, Spokane,*
24 *Washington.* Prepared by GEI Consultants, Inc. for Avista and BNSF,
25 November 30, 2000.

26 O. Based upon the results of the RI and the FS, Ecology prepared a Draft Cleanup
27 Action Plan (DCAP). As required under MTCA, this DCAP was made available for public
28 review and comment from July 2 to August 1, 2001. A Final Cleanup Action Plan
29 (CAP), Exhibit B, was issued on August 10, 2001.

1 VI. WORK TO BE PERFORMED

2 This Decree contains a program designed to protect public health, welfare and the
3 environment from the known release, or threatened release, of hazardous substances at, on, or
4 from the Site.

5 A. Defendants shall implement the cleanup action selected in the Final CAP
6 (Exhibit B) as set forth in the Scope of Work and Schedule (Exhibit C), which establishes the
7 required remedial action at the Site. The recording of institutional controls on property within
8 the site shall be as provided for in Section VI.E.

9 B. The cleanup action is described in Section 8 of the final CAP attached to this
10 Decree as Exhibit B. This cleanup action consists of: covering contaminated soils with clean
11 soil or gravel, stormwater management, construction of a streambank bioengineering along the
12 impacted shoreline of the Spokane River, groundwater monitoring, institutional controls that
13 include a Restrictive Covenant, and five-year reviews.

14 C. Defendants shall perform compliance monitoring, as required in the Final CAP
15 and in accordance with WAC 173-340-410, to ensure that the cleanup standards are met.

16 D. Within 120 days of entry of this Decree, the Defendants shall submit to Ecology
17 for approval the Engineering Design Report, Compliance Monitoring Plan, and an Institutional
18 Controls Plan. Within 120 days of entry of this Decree, the Defendants shall submit to
19 Ecology for review a Health and Safety Plan.

20 E. A Restrictive Covenant, attached to the CAP as Appendix A, shall be recorded
21 on property owned or controlled by defendants within the Site no later than 120 days after
22 approval of the Institutional Controls Plan. Access and institutional controls on property not
23 owned or controlled by defendants within the Site shall be obtained as provided in Section
24 IX.B and C.

25 F. The Construction Plans and Specifications, and the Operation and Maintenance
26 Plan, shall be submitted in accordance with the approved schedule in the Engineering Design
Report. Completion of construction shall be in accordance with the approved schedule.

1 G. Ecology will review the Engineering Design Report, Compliance Monitoring
2 Report, Institutional Controls Plan and Specifications, Construction Plans and Specifications,
3 and the Operations and Maintenance Plan (hereinafter plans) These plans shall not be
4 implemented, nor shall any other remedial activity take place at the Site, without Ecology's
5 approval. Once these plans, and any required revisions, are approved by Ecology, the plans
6 and the schedule shall become integral and enforceable elements of this Decree.

7 H. A cleanup action report, summarizing all construction activities and changes or
8 modifications, shall be submitted to Ecology not later than ninety (90) days after completion of
9 the construction.

10 I. Defendants agree not to perform any remedial actions outside the scope of this
11 Decree unless the Parties agree to amend the scope of work to address those actions. All work
12 conducted under this Decree shall be done in accordance with Ch. 173-340 WAC unless
13 otherwise provided herein.

14 VII. DESIGNATED PROJECT COORDINATORS

15 The project coordinator for Ecology is:

16 Teresita Bala, Site Manager
17 Toxics Cleanup Program
18 Washington State Department of Ecology
19 Eastern Regional Office
20 4601 N. Monroe
21 Spokane, WA 99205-1295
22 E-Mail: TBAL461@ECY.WA.GOV
23 Voice: (509) 456-6337
24 Fax: (509) 456-6175

25 The project coordinators for Defendants for purposes of this Decree are:

26 Steve Schultz
Avista Corporation
1411 E. Mission
Spokane, WA 99202
Voice: (509) 495-4008
Fax: (509) 495-4796
E-mail: steve.schultz@avistacorp.com

1 Bruce Sheppard
2 Burlington Northern and Santa Fe Railway Company
3 2454 Occidental Avenue, Suite 1A
4 Seattle, WA 99134-1451
5 Voice: (206) 625-5035
6 Fax: (206) 625-6007
7 E-mail: bruce.sheppard@bnsf.com

8 Each project coordinator shall be responsible for overseeing the implementation of this
9 Decree. The Ecology project coordinator will be Ecology's designated representative at the
10 Site. To the maximum extent possible, communications between Ecology and the Defendants
11 and all documents, including reports, approvals, and other correspondence concerning the
12 activities performed pursuant to the terms and conditions of this Decree, shall be directed
13 through the project coordinators. The project coordinators may designate, in writing, working
14 level staff contacts for all or portions of the implementation of the remedial work required by
15 this Decree. The project coordinators may agree to minor modifications to the work to be
16 performed without formal amendments to this Decree. Minor modifications will be
17 documented in writing by Ecology

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

20 VIII. PERFORMANCE

21 All work performed pursuant to this Decree shall be under the direction and
22 supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with
23 experience and expertise in hazardous waste site investigation and cleanup. Any construction
24 work must be under the supervision of a professional engineer. Defendants' project
25 coordinators shall notify Ecology in writing as to the identity of such engineer(s) or
26 hydrogeologist(s), or others 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.

