

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	:	Jointly Administrated Under
	:	Case No. 03-37718-H2-11
PHILIP SERVICES CORPORATION, et al.:	:	
	:	
Debtors.	:	(Chapter 11)

SETTLEMENT AGREEMENT AND CONSENT DECREE

RECITALS

WHEREAS, on June 2, 2003, Philip Services Corporation and its affiliated debtors, as debtors and debtors-in-possession (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq., as amended (the “Bankruptcy Code”), which cases have been jointly administered under Case No. 03-37718-H2-11 (the “Chapter 11 Cases”);

WHEREAS, the parties to this Settlement Agreement and Consent Decree (the “Agreement”) shall include the United States Environmental Protection Agency, (“EPA”) Washington State Department of Ecology (“Ecology”) and the Debtors (collectively the “Parties”).

WHEREAS Debtors have entered into Agreed Order 1324 (the “Pasco Agreed Order”) with Ecology, among others, pursuant to which Debtors have participated in the cleanup of the Pasco Sanitary Landfill located at 1060 North 4th Avenue, Pasco, Washington (the “Pasco Site”);

WHEREAS, the Debtors have entered into Agreed Order DE 98HW-N108 (the “Pier 91 Agreed Order”) with Ecology and the Port of Seattle, pursuant to the Model Toxics Control Act,

(“MTCA”) Ch. 70.105D RCW, and regulations issued thereunder, pursuant to which the Parties have agreed to address remedial actions with respect to the release or threatened release of hazardous substances at or from the Pier 91 Site in Seattle, Washington (“the Pier 91 Site”);

WHEREAS, the Parties have entered into Agreed Order No. DE 983TC-N273 (the “Landsburg Agreed Order”) with the Washington State Department of Ecology (“Ecology”) pursuant to which the Parties have agreed to investigate and conduct remedial actions with respect to the release or threatened release of hazardous substances at or from the Landsburg Mine and located in Sections 24 and 25, T22N, R6E, near Ravensdale, Washington (the “Landsburg Mine Site”);

WHEREAS, Settlement of the matters governed by this Agreement is in the public interest and an appropriate means of resolving these matters and will lead to more expeditious cleanup of hazardous substances in compliance with federal and state laws and regulations, including cleanup standards under MTCA;

WHEREAS, EPA and Ecology (collectively “the Agencies”) allege that Debtors face potential environmental liabilities at the Pasco Site, the Pier 91 Site, and the Landsburg Mine Site, (collectively the “Washington Sites”) under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (“RCRA”), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), MTCA Ch. 70.105D RCW, and regulations issued thereunder, and other federal and state environmental regulations and laws, for response action and/or response costs, for investigation and remediation action and/or investigation and remediation costs; for closure and post-closure action and/or closure and post-closure costs; and for corrective action and/or corrective action costs with respect to the Washington Sites;

WHEREAS, the Debtors dispute such allegations, and seek to obtain protection, through

the resolution of environmental liabilities for with respect to the Washington Sites, as provided herein, from and against all such claims, causes of action, remedies or otherwise that have been or may in the future be asserted by the Agencies;

WHEREAS, on October 31, 2003, the Debtors filed their “Motion Pursuant to 11 U.S.C. § 554(a) for an Order Authorizing Debtor to Abandon Certain Property in Washougal, Washington that is Burdensome to the Estates or Otherwise of Inconsequential Value to the Estates” pursuant to which the Debtors sought authority to abandon the site at Washougal, Washington (the “Washougal Abandonment Motion”);

WHEREAS, Debtors have reached a settlement agreement with other relevant and potentially responsible parties regarding the environmental liabilities associated with the Pasco Site;

WHEREAS, Debtors have reached a settlement agreement with other relevant and potentially responsible parties regarding the environmental liabilities associated with the Pier 91 Site;

WHEREAS, Debtors have reached a settlement agreement with other relevant and potentially responsible parties regarding the environmental liabilities associated with the Landsburg Mine Site;

WHEREAS, the Agencies and Debtors, without admission of liability by any Party, desire to settle, compromise and resolve their differences and in consideration of, and in exchange for, the promises herein, intending to be legally bound hereby, the Debtors and the Agencies hereby agree to the terms and provisions of this Agreement;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

“Agencies” shall mean the United States of America, EPA, the United States Department of Justice on behalf of EPA, the State of Washington, and Ecology.

