

FILED
 AUG 20 2010
 SUPERIOR COURT
 BETTY J. GOULD
 THURSTON COUNTY CLERK

1 EXPEDITE
 2 No hearing set
 3 Hearing is set:
 4 Date:
 5 Time:

7 **STATE OF WASHINGTON**

8 **THURSTON COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
 10 DEPARTMENT OF ECOLOGY,

NO. 10 - 2 - 01900 - 3

11 Plaintiff,

CONSENT DECREE

12 v:

13 Mr. and Mrs. Chauncey and Elizabeth
 14 Lufkin

15 Defendants.
 16

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CONSENT DECREE NO.

ATTORNEY GENERAL OF WASHINGTON
 Ecology Division
 PO Box 40117
 Olympia, WA 98504-0117
 FAX (360) 586-6760

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Chauncey and Elizabeth Lufkin (the Lufkins) (Defendants) under this Decree is
4 to provide for remedial action at a facility where there has been a release or threatened release
5 of hazardous substances. This Decree requires Defendants to perform a remedial action at the
6 Bordeaux Dump Site in Olympia, Washington in accordance with the Cleanup Action Plan
7 (CAP) attached as Exhibit B to this Consent Decree.

8 Ecology has determined that these actions are necessary to protect human 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 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
13 Parties agree that settlement of these matters without litigation is reasonable and in the public
14 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

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

17 D. By entering into this Decree, the Parties do not intend to discharge non-settling
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 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 Defendants shall not challenge the authority of the Attorney General
24 and Ecology 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:

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

2 **II. JURISDICTION**

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

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

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

12 D. Ecology has given notice to Defendants of Ecology's determination that
13 Defendants are PLPs for the Site, as required by RCW 70.105D.020(21) and WAC
14 173-340-500.

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

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

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

21 H. Defendants have agreed to undertake the actions specified in this Decree and
22 consent to the entry of this Decree under MTCA.

23 **III. PARTIES BOUND**

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

1 comply with this Decree. Defendants agree to undertake all actions required by the terms and
2 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
3 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,
4 contractors, and subcontractors retained to perform work required by this Decree, and shall
5 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
6 this Decree.

7 IV. DEFINITIONS

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

10 A. Site: The Site is referred to as the Bordeaux Dump, and is generally located at
11 13434 S.W. Halo Kuntux Lane, Olympia, Washington. The Site is more particularly described
12 in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

13 B. Parties: Refers to the State of Washington, Department of Ecology and Mr. and
14 Mrs. Chauncey and Elizabeth Lufkin (Lufkins).

15 C. Defendants: Refers to Mr. and Mrs. Chauncey and Elizabeth Lufkin (Lufkins).

16 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
17 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
18 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

19 E. CAP: Refers to the Cleanup Action Plan developed for this Site and included as
20 Exhibit B to this Consent Decree.

21 F. SEPA Checklist: Refers to the State Environmental Policy Act Checklist
22 prepared for this Site and included with Exhibit B to this Consent Decree.

23 V. FINDINGS OF FACT

24 Ecology makes the following findings of fact without any express or implied
25 admissions of such facts by Defendants.
26

1 A. The site is generally located at 13434 S.W. Halo Kuntux Lane, Olympia,
2 Washington (Township 16, Range 3 West, Section 9). The general area of the Bordeaux dump
3 was surveyed by Butler Surveying, a licensed Washington surveyor located in Chehalis,
4 Washington, in August 2006. All spatial coordinates in the survey are based on the
5 Washington State Plane South Zone. The position of the approximate center of the Bordeaux
6 dump site is: Northing (ft) 578,702; Easting (ft) 998,634. The surface area of the Bordeaux
7 dump covers an area of approximately 0.25 acres (based on the results of test pits and
8 geophysical testing. The property(s) upon which the site is generally located is bounded to the
9 north and east by residential properties, to the west by 77.3 acres of land owned by the
10 Washington State Department of Natural Resources and to the south by Bordeaux Road. The
11 other side of Bordeaux Road is undeveloped. The nearest town is Littlerock.

12 B. The Lufkins currently own the property located at 13434 S.W. Halo Kuntux
13 Lane, Olympia, Washington (Township 16, Range 3 West, Section 9). The Lufkins' 24-acre
14 parcel includes the dump for the former town of Bordeaux, a logging town that flourished
15 during the early part of the twentieth century, and disappeared in 1941, once the area had been
16 logged off.