1 IX. ACCESS AND INSTITUTIONAL CONTROLS

2 A. If the Site, or any other property where access and/or institutional controls are
3 needed to implement this Consent Decree, is owned or controlled by any of the Defendants,
4 such Defendants shall:

5 (1) Commencing on the effective date of this Consent Decree, provide Ecology or
6 any Ecology authorized representatives with the authority to enter and freely move about all
7 property at the Site at all reasonable times for the purposes of, inter alia: inspecting records,
8 operation logs, and contracts related to the work being performed pursuant to this Decree;
9 reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests
10 or collecting such samples as Ecology may deem necessary; using a camera, sound recording,
11 or other documentary type equipment to record work done pursuant to this Decree; and
12 verifying the data submitted to Ecology by the Defendant. All parties with access to the Site
13 pursuant to this paragraph shall comply with approved health and safety plans; and

14 (2) Commencing on the effective date of this Consent Decree, refrain from using
15 the Site, or such other property, in any manner that would interfere with or adversely affect the
16 integrity or protectiveness of the remedial measures to be implemented pursuant to this
17 Consent Decree.

18 B. If the Site, or any other property where access and/or institutional controls are
19 needed to implement this Consent Decree, is owned or controlled by persons other than any of
20 the Defendants, Defendants shall undertake all reasonable efforts to secure from such persons;

21 (1) An agreement to provide access to the property for Defendants, and Ecology
22 and their representatives (including contractors), for the purpose of conducting any activity
23 related to this Consent decree including, but not limited to, those activities described in
24 Paragraph A 1 of this Section.

25 (2) An agreement, enforceable by the Defendants and Ecology to abide by the
obligations and restrictions established by Paragraph A 2 of this Section, or that are otherwise
necessary to implement, ensure non-interference with, or ensure the protectiveness of the

1 remedial measures to be performed pursuant to this Consent Decree including an agreement to
2 provide institutional controls on the property as required by Section VI of the decree

3 C. If any access or institutional control agreements contemplated by this Consent
4 Decree on property described in Paragraph B. of this section are not obtained within 120 days
5 of the date of entry of this Consent Decree, Defendants shall promptly notify Ecology in
6 writing, and shall include in that notification a summary of the steps that Defendants have
7 taken to attempt to comply with this Section. Ecology may, as it deems appropriate, take any
8 reasonable efforts necessary to obtain access to, or institutional controls on, this property.
9 Defendants shall reimburse Ecology for all costs incurred, direct or indirect, in obtaining such
10 access and/or institutional controls.

11 D. If Ecology takes any action to compel a person who is not a party to this consent
12 decree to record a deed restriction on property previously owned by Avista within the site, and
13 that person seeks an award of compensation against the State of Washington, Ecology and/or
14 any agent or employee thereof, Avista shall move to intervene or to otherwise be named as a
15 party in such action, defend against any such claim for compensation, and pay any monetary
16 judgment ordered by the court to be paid to such person including any award of attorneys fees
17 and costs. If Avista's motion to intervene or otherwise be named as a party to such action is
18 not granted by the court, then Avista agrees to assist the State of Washington, Ecology, and/or
19 any agents or employees thereof, in defending against such claim for compensation by
20 retaining and paying the costs for any expert witness(es) necessary to defend against the claim
21 for compensation and paying any monetary judgment ordered by the court including the award
22 of any attorneys fees and costs. Ecology agrees that it shall not enter into any settlement
23 providing for the payment of any compensation or attorneys fees in such a case where Avista is
24 not a party or intervenors without the consent of the Avista, which consent shall not be
25 unreasonably withheld.
26

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

2 With respect to the implementation of this Decree, Defendants shall make the results of
3 all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to
4 Ecology and shall submit these results in accordance with Section XI of this Decree.

5 Groundwater sampling data shall be submitted in accordance with WAC 173-340-
6 840(5). These submittals shall be provided to Ecology in accordance with Section XI of this
7 Decree.