“Agreement” shall mean this Settlement Agreement and Consent Decree.

“Bankruptcy Code” shall have the meaning set for the recitals to this Agreement.

“CERCLA” refers to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as now in effect or hereafter amended.

“Claims” has the meaning provided in Section 101(5) of the Bankruptcy Code.

“Court” shall mean the United States Bankruptcy Court for the Southern District of Texas, Houston District.

“Debtors” shall mean Philip Services Corporation, its affiliated debtors, as debtors and debtors-in-possession, which filed a voluntary petition for relief on June 2, 2003, as debtors, debtors-in-possession or in a new or reorganized form as a result of the Chapter 11 Cases.

“Effective Date” means the date as defined in the Plan.

“MTCA” refers to the Model Toxics Control Act, Ch. 70.105D RCW.

“Plan of Reorganization” or “Plan” means any plan of reorganization that is confirmed and becomes effective in the Chapter 11 Cases.

“Prepetition” refers to the time period on or prior to June 2, 2003.

“Postpetition” refers to the time period from and after June 2, 2003.

“RCRA” refers to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as now in effect or hereafter amended, and Washington’s RCRA authorized state program under the Hazardous Waste Management Act, Ch. 70.105 RCW.

“Site” refers to property that is environmentally impacted.

“State” refers to the State of Washington.

“United States” means the United States of America, including EPA, the Department of Justice, on behalf of EPA, and all of the United States’ agencies, departments and instrumentalities.

“Washington Sites” means the sites located at Pasco, Washington, Pier 91 at the Port of Seattle in Seattle, Washington, and Landsburg Mine in Ravensdale, Washington, and as defined in this Agreement.

JURISDICTION

The Court has jurisdiction over the subject matter over the subject matter hereof pursuant to the provisions of 28 U.S.C. §§ 157 and 1334.

AGREEMENT

1. The parties hereto, including the Agencies, the Debtors, and the Debtor’s legal successors and assigns, and any trustee, examiner or receiver appointed by the Bankruptcy Court, agree that the above recitals are true and correct and that they form the basis of, and are incorporated into this Agreement.

2. The Debtors agree to withdraw the Washougal Abandonment Motion from consideration and thereby retain possession and ownership of the assets and liabilities of the Washougal Site;

3. Ecology agrees to use reasonable good faith efforts to remove the Debtors from the RCRA and other permits subject to Ecology’s jurisdiction at the Pier 91 Site, and the Agreed Orders which are currently in place at the Pasco Site, the Pier 91 Site, and the Landsburg Mine Site.

4. With this Agreement, Debtors have resolved their liability under CERCLA, RCRA, and MTCA to the Agencies for contamination, site assessment, investigation,

remediation, closure, post-closure, and other response actions at the Washington Sites, including liabilities under RCRA and other permits subject to Ecology's jurisdiction. As provided by CERCLA § 113(f)(2) and MTCA, RCW 70.105D.040(4), the Debtors shall not be liable for contribution claims for all claims or causes of action under CERCLA, RCRA, and MTCA for injunctive relief and response costs related to the environmental contamination that exists at the Washington Sites as of the Effective Date of this Agreement. Specifically, under this Agreement, the Debtors' liabilities for the Washington Sites under RCRA are discharged, including liabilities under any RCRA permits, liabilities associated with closure and post-closure, and liabilities associated with corrective action.

5. The Agencies agree to withdraw all Proofs of Claim against the Debtors associated with the Washington Sites.

6. Covenants Not to Sue. (a) The Agencies covenant not to bring a civil judicial or civil administrative action, or assert any claim or demand against the Debtors under CERCLA, RCRA, or MTCA with respect to the Washington Sites, including actions, claims, or demands related to Hazardous Waste or Substances at, on, in under or emanating from the Washington Sites. (b) Debtors covenant not to bring a civil judicial or civil administrative action, or to assert any claim or demand against the Agencies, the United States and the State, including any direct or indirect claims or actions for reimbursement for the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law or similar funds of the State; any claims against the United States, the State, or the Agencies and any of their departments, agencies, and instrumentalities under CERCLA Sections 107 or 113 or similar State statutes, including any claims arising out of response actions at or in connection with the Washington Sites.

