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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)

Plaintiff,)

v.)

TIKI ENTERPRISES, INC.,)

Defendant.)

NO. 93-2 07710
CONSENT DECREE

6

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1 **I. INTRODUCTION**

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and Tiki Enterprises, Inc. (Defendant), is to
5 provide for reimbursement for costs incurred by Ecology in
6 remediating a release or threatened release of hazardous
7 substances at the Tiki Car Wash site.

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

16 C. In signing this Decree, the Defendant agrees to its
17 entry, without further notice, and agrees to be bound by its
18 terms.

19 D. The court is fully advised of the reasons for entry
20 of this Decree, and good cause having been shown: IT IS
21 HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

22 **II. JURISDICTION**

23 A. This court has jurisdiction over the subject matter
24 and personal jurisdiction over the parties pursuant to the
25 Model Toxics Control Act (ch. 70.105D RCW).

1 B. Ecology has authority pursuant to RCW 70.105D.040(4)
2 to file this Consent Decree with the appropriate superior
3 court after appropriate public notice and comment.

4 C. On the basis of the testing and analysis described
5 in the Statement of Facts, Section V, and Ecology files and
6 records, Ecology has determined that a release of hazardous
7 substances has occurred at the site.

8 D. Ecology has determined that the Defendant is a
9 potentially liable person for the site pursuant to RCW
10 70.105D.040. The Defendant has been given notice of Ecology's
11 determination, and has had opportunity to comment thereon.

12 E. The Defendant has applied to Ecology for financial
13 assistance under WAC 173-340-560. Based on the Defendant's
14 application, Ecology has determined the Defendant is eligible
15 for mixed funding. Ecology has also determined that making
16 available mixed funding under the circumstances described in
17 Section V of this Decree will achieve a more expeditious or
18 enhanced cleanup than would otherwise occur and will prevent
19 or mitigate unfair economic hardship. Actual funding will
20 depend on availability of funds.

21 F. Entering this Decree will result in a more
22 expeditious cleanup of the site and is appropriate given the
23 use of mixed funding at the site.

1 G. The actions to be taken pursuant to this Decree are
2 necessary to protect the public health, welfare and the
3 environment.

4 **III. PARTIES BOUND**

5 This Decree shall apply to and be binding upon
6 Tiki Enterprises, Inc., its successors and assigns, and
7 Ecology and its successors and assigns. The undersigned
8 representative of each party hereby certifies that he/she is
9 fully authorized to enter into this Decree and to execute and
10 legally bind such party to comply with the Decree. The
11 parties agree to undertake all actions required by the terms
12 and conditions of this Decree and the Defendant agrees not to
13 contest state jurisdiction regarding this Decree. No change
14 in ownership or corporate status shall alter the
15 responsibility of the Defendant under this Decree. Nothing in
16 this Decree shall constitute as a release of any claim, cause
17 of action, or demand that either Ecology or the Defendant may
18 have against any person, corporation, business, or other
19 entity, whatsoever, for liability arising from contamination
20 of hazardous substances.

21 **IV. DEFINITIONS**

22 A. "Site," "Tiki," or "Tiki Car Wash" refers to the
23 property and business located at 11909 N.E. 8th Street,
24 Bellevue, Washington.

1 B. "Remedial action" refers to the work performed by
2 Ecology to clean up the site.

3 C. "Remedial action costs" refer to those direct and
4 indirect costs incurred by Ecology under this Consent Decree.
5 Such costs include work performed by Ecology or its
6 contractors for investigations, remedial actions, and order
7 preparation, negotiations, oversight, administration, employee
8 salary and benefits, laboratory costs, travel costs,
9 contractor fees, and interest charges for delayed payments by
10 the Defendant.

11 D. "Days" refers to calendar days unless specified
12 otherwise.

13 E. "Parties" refers to the Department of Ecology, also
14 known as "Plaintiff" or "Ecology" and Tiki Enterprises, Inc.,
15 also known as "Defendant," "Tiki," or "Tiki Car Wash."