8 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken
9 by Ecology and/or its authorized representatives of any samples collected by Defendants
10 pursuant to the implementation of this Decree. Defendants' project coordinator shall notify
11 Ecology seven (7) days in advance of any sample collection or work activity at the Site.
12 Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants or its
13 authorized representatives of any samples collected by Ecology pursuant to the implementation
14 of this Decree provided it does not interfere with the Ecology's sampling. Duplicate samples
15 shall be provided only if sample quantity is available to split for a valid sample. Ecology,
16 without limitation on its' rights under Section IX, shall endeavor to notify the Defendants'
17 project coordinator prior to any sample collection activity. Ecology's sampling shall be
18 conducted in compliance with WAC 173-340-820 and -830.

19 **XI. PROGRESS REPORTS**

20 Defendants' project coordinators shall submit to Ecology written monthly progress
21 reports which describe the actions taken during the previous month to implement the
22 requirements of this Decree. The progress report shall include the following:

- 23 A. A list of on Site activities that have taken place during the month;
- 24 B. Detailed description of any deviations from required tasks not otherwise
25 documented in project plans or amendment requests;
- 26 C. Description of all deviations from the schedule (Exhibit C) during the current
27 month and any planned deviations in the upcoming month;

1 D. For any deviations in schedule, a plan for recovering lost time and maintaining
2 compliance with the schedule;

3 E. All raw data (including laboratory analysis) received by the Defendants during
4 the past month and an identification of the source of the sample;

5 F. A list of deliverables for the upcoming month if different from the schedule;
6 and

7 All progress reports shall be submitted by the tenth day of the month in which they are
8 due after the effective date of this Decree. Beginning three (3) months after the cleanup action
9 report is approved by Ecology, progress reports shall be submitted semi-annually. Unless
10 otherwise specified, progress reports and any other documents submitted pursuant to this
11 Decree shall be sent by electronic mail and regular mail to Ecology's project coordinator.

12 XII. RETENTION OF RECORDS

13 Defendants shall preserve, during the pendency of this Decree and for ten (10) years
14 from the date this Decree is no longer in effect as provided in Section XXV, all records,
15 reports, documents, and underlying data in its possession relevant to the implementation of this
16 Decree and shall insert in contracts with project contractors and subcontractors a similar record
17 retention requirement. Upon request of Ecology, Defendants shall make all non-archived
18 records available to Ecology and allow access for review. All archived records shall be made
19 available to Ecology within a reasonable period of time

20 XIII. TRANSFER OF INTEREST IN PROPERTY

21 No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold,
22 or other interest in any portion of the Site shall be consummated by a Defendant unless that
23 Defendant provides for continued operation and maintenance of any containment system,
24 treatment system, and monitoring system installed or implemented pursuant to this Decree.

25 Prior to transfer of any legal or equitable interest in all or any portion of the Site by a
26 Defendant, and during the effective period of this Decree, that Defendant shall serve a copy of
this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in

1 interest of the property; and, at least thirty (30) days prior to any transfer, that Defendant shall
2 notify Ecology of said contemplated transfer

3 XIV. RESOLUTION OF DISPUTES

4 A. In the event a dispute arises as to an approval, disapproval, proposed
5 modification or other decision or action by Ecology's project coordinator, the parties shall
6 utilize the dispute resolution procedure set forth below

7 (1) Upon receipt of Ecology's project coordinator's decision, the Defendants'
8 project coordinators have fourteen (14) days within which to notify Ecology's project
9 coordinator of its objection to the decision.

10 (2) The parties' project coordinators shall then confer in an effort to resolve the
11 dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
12 Ecology's project coordinator shall issue a written decision within forty-five (45) days after
13 receiving notice of the dispute.

14 (3) Any Defendant, through the Defendants' project coordinator identified in
15 Section VII, may then request Ecology management review of the decision. This request shall
16 be submitted in writing to the Toxics Cleanup Program Manager within fourteen (14) days of
17 receipt of Ecology's project coordinator's decision.

18 (4) Ecology's Program Manager shall conduct a review of the dispute and shall
19 issue a written decision regarding the dispute within thirty (30) days of the Defendants' project
20 coordinator's request for review. The Program Manager's decision shall be Ecology's final
21 decision on the disputed matter.

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

1 action or decision was arbitrary and capricious and render a decision based on such standard of
2 review

3 C. The Parties agree to only utilize the dispute resolution process in good faith and
4 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
5 Where a party utilizes the dispute resolution process in bad faith or for purposes of delay, the
6 other parties may seek sanctions

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

10 XV. AMENDMENT OF CONSENT DECREE

11 This Decree may only be amended by a written stipulation among the parties to this
12 Decree that is entered by the Court or by order of the Court. Such amendment shall become
13 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by
14 any party to the Decree.

15 Defendants', through their designated project coordinators, shall submit any request for
16 an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a
17 timely manner after the request for amendment is received. If the amendment to the Decree is
18 substantial, Ecology will provide public notice and opportunity for comment. Reasons for the
19 disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment,
20 the disagreement may be addressed through the dispute resolution procedures described in
21 Section XIV of this Decree.