17 C. The Lufkins' property includes two separate and distinct clean-up sites: the
18 Hytec fiberglass debris landfill site and the Bordeaux dump site. These two sites were
19 originally handled by Ecology as one site (the Hytec Littlerock site), with two potentially liable
20 parties, Hytec, Inc. and the Lufkins.

21 D. In November 2005, Ecology issued Agreed Order No. 2888 to govern the
22 Remedial Investigation/Feasibility Study (RI/FS) for the Hytec Littlerock site. Hytec, Inc. and
23 the Lufkins submitted a final RI/FS to Ecology on August 1, 2007, which Ecology approved on
24 September 5, 2007.

25 E. The investigations conducted during the RI/FS made it clear that the
26 contamination at the Bordeaux dump site is separate and distinct from the contamination at the

1 Hytec fiberglass debris landfill site. It is therefore appropriate to handle cleanup of the two
2 sites independently. The Hytec fiberglass debris landfill site is subject to a separate clean-up
3 action under a separate consent decree involving two PLPs, Hytec, Inc. and the Lufkins. The
4 Bordeaux dump site is subject to cleanup under this Consent Decree.

5 F. Tables 1, 2, and 3 in the CAP show a summary of the chemicals of concern
6 measured in soil and groundwater at the site.

7 G. This Consent Decree is being issued for the Defendants to implement the CAP
8 attached as Exhibit B.

9
10 **VI. WORK TO BE PERFORMED**

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

14 A. Based on the information in the final RI/FS, a draft CAP (attached as Exhibit B)
15 has been prepared and a preferred cleanup alternative has been chosen. The CAP requires
16 excavation and removal of soil containing chemicals of concern. The soil cleanup levels for
17 the chemicals of concern at the point of compliance will be the lowest of (1) MTCA Methods
18 A or B for unrestricted land use, or (2) the soil cleanup level generated by equation 747-1 to
19 protect groundwater, or (3) the values in Table 749-2 of MTCA (for the sites that qualify for
20 the Simplified Terrestrial Ecological evaluation). The soil cleanup level for selenium is 90%
21 of naturally occurring background. This 90% natural background soil cleanup level was
22 calculated based on site specific data. Compliance monitoring reports for soil and
23 groundwater, a health and safety plan and a final remedial action report must be prepared and
24 submitted to Ecology as outlined in Appendix B of the CAP.

25 B. Defendants agree not to perform any remedial actions outside the scope of this
26 Decree unless the Parties agree to modify the CAP (Exhibit B) to cover these actions. All

1 work conducted by Defendants under this Decree shall be done in accordance with Chapter
2 173-340 WAC unless otherwise provided herein.

3
4 **VII. DESIGNATED PROJECT COORDINATORS**

5 The project coordinator for Ecology is:

6 Mohsen Kourehdar, P.E.
7 Ecology's Southwest Regional Office
8 Toxics Cleanup Program
9 300 Desmond Dr.
10 PO Box 47775
11 Olympia, WA 98504-7775
12 (360) 407-6256
13 mkou461@ecy.wa.gov

14 The project coordinators for the Defendants are:

15 Tom McKeon, P.E.
16 CALIBRE Systems Inc.
17 16935 SE 39th St.
18 Bellevue, WA 98008
19 (425) 643-4634
20 Tom.McKeon@calibresys.com

21 Michael W. Mayberry
22 Owens Davies, P.S.
23 PO Box 187
24 Olympia, WA 98507
25 (360)943-8320
26 mmayberry@owensdavies.com

Each project coordinator shall be responsible for overseeing the implementation of this Decree. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Defendants and all documents, including reports, approvals, and other correspondence concerning the activities

1 performed pursuant to the terms and conditions of this Decree, shall be directed through the
2 project coordinators. The project coordinators may designate, in writing, working level staff
3 contacts for all or portions of the implementation of the work to be performed required by this
4 Decree.