16 F. The definitions set forth in ch. 70.105D RCW and
17 ch. 173-340 WAC shall control the meanings of the terms used
18 in this Decree.

19 **V. STATEMENT OF FACTS**

20 Ecology makes the following findings of fact:

21 **A. Site Location and Status**

22 The Tiki Car Wash site is located at 11909 N.E. 8th
23 Street, Bellevue, Washington. The site is currently being
24 operated as a gasoline station and car washing facility.

1 **B. Facility History and Operations**

2 Tiki Car Wash operates as a gasoline station and car
3 washing facility. It is located at 11909 N.E. 8th Street,
4 Bellevue, Washington. It is bounded on the north by N.E. 8th
5 Street, across from Eastside Rentals, located at 11830
6 N.E. 8th Street, and Barrier Motors, a former Texaco station,
7 located at 11968 Bel-Red Road. It is bounded on the south by
8 Larry's Market parking lot. The east boundary of Tiki Car
9 Wash is abutted by Bellevue Alpha-Romeo. On the west boundary
10 of the site is a Dollar Rent-A-Car located at 11839 N.E. 8th
11 Street, and a vacant site.

12 The property was purchased by H. Rand Ginn from F. Kemper
13 Freeman and Clotilde D. Freeman, and Elwell C. Case and
14 Helen D. Case, and Bellevue Properties, a limited partnership,
15 in mid-1971. The current facility was constructed by Tullus
16 Gordon Construction in the same year. In 1973, Carl B.
17 Goodwin and Ruth E. Goodwin purchased the property from
18 H. Rand Ginn.

19 Tiki Enterprises, Inc., the current owner, purchased the
20 facility in 1973 from Carl and Ruth Goodwin. At that time the
21 facility had three underground storage tanks, with capacities
22 of 10,000, 8,000 and 6,000 gallons respectively. A fourth
23 underground storage tank with a capacity of 15,000 gallons was
24 installed in 1979.

1 **C. Previous Site Investigation**

2 On June 7, 1990, the Department of Ecology received a
3 report that a release of petroleum hydrocarbon compounds may
4 have taken place at the Tiki Car Wash site. This report was
5 as a result of a site assessment conducted on the northern
6 section of the Larry's Market property, which is downgradient
7 from Tiki Car Wash. With the consent of Mr. Robert Bollman of
8 Tiki Enterprises, Inc., Hart Crowser, an environmental
9 consultant, installed one monitoring well and drilled nine
10 soil borings on the Tiki Car Wash site. Analyses of the
11 samples from the soil borings and groundwater indicate the
12 presence of benzene, toluene, ethylbenzene, and xylenes in
13 excess of MTCA Method A standard cleanup levels.

14 **VI. WORK TO BE PERFORMED**

15 **A. Scope of Work**

16 Ecology shall direct the remedial action at the site
17 according to the following scope of work:

18 **1. Phase I: Remedial Investigation and
19 Feasibility Study**

20 The objective of this phase of work is to conduct a State
21 Remedial Investigation and Feasibility Study according to WAC
22 173-340-450(5). This work will explore subsurface soil and
23 groundwater conditions to determine the source and extent of
24 contamination. This phase will consist of the following
25 tasks:

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- (1) Review and evaluate existing data from previous investigations and other pertinent information on Tiki and surrounding properties.
- (2) Sample and analyze groundwater from existing monitoring wells on and around Tiki.
- (3) Conduct soil vapor survey to determine possible hot spot areas.
- (4) Using soil vapor survey results, drill soil borings and install monitoring wells necessary to determine source and extent of contamination, and sample and analyze soil borings and monitoring wells.
- (5) Conduct a review of available remedial technologies appropriate for the site based on data from Tasks (1) through (4).
- (6) Prepare a Remedial Investigation/Feasibility Study Report for public comment in accordance to WAC 173-340-600(12)(c).