22 XVI. EXTENSION OF SCHEDULE

23 A. An extension of schedule shall be considered only when a request for an
24 extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration
25 of the deadline for which the extension is requested, and shall be granted only if good cause
26 exists for granting the extension. All extensions shall be requested in writing by Defendants'
project coordinator. The request shall specify the reason(s) the extension is needed.

1 An extension shall only be granted for such period of time as Ecology determines is
2 reasonable under the circumstances. A requested extension shall not be effective until
3 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
4 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section
5 XV when a schedule extension is granted.

6 B. The burden shall be on the Defendants' project coordinators to demonstrate to
7 the satisfaction of Ecology that the request for such extension has been submitted in a timely
8 fashion and that good cause exists for granting the extension. Good cause includes, but is not
9 limited to, the following.

10 (1) Circumstances beyond the reasonable control and despite the due diligence of
11 the Defendants' designated project coordinators including delays caused by unrelated third
12 parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or
13 modifying documents submitted by a Defendant; or

14 (2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
15 other unavoidable casualty; or

16 (3) Endangerment as described in Section XVII.

17 However, neither increased costs of performance of the terms of the Decree nor
18 changed economic circumstances shall be considered circumstances beyond the reasonable
19 control of Defendants.

20 C. Ecology may extend the schedule for a period not to exceed ninety (90) days,
21 except where an extension is needed as a result of:

22 (1) Delays in the issuance of a necessary permit which was applied for in a timely
23 manner; or

24 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

25 (3) Endangerment as described in Section XVI.

26 Ecology shall give Defendants' designated project coordinators written notification in a
27 timely fashion of any extensions granted pursuant to this Decree.

1 XVII. ENDANGERMENT

2 In the event Ecology determines that activities implementing or in noncompliance with
3 this Decree, or any other circumstances or activities, are creating or have the potential to create
4 a danger to the health or welfare of the people on the Site or in the surrounding area or to the
5 environment, Ecology may order Defendants to stop further implementation of this Decree for
6 such period of time as needed to abate the danger or may petition the Court for an order as
7 appropriate. During any stoppage of work under this section, the obligations of Defendants
8 with respect to the work under this Decree which is ordered to be stopped shall be suspended
9 and the time periods for performance of that work, as well as the time period for any other
10 work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of
11 this Decree, for such period of time as Ecology determines is reasonable under the
12 circumstances.

13 In the event any Defendant determines that activities undertaken by that Defendant in
14 furtherance of this Decree or any other circumstances or activities are creating an
15 endangerment to the people on the Site or in the surrounding area or to the environment, that
16 Defendant may stop implementation of this Decree for such period of time necessary for
17 Ecology to evaluate the situation and determine whether the Defendant should proceed with
18 implementation of the Decree or whether the work stoppage should be continued until the
19 danger is abated. Defendant's project coordinators shall notify Ecology's project coordinator
20 as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and
21 thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology
22 disagrees with a Defendant's determination, it may order the Defendants to resume
23 implementation of this Decree. If Ecology concurs with the work stoppage, the Defendants'
24 obligations shall be suspended and the time period for performance of that work, as well as the
25 time period for any other work dependent upon the work which was stopped, shall be
26 extended, pursuant to Section XVI of this Decree, for such period of time as Ecology

1 determines is reasonable under the circumstances Any disagreements pursuant to the clause
2 shall be resolved through the dispute resolution procedures in Section XIV

3 XVIII. OTHER ACTIONS

4 Ecology reserves its rights to institute remedial action(s) at the Site and subsequently
5 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take
6 any other enforcement action pursuant to available statutory authority under the following
7 circumstances:

8 (A) Where Defendants fail, after notice, to comply with any requirement of this
9 Decree;

10 (B) In the event or upon the discovery of a release or threatened release not
11 addressed by this Decree;

12 (C) Upon Ecology's determination that action beyond the terms of this Decree is
13 necessary to abate an emergency situation which threatens public health or welfare or the
14 environment; or

15 (D) Upon the occurrence or discovery of a situation beyond the scope of this Decree
16 as to which Ecology would be empowered to perform any remedial action or to issue an order
17 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the
18 geographic Site described in Exhibit A and to those contaminants which Ecology knows to be
19 at the Site when this Decree is entered at levels which present a known threat to human health
20 and the environment.

21 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural
22 resources resulting from the release or threatened release of hazardous substances from the
23 Hamilton Street Bridge Site.

24 Ecology reserves the right to take any enforcement action whatsoever, including a cost
25 recovery action, against potentially liable persons not party to this Decree
26

1 XIX. INDEMNIFICATION

2 Each Defendant agrees to defend and indemnify the State of Washington, its
3 employees, and agents harmless from any and all claims or causes of action for death or
4 injuries to persons or for loss or damage to property arising from or on account of acts or
5 omissions of that Defendant, its officers, employees, agents, or contractors in entering into and
6 implementing this Decree. However, the Defendants shall not defend and indemnify the State
7 of Washington, its employees, and agents harmless from any claims or causes of action arising
8 out of the negligent acts or omissions of the State of Washington, or the employees or agents of
9 the State, in implementing the activities pursuant to this Decree.