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

7 VIII. PERFORMANCE

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

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

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

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

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

25 IX. ACCESS

26 Ecology or any Ecology authorized representative shall have full authority to enter and
freely move about all property at the Site that Defendants either own, control, or have access

1 | rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation
2 | logs, and contracts related to the work being performed pursuant to this Decree; reviewing
3 | Defendants' progress in carrying out the terms of this Decree; conducting such tests or
4 | collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
5 | other documentary type equipment to record work done pursuant to this Decree; and verifying
6 | the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to
7 | secure access rights for those properties within the Site not owned or controlled by Defendants
8 | where remedial activities or investigations will be performed pursuant to this Decree. Ecology
9 | or any Ecology authorized representative shall give reasonable notice before entering any Site
10 | property owned or controlled by Defendants unless an emergency prevents such notice. All
11 | Parties who access the Site pursuant to this Section shall comply with any applicable Health
12 | and Safety Plan(s). Ecology employees and their representatives shall not be required to sign
13 | any liability release or waiver as a condition of Site property access.

14 | **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

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

21 | If requested by Ecology, Defendants shall allow Ecology and/or its authorized
22 | representative to take split or duplicate samples of any samples collected by Defendants
23 | pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
24 | in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
25 | allow Defendants and/or their authorized representatives to take split or duplicate samples of
26 | any samples collected by Ecology pursuant to the implementation of this Decree, provided that

1 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights
2 under Section IX (Access), Ecology shall notify Defendants three (3) days prior to any sample
3 collection activity unless an emergency prevents such notice.

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

7 XI. PROGRESS REPORTS

8 Every two (2) months, Defendants shall submit to Ecology written Progress Reports
9 that describe the actions taken during the previous two (2) months to implement the
10 requirements of this Decree. The Progress Reports shall include the following:

- 11 A. A list of on-site activities that have taken place during the months;
- 12 B. Detailed description of any deviations from required tasks not otherwise
13 documented in project plans or amendment requests;
- 14 C. Description of all deviations from the CAP (Exhibit B) during the current
15 months and any planned deviations in the upcoming months;
- 16 D. For any deviations in schedule, a plan for recovering lost time and maintaining
17 compliance with the schedule;
- 18 E. All raw data (including laboratory analyses) received by Defendants during the
19 past month and an identification of the source of the sample; and
- 20 F. A list of deliverables for the upcoming two (2) months if different from the
21 schedule.

22 All Progress Reports shall be submitted by the tenth (10th) day of the month in which
23 they are due after the effective date of this Decree. Unless otherwise specified, Progress
24 Reports and any other documents submitted pursuant to this Decree shall be sent by certified
25 mail, return receipt requested, to Ecology's project coordinator.

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XII. RETENTION OF RECORDS

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVI (Duration of Decree), Defendants shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall make all records available to Ecology and allow access for review within a reasonable time.

XIII. TRANSFER OF INTEREST IN PROPERTY

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

Prior to a Defendant's transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, that Defendant shall provide a copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, that Defendant shall notify Ecology of said transfer. Upon Defendants' transfer of any interest, Defendants shall restrict uses and activities to those consistent with this Consent Decree and notify all transferees of the restrictions on the use of the property.

XIV. RESOLUTION OF DISPUTES

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

1 1. Upon receipt of Ecology's project coordinator's written decision, or the
2 itemized billing statement, Defendants have fourteen (14) days within which to notify
3 Ecology's project coordinator in writing of any objection to the decision or itemized
4 statement.

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

8 3. Defendants may then request regional management review of the
9 decision. This request shall be submitted in writing to the Southwest Region Toxics
10 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's
11 project coordinator's written decision.

12 4. Ecology's Regional Section Manager shall conduct a review of the
13 dispute and shall endeavor to issue a written decision regarding the dispute within thirty
14 (30) days of Defendants' request for review.

15 5. If Defendants find Ecology's Regional Section Manager's decision
16 unacceptable, Defendants may then request final management review of the decision.
17 This request shall be submitted in writing to the Toxics Cleanup Program Manager
18 within seven (7) days of receipt of the Regional Section Manager's decision.

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

24 B. If Ecology's final written decision is unacceptable to Defendants, Defendants
25 have the right to submit the dispute to the Court for resolution. The Parties agree that one
26 judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute

1 arising under this Decree. In the event Defendants present an issue to the Court for review, the
2 Court shall review the action or decision of Ecology on the basis of whether such action or
3 decision was arbitrary and capricious and render a decision based on such standard of review.

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

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

11 **XV. AMENDMENT OF DECREE**

12 The project coordinators may agree to minor changes to the work to be performed
13 without formally amending this Decree. Minor changes will be documented in writing by
14 Ecology.

15 Substantial changes to the work to be performed shall require formal amendment of this
16 Decree. This Decree may only be formally amended by a written stipulation among the Parties
17 that is entered by the Court, or by order of the Court. Such amendment shall become effective
18 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
19 by any party.