7. The Debtors agree to perform under separate settlement agreements lodged with this Court with respect to other relevant and potentially responsible parties regarding environmental liabilities associated with the Pasco Site, Pier 91 Site, and Landsburg Mine Site, including payments under such settlement agreements for the purpose of furthering remedial measure at those Sites.

8. The United States and the State reserve all rights relating to enforcement of the requirements of this Agreement or any new acts of the Debtors, creating liability under CERCLA, RCRA, and similar State statutes, including, but not limited to MTCA.

9. The Agencies and the Debtors expressly reserve all claims, demands and causes of action either judicial or administrative, past, present or future, in law or equity, which the Agencies or the Debtors may have against all other persons, firms, corporations, entities, or predecessors of the Debtors for any matter arising at or relating in any manner to the sites or claims addressed herein.

10. Nothing in this Agreement shall be deemed to limit the information gathering authority of the United States under Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604 and 9622, or any other applicable federal law or regulation, or to excuse the Debtors from any disclosure or notification requirements imposed by CERCLA, RCRA, or any other applicable federal or state law or regulation.

11. The Debtors agree to comply with all applicable federal and state requirements and regulations with respect to all of the Washington Sites.

12. Notwithstanding anything to the contrary in the Plan or the Plan's Confirmation Order, nothing in the Plan shall be deemed to release, discharge or nullify any environmental liability to any governmental unit that any entity would be subject to as to the current tenant, current owner or current operator of property after the Effective Date.

NOTICES AND SUBMISSIONS

12. Whenever, under the terms of this Agreement, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below via U.S. mail, unless those individuals or their successors give notice of a change of address to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Except as otherwise provided in this Agreement, written notice as specified herein shall constitute complete satisfaction of any written notice requirement in the Agreement with respect to the United States, the State, and the Debtors, respectively.

If to the Agencies:

U.S. Environmental Protection Agency
[ADDRESS]

Washington State Department of Ecology
[ADDRESS]

If to the Debtors:

Philip Service Corporation
[ADDRESS]

LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

13. This Agreement shall be lodged with the Court by Ecology for a period not less than thirty days for public notice and comment. The United States agrees to consider an expedited public comment period for this Agreement. All Parties agree that this Agreement shall not become effective until participation by the Debtors is approved by the Bankruptcy Court and until Effective Date of the Plan. The Debtors will promptly seek the approval of the Bankruptcy Court of their entry into this Agreement in accordance with Bankruptcy Rule 9019. The United States and Ecology shall notify the Bankruptcy Court of any public comments and their response

thereto and shall, assuming they have decided to go forward with this Agreement, file a motion for approval and entry of this Agreement under the environmental laws.

14. If for any reason (i) this Agreement is not approved by the Bankruptcy Court, or (ii) the Plan is not confirmed: (a) this Agreement shall be null and void and the parties shall not be bound hereunder or under any documents executed in connection herewith; (b) the parties shall have no liability to one another arising out of or in connection with this Agreement or under any documents executed in connection herewith; (c) this Agreement and any documents prepared in connection herewith shall have no residual or probative effect or value, and it shall be as if they had never been executed; and (d) this Agreement, any statements made in connection with settlement discussions, and any documents prepared in connection herewith may not be used as evidence in any litigation between the parties.

15. The Debtors shall not propose any Plan of Reorganization or take any other action in the Chapter 11 Cases that is inconsistent with the terms and provisions of this Agreement. The Agencies will not oppose any term or provision of a Plan of Reorganization filed by the Debtors that is addressed by this Agreement. The parties reserve all other rights and defenses they may have with respect to any Plan of Reorganization filed by the Debtors.

AMENDMENTS/INTEGRATION AND COUNTERPARTS

16. This Agreement and any other documents to be executed in connection herewith shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein. This Agreement may not be amended except by a writing signed by all parties to this Agreement.

17. This Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

RETENTION OF JURISDICTION

18. This Court shall retain jurisdiction over the subject matter of this Agreement and the Parties hereto for the duration of the performance of the terms of this Agreement for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction and relief as may be necessary or appropriate for the construction or interpretation of this Agreement or to effectuate or enforce compliance with its terms.

SIGNATURE BLOCK

UNITED STATES OF AMERICA
[ADDRESS]

STATE OF WASHINGTON
[ADDRESS]

PHILIP SERVICES CORPORATION
[ADDRESS]