10 XX. COMPLIANCE WITH APPLICABLE LAWS

11 A. All actions carried out by Defendants pursuant to this Decree shall be done in
12 accordance with all applicable federal, state, and local requirements, including requirements to
13 obtain necessary permits, except as provided in paragraph B. of this section.

14 B. Pursuant to RCW 70.105D.090(l), the substantive requirements of Chapters
15 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
16 local government permits or approvals for the remedial action under this Decree that are
17 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the
18 Cleanup Action Plan, and are binding and enforceable requirements of the Decree

19 Defendants have a continuing obligation to determine whether additional permits or
20 approvals addressed in RCW 70.105D.090(l) would otherwise be required for the remedial
21 action under this Decree. In the event either Defendants or Ecology determines that additional
22 permits or approvals addressed in RCW 70.105D.090(l) would otherwise be required for the
23 remedial action under this Decree, it shall promptly notify the other party of this determination.
24 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
25 appropriate state and/or local agencies. If Ecology so requires, then Defendants shall promptly
26 consult with the appropriate state and/or local agencies and provide Ecology with written
documentation from those agencies of the substantive requirements those agencies believe are

1 applicable to the remedial action. Ecology shall make the final determination on the additional
2 substantive requirements that must be met by Defendants and on how Defendants must meet
3 those requirements. Ecology shall inform Defendants' project coordinators in writing of these
4 requirements. Once established by Ecology, the additional requirements shall be enforceable
5 requirements of this Decree. Defendants shall not begin or continue the remedial action
6 potentially subject to the additional requirements until Ecology makes its final determination.

7 Ecology shall ensure that notice and opportunity for comment is provided to the public
8 and appropriate agencies prior to establishing the substantive requirements under this section.

9 C Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
10 exemption from complying with the procedural requirements of the laws referenced in RCW
11 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
12 for the State to administer any federal law, the exemption shall not apply and the Defendants
13 shall comply with both the procedural and substantive requirements of the laws referenced in
14 RCW 70.105D.090(1), including any requirements to obtain permits.

15 **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

16 The Defendants agree to pay costs incurred by Ecology pursuant to this Decree. These
17 costs shall include work performed by Ecology or its contractors for, or on, the Site under Ch.
18 70.105D RCW both prior to and subsequent to the issuance of this Decree for investigations,
19 remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology
20 costs shall include costs of direct activities and support costs of direct activities as defined in
21 WAC 173-340-550(2). The Defendants agree to pay the required amount within ninety (90)
22 days of receiving from Ecology an itemized statement of costs that includes a summary of
23 costs incurred, an identification of involved staff, and the amount of time spent by involved
24 staff members on the project. A general statement of work performed will be provided upon
25 request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within
26 ninety (90) days of receipt of the itemized statement will result in interest charges.

1 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

2 If Ecology determines that Defendants have failed without good cause to implement the
3 remedial action required under this Decree, then Ecology may, after notice to Defendants'
4 project coordinators, perform any or all portions of the remedial action that remain incomplete
5 If Ecology performs all or portions of the remedial action because of the Defendants failure to
6 comply with its obligations under this Decree, then Defendants shall reimburse Ecology for the
7 costs of doing such work in accordance with Section XXI. No Defendant is obligated under
8 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the
9 scope of this Decree

10 **XXIII. FIVE YEAR REVIEW**

11 As remedial action, including groundwater monitoring, continues at the Site, the Parties
12 agree to review the progress of remedial action at the Site, and to review the data accumulated
13 as a result of Site monitoring as often as is necessary and appropriate under the circumstances.
14 At least every five (5) years the Parties shall meet to discuss the status of the Site and the need,
15 if any, of further remedial action at the Site. Ecology reserves the right to require further
16 remedial action at the Site pursuant to MTCA, RCW 70.105D or the MTCA Cleanup
17 Regulations, WAC 173-340. This provision shall remain in effect for the duration of the
18 Decree.