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

1 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
2 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
3 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
10 Ecology; or

11 3. Endangerment as described in Section XVII (Endangerment).

12 **XVII. ENDANGERMENT**

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

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

25 If Ecology concurs with or orders a work stoppage pursuant to this Section,
26 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology

1 determines the danger is abated, and the time for performance of such activities, as well as the
2 time for any other work dependent upon such activities, shall be extended, in accordance with
3 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
4 reasonable under the circumstances.

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

7 XVIII. COVENANT NOT TO SUE

8 A. Covenant Not to Sue: In consideration of Defendants' compliance with the
9 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
10 actions against Defendants regarding the release or threatened release of hazardous substances
11 covered by this Decree.

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

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

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

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

24 B. Reopeners: Ecology specifically reserves the right to institute legal or
25 administrative action against Defendants to require them to perform additional remedial
26

1 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050
2 under the following circumstances:

3 1. Upon Defendants' failure to meet the requirements of this Decree,
4 including, but not limited to, failure of the remedial action to meet the cleanup
5 standards identified in the Cleanup Action Plan (CAP) (Exhibit B);

6 2. Upon Ecology's determination that remedial action beyond the terms of
7 this Decree is necessary to abate an imminent and substantial endangerment to human
8 health or the environment;

9 3. Upon the availability of new information regarding factors previously
10 unknown to Ecology, including the nature or quantity of hazardous substances at the
11 Site, and Ecology's determination, in light of this information, that further remedial
12 action is necessary at the Site to protect human health or the environment; or

13 4. Upon Ecology's determination that additional remedial actions are
14 necessary to achieve cleanup standards within the reasonable restoration time frame set
15 forth in the CAP.

16 C. Except in the case of an emergency, prior to instituting legal or administrative
17 action against Defendants pursuant to this Section, Ecology shall provide Defendants with
18 fifteen (15) calendar days notice of such action.

19 **XIX. CONTRIBUTION PROTECTION**

20 With regard to claims for contribution against Defendants, the Parties agree that
21 Defendants are entitled to protection against claims for contribution for matters addressed in
22 this Decree as provided by RCW 70.105D.040(4)(d).

23 **XX. INDEMNIFICATION**

24 Defendants agree to indemnify and save and hold the State of Washington, its
25 employees, and agents harmless from any and all claims or causes of action for death or
26 injuries to persons or for loss or damage to property to the extent arising from or on account of

1 acts or omissions of Defendants, its officers, employees, agents, or contractors in entering into
2 and implementing this Decree. However, Defendants shall not indemnify the State of
3 Washington nor save nor hold its employees and agents harmless from any claims or causes of
4 action to the extent arising out of the negligent acts or omissions of the State of Washington, or
5 the employees or agents of the State, in entering into or implementing this Decree.

6 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

7 A. All actions carried out by Defendants pursuant to this Decree shall be done in
8 accordance with all applicable federal, state, and local requirements, including requirements to
9 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
10 federal, state or local requirements that the agency has determined are applicable and that are
11 known at the time of entry of this Decree have been identified in the CAP.

12 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural
13 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws
14 requiring or authorizing local government permits or approvals. However, Defendants shall
15 comply with the substantive requirements of such permits or approvals. The exempt permits or
16 approvals and the applicable substantive requirements of those permits or approvals, as they
17 are known at the time of entry of this Decree, have been identified in Exhibit B.

18 Defendants have a continuing obligation to determine whether additional permits or
19 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
20 action under this Decree. In the event either Ecology or Defendants determine that additional
21 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
22 remedial action under this Decree, it shall promptly notify the other party of this determination.
23 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
24 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly
25 consult with the appropriate state and/or local agencies and provide Ecology with written
26 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 in writing of these requirements. Once
4 established by Ecology, the additional requirements shall be enforceable requirements of this
5 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
6 additional requirements until Ecology makes its final determination.

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

13 XXII. REMEDIAL ACTION COSTS

14 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
15 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
16 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions
17 and Decree preparation, negotiation, oversight and administration. These costs shall include
18 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
19 include costs of direct activities and support costs of direct activities as defined in WAC
20 173-340-550(2). Defendants shall pay the required amount within ninety (90) days of
21 receiving from Ecology an itemized statement of costs that includes a summary of costs
22 incurred, an identification of involved staff, and the amount of time spent by involved staff
23 members on the project. A general statement of work performed will be provided upon
24 request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4),
25 failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of
26

1 costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded
2 monthly.