19 **XXIV. PUBLIC PARTICIPATION**

20 Ecology shall maintain the responsibility for public participation at the Site. However,
21 Defendants shall cooperate with Ecology and, if agreed to by Ecology, shall:

- 22 A. Prepare drafts of public notices and fact sheets at important stages of the
23 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
24 Study reports and engineering design reports. Ecology will finalize (including editing if
25 necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's
26 presentations and meetings;

1 B. Notify Ecology's project coordinator prior to the preparation of all press releases
2 and fact sheets, and before major meetings with the interested public and local governments.
3 Likewise, Ecology shall notify Defendants' project coordinators prior to the issuance of all
4 press releases and fact sheets, and before major meetings with the interested public and local
5 governments;

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

9 D. In cooperation with Ecology, arrange and/or continue information repositories
10 to be located at the Spokane Public Library, 906 West Main Avenue, Spokane, WA 99201 and
11 Ecology's Eastern Regional Office at 4601 North Monroe, Spokane WA 99205. At a
12 minimum, copies of all public notices, fact sheets, and press releases; all quality assured
13 groundwater, surface water, soil sediment, and air monitoring data; remedial actions plans,
14 supplemental remedial planning documents, and all other similar documents relating to
15 performance of the remedial action required by this Decree shall be promptly placed in these
16 repositories.

17 XXV. DURATION OF DECREE

18 This Decree shall remain in effect and the remedial program described in the Decree
19 shall be maintained and continued until the Defendants have received written notification from
20 Ecology that the requirements of this Decree have been satisfactorily completed.

21 XXVI. CLAIMS AGAINST THE STATE

22 Each Defendant hereby agrees that it will not seek to recover any costs accrued in
23 implementing the remedial action required by this Decree from the State of Washington or any
24 of its agencies, unless recovery is allowed against the State of Washington or any of its
25 agencies as a "potentially liable person" (PLP) under MTCA; and further, that no Defendant
26 will make any claim against the State Toxics Control Account or any Local Toxics Control
Account for any costs incurred in implementing this Decree Except as provided above.

1 however, each Defendant expressly reserves its right to seek to recover any costs incurred in
2 implementing this Decree from any other potentially liable person.

3 XXVII. COVENANT NOT TO SUE, REOPENERS

4 A. Covenant Not To Sue: In consideration of the Defendants' compliance with the
5 terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall
6 stand in lieu of any and all administrative, legal, and equitable remedies and enforcement
7 actions available to the State against Defendants regarding all matters within the scope of this
8 Decree.

9 B. Reopeners: In the following circumstances, Ecology may exercise its full legal
10 authority to address releases of hazardous substances at the Site, notwithstanding the Covenant
11 Not To Sue set forth above:

12 (1) In the event Defendants fails to comply with the terms and conditions of this
13 Decree, including all Exhibits, and after written notice of non-compliance, such failure is not
14 cured by Defendants within thirty (30) days of receipt of notice of non-compliance.

15 (2) In the event factors not known at the time of entry of this Decree are discovered
16 and such factors present a previously unknown threat to human health or the environment and
17 are not addressed by the Cleanup Action Plan, attached hereto as Exhibit B.

18 (3) Upon Ecology's determination that actions beyond the terms of this Decree are
19 necessary to abate an emergency or endangerment situation which threatens public health,
20 welfare, or the environment.

21 (4) Upon Ecology's determination that additional remedial actions are necessary to
22 achieve cleanup standards within the time frame set forth in the CAP.

23 C. Applicability: The Covenant Not To Sue set forth above does not pertain to any
24 matters other than those expressly specified in this Section. The State of Washington reserves,
25 and this Consent Decree is without prejudice to, all rights against Defendants with respect to
26 all other matters, including but not limited to, the following:

(1) Criminal Liability;

1 (2) Actions against any person or entity not a party to this Decree;

2 (3) Liability for damages for injury to, destruction of, or loss of natural resources,
3 and for the costs of any natural resource damage assessments;

4 D Ecology retains all of its legal and equitable rights against all persons except as
5 otherwise provided in this Decree.

6 **XXVIII. CONTRIBUTION PROTECTION**

7 By signing this Decree, the parties intend that Defendants will obtain the protection
8 against claims for contribution for matters addressed in this Decree, as is provided by MTCRA,
9 RCW 70.105D.040(4)(d)

10 **XXIX. EFFECTIVE DATE**

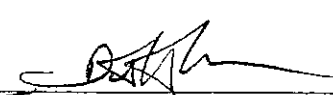
11 This Decree is effective upon the date it is entered by the Court.

12 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

13 This Decree has been the subject of public notice and comment under RCW
14 70.105D.040(4)(a). As a result of this process, Ecology has found that this settlement
15 agreement, entered into as a Consent Decree under RCW 70.105D.040(4)(a), will lead to a
16 more expeditious cleanup of hazardous substances at the Site.

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

21 DATED this 11th day of Sept, 2002.
11th Sept.

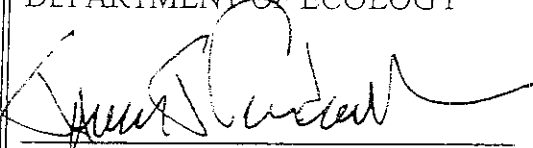
22 
23 JUDGE
24 Spokane County Superior Court

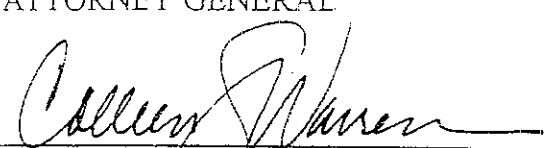
25 **DAVID THORN**
26 **COURT COMMISSIONER**

DAVID THORN
CHIEF COMMISSIONER

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

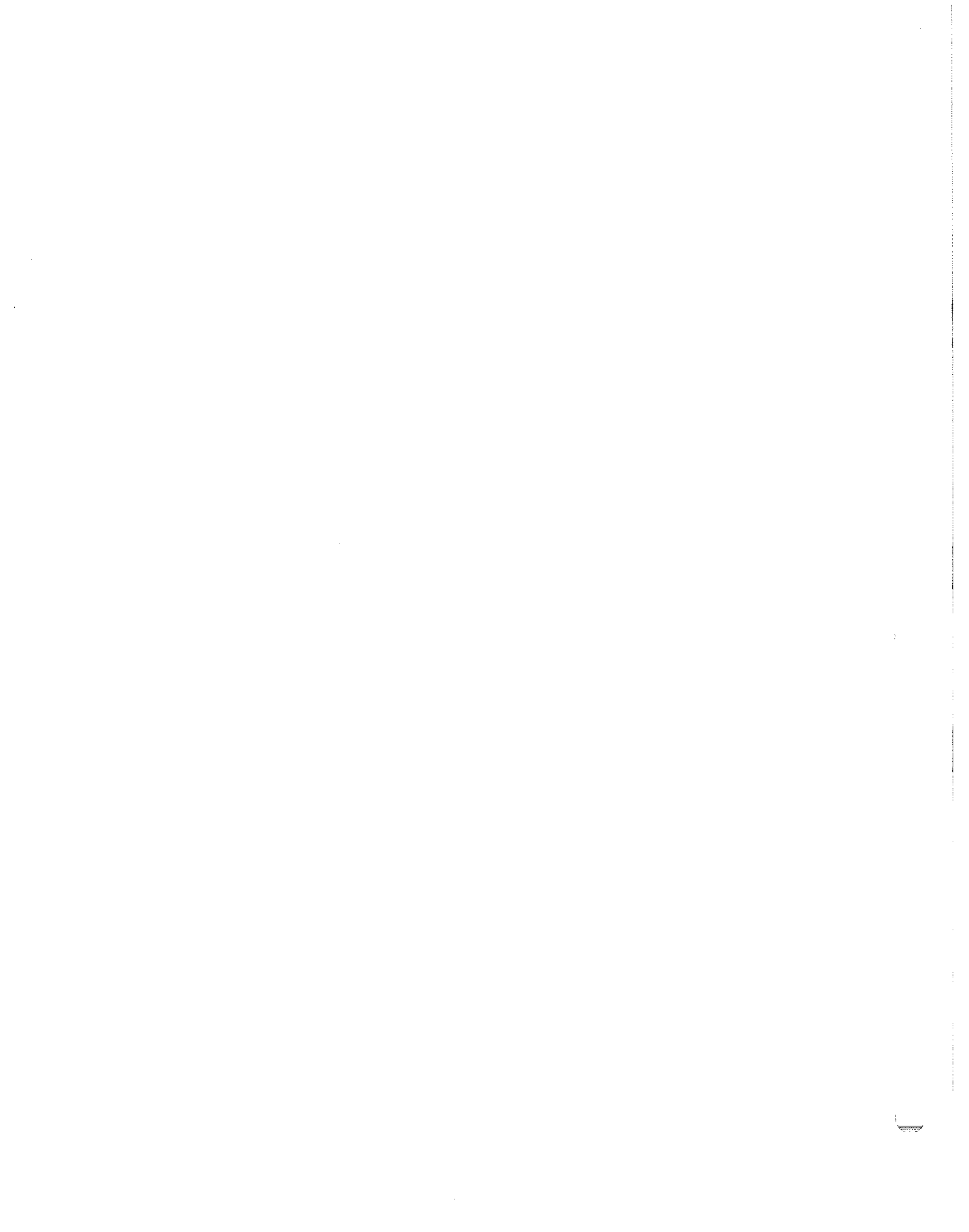
CHRISTINE O GREGOIRE
ATTORNEY GENERAL

3 
4 JIM PENDOWSKI
5 Program Manager
6 Department of Ecology
7 Toxics Cleanup Program


COLLEEN G. WARREN, WSBA #16506
Assistant Attorney General
Attorney for Plaintiff
Department of Ecology