3 Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed
4 remedial action costs by filing a lien against real property subject to the remedial actions.

5 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

6 If Ecology determines that Defendants have failed without good cause to implement the
7 remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or
8 all portions of the remedial action that remain incomplete. If Ecology performs all or portions
9 of the remedial action because of Defendants' failure to comply with their obligations under
10 this Decree, Defendants shall reimburse Ecology for the costs of doing such work in
11 accordance with Section XXII (Remedial Action Costs), provided that Defendants are not
12 obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with
13 or beyond the scope of this Decree.

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

18 **XXIV. PERIODIC REVIEW**

19 As remedial action, including groundwater monitoring, continues at the Site, the Parties
20 agree to review the progress of remedial action at the Site, and to review the data accumulated
21 as a result of monitoring the Site as often as is necessary and appropriate under the
22 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
23 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
24 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall
25 submit a report to Ecology that documents whether human health and the environment are
26 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the

1 right to require further remedial action at the Site under appropriate circumstances. This
2 provision shall remain in effect for the duration of this Decree.

3 **XXV. PUBLIC PARTICIPATION**

4 A Public Participation Plan (Exhibit C) is required for this Site. Ecology shall review
5 any existing Public Participation Plan to determine its continued appropriateness and whether it
6 requires amendment.

7 Ecology shall maintain the responsibility for public participation at the Site. However,
8 Defendants shall cooperate with Ecology, and shall:

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

14 B. Notify Ecology's project coordinator prior to the preparation of all press releases
15 and fact sheets, and before major meetings with the interested public and local governments.
16 Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact
17 sheets, and before major meetings with the interested public and local governments. For all
18 press releases, fact sheets, meetings, and other outreach efforts by Defendants that do not
19 receive prior Ecology approval, Defendants shall clearly indicate to their audience that the
20 press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by
21 Ecology.

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

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

- 1 1. Tumwater Timberline Library
2 7023 New Market Street
3 Tumwater, WA 98501
4 (360) 695-1566
- 5 2. Ecology's Southwest Regional Office
6 300 Desmond Drive
7 PO Box 47775
8 Olympia, WA 98504-7775
9 (360) 407-6365

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

14 **XXVI. DURATION OF DECREE**

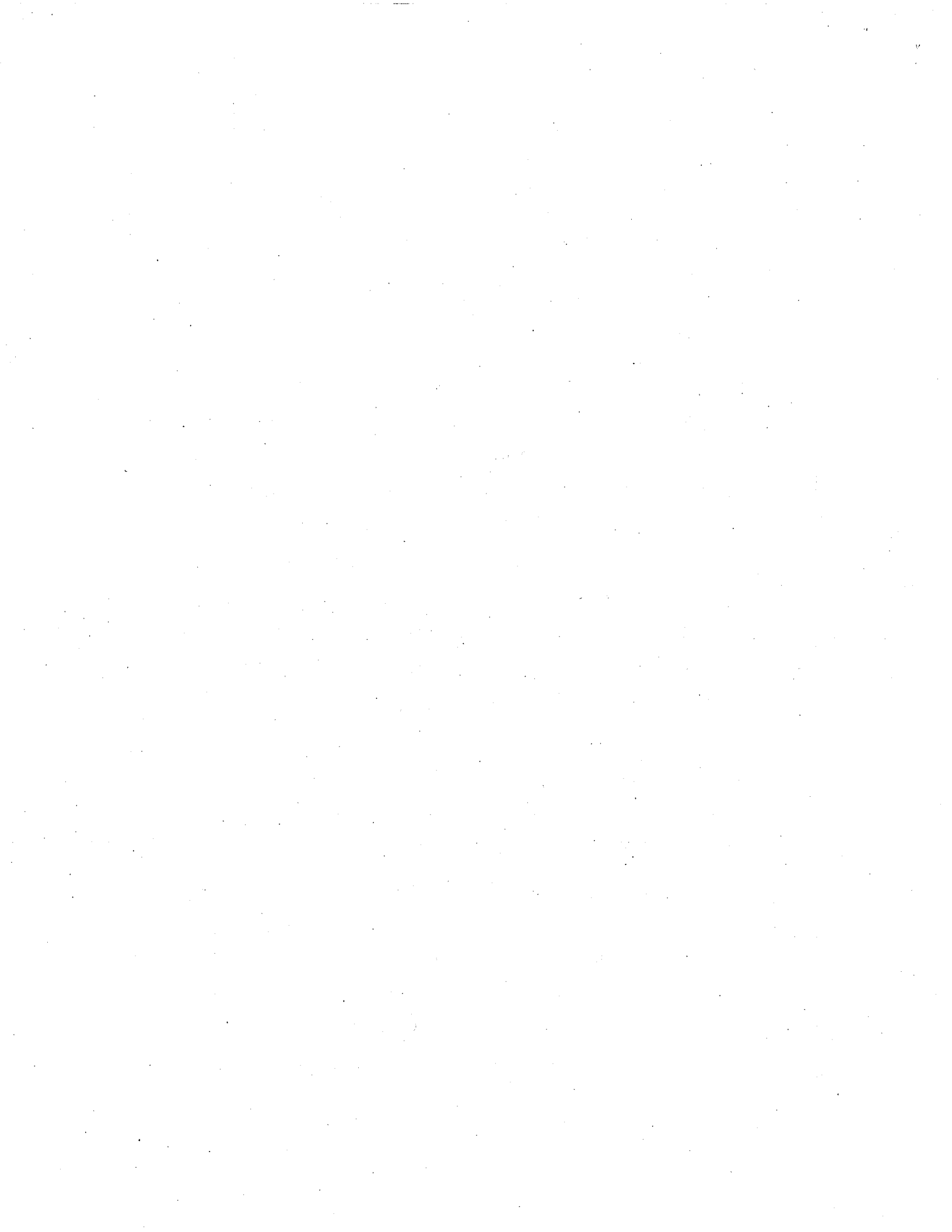
15 The remedial program required pursuant to this Decree shall be maintained and
16 continued until Defendants have received written notification from Ecology that the
17 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
18 effect until dismissed by the Court.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