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1 AVISTA CORPORATION

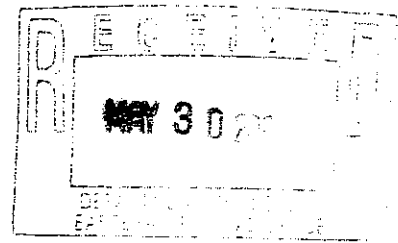
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By: [Signature]
Title: President - Avista Utilities

[Signature]
JERRY K. BOYD, WSBA #2099
Attorney for Defendant
Avista Corporation

Date: 5-23-02

Date: 05/28/02



1 THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

2
3 By: [Signature]
4 Title: VP Safety & Training

[Signature]
CRAIG S. TRUEBLOOD, WSBA #18357
Attorney for Defendant
The Burlington Northern and
Santa Fe Railway Company

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6 Date: 6/10/02

Date: 7-2-2002

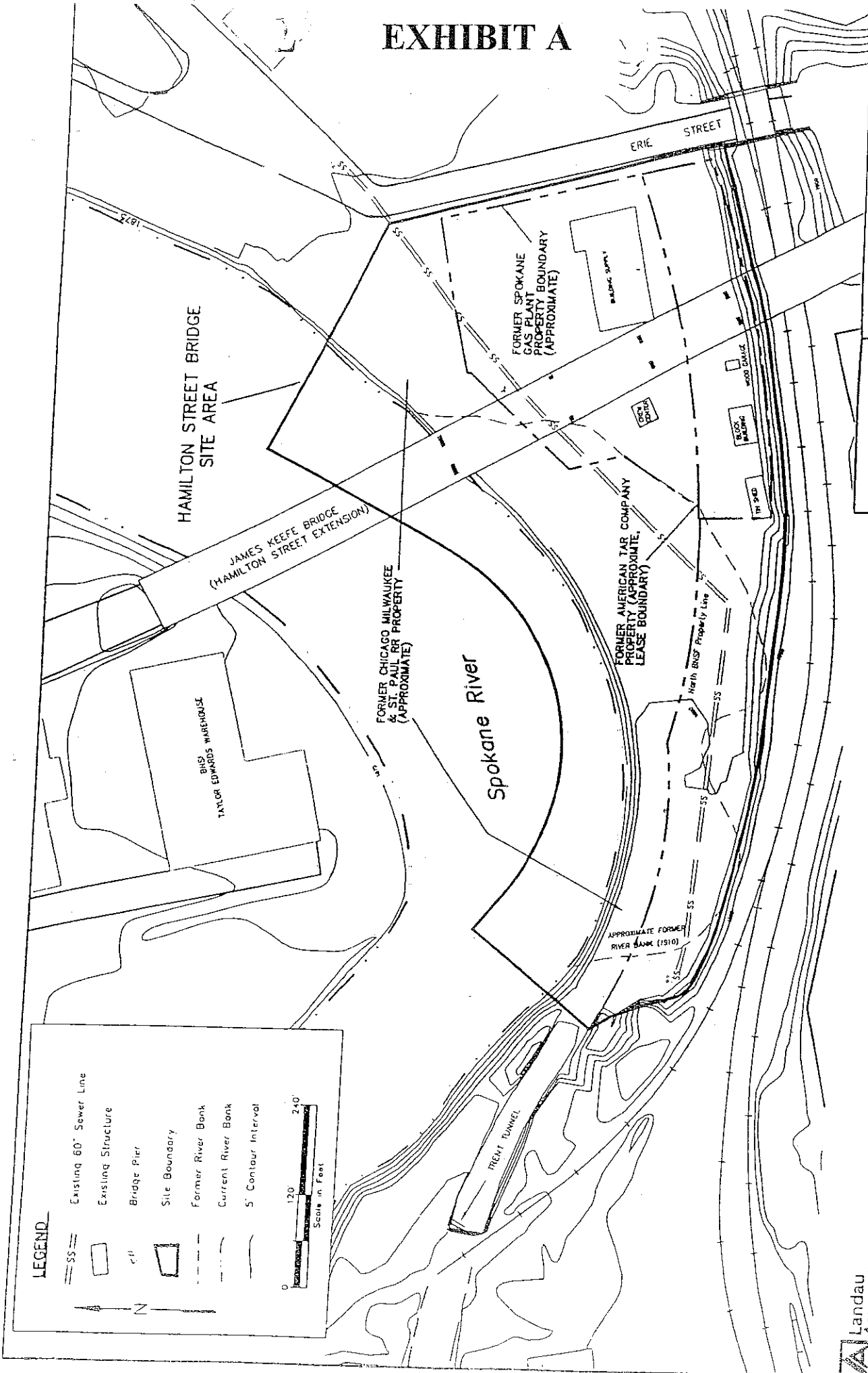
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CONSENT DECREE

EXHIBIT A

SITE MAP

EXHIBIT A



Site Map

Hamilton Street Bridge Site
Spokane, Washington