20 **XXVII. CLAIMS AGAINST THE STATE**

21 Defendants hereby agree that they will not seek to recover any costs accrued in
22 implementing the remedial action required by this Decree from the State of Washington or any
23 of its agencies; and further, that Defendants will make no claim against the State Toxics
24 Control Account or any local Toxics Control Account for any costs incurred in implementing
25 this Decree. Except as provided above, however, Defendants expressly reserve their right to
26 seek to recover any costs incurred in implementing this Decree from any other PLP. This
Section does not limit or address funding that may be provided under Chapter 173-322 WAC.

XXVIII. EFFECTIVE DATE

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



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XXIX. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT M. McKENNA
Attorney General

Jim Pendowski
Program Manager
Toxics Cleanup Program
(360) 407 - 7177

Katharine G. Shirey WSBA # 35736
Assistant Attorney General
(360) 586-6769

Date: _____

Date: _____

CHAUNCEY AND ELIZABETH LUFKIN

x *Chauncey Lufkin*
Elizabeth Lufkin

Date: May 19, 2010


ENTERED this _____ day of _____ 20____.

JUDGE
Thurston County Superior Court

1 XXIX. WITHDRAWAL OF CONSENT

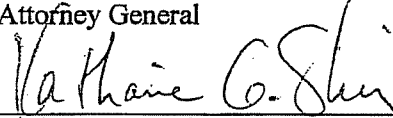
2 If the Court withholds or withdraws its consent to this Decree, it shall be null and void
3 at the option of any party and the accompanying Complaint shall be dismissed without costs
4 and without prejudice. In such an event, no party shall be bound by the requirements of this
5 Decree.

6 STATE OF WASHINGTON
7 DEPARTMENT OF ECOLOGY

8 
9 Jim Pendowski
10 Program Manager
11 Toxics Cleanup Program
12 (360) 407 - 7177

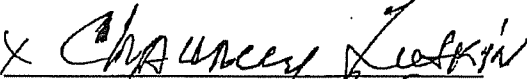
13 Date: 8/4/10

ROBERT M. McKENNA
Attorney General

14 
15 Katharine G. Shirey WSBA # 35786
16 Assistant Attorney General
17 (360) 586-6769

18 Date: 8/18/10

19 CHAUNCEY AND ELIZABETH LUFKIN

20 x 
21 Elizabeth Lufkin

22 Date: May 19, 2010

23 ENTERED this 20th day of August 2010.

24 CAROL MURPHY

25 JUDGE
26 Thurston County Superior Court