2. Phase II: Cleanup Action Plan

The objective is to select and design an appropriate remedial technology in accordance with WAC 173-340-360 for the site based on information compiled from Phase I. This will consist of the following tasks:

- (1) Select the appropriate remedial technology for the site.

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- (2) Identify data gaps that affect the design of the selected technology, and collect additional information.
- (3) Design the selected remedial system with plans and specifications.
- (4) Develop sampling and monitoring plans for system operation and performance assessment.
- (5) Obtain all permits required for the construction and operation of the system.
- (6) Prepare a Cleanup Action Plan report for public review and comments in accordance with WAC 173-340-600.

3. Phase III: Implementation of Cleanup Action Plan

This phase of work is to implement the Cleanup Action Plan to remediate soil and groundwater. This phase will consist of the following tasks:

- (1) Construct and operate the designed system in a manner consistent with Phase II.
- (2) Monitor the system in a manner consistent with Phase II.
- (3) Document all observations, conditions and results in a final report.

1 **VII. DESIGNATED PROJECT COORDINATOR**

2 The project coordinator for Ecology is:

3 Ben Amoah-Forson
4 Department of Ecology
5 Northwest Regional Office
6 3190 - 160th Avenue S.E.
7 Bellevue, WA 98008-5452
8 (206) 649-7099

9 The project coordinator shall be responsible for overseeing
10 the implementation of this Decree. To the maximum extent
11 possible, communications between Ecology and the Defendant,
12 and all documents, including reports, approvals, and other
13 correspondence concerning the activities performed pursuant to
14 the terms and conditions of this Decree, shall be directed
15 through the project coordinator. Should Ecology change the
16 project coordinator, written notification shall be provided by
17 Ecology to the Defendant's undersigned representative or such
18 other person designated by the Defendant.

19 **VIII. REIMBURSEMENT OF ECOLOGY'S COSTS**

20 1. Ecology has determined that the Defendant is
21 eligible for mixed funding. Actual funding depends on
22 availability of funds. The Defendant agrees to reimburse
23 Ecology for the costs Ecology incurs in remediating the
24 release and/or threatened release of hazardous substances at
25 the site, including future monitoring (if any), up to a
26 maximum dollar amount of two-hundred and fifty thousand
dollars (\$250,000). In the event Ecology incurs remedial

1 action costs exceeding \$250,000, payment of such costs shall
2 be satisfied by use of funds from the Toxics Control Account
3 or other individuals identified as potentially liable persons.

4 2. Payment of Ecology's remedial action costs shall be
5 due on the first (1st) of each calendar month commencing upon
6 receipt of billing from Ecology. Ecology shall provide the
7 Defendant itemized quarterly statements describing the
8 remedial action costs incurred at the site.

9 3. During the reimbursement period, the Defendant
10 agrees to make monthly payments of not less than one thousand-
11 five hundred (\$1500.00) dollars. There is no interest on
12 those payments, unless they are late, as stated in
13 Section VIII, paragraph 4. However, should the operations of
14 Tiki Car Wash cease because of construction or improvements to
15 the real property, Defendant may forego monthly payments.
16 This interruption of monthly payments may occur only once for
17 a period not to exceed twelve months. Monies not paid during
18 this period of interruption will be repaid over the remaining
19 lifetime of the loan. The original loan period cannot be
20 extended without the written approval of Ecology. The
21 Defendant shall be notified in writing when its obligation to
22 reimburse Ecology under this Decree has been satisfied.

23 4. Monthly payments not received by Ecology within
24 thirty (30) days of the date due shall be considered late
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1 payments and bear interest at a rate of one percent (1%) per
2 month, or fraction thereof.

3 5. Ecology's determination regarding mixed funding
4 applies only to the Defendant and is not transferable. In the
5 event the Defendant sells, assigns, or otherwise transfers any
6 or all interest in the site while this Decree is in effect,
7 the new owner may be liable for remedial action costs incurred
8 by Ecology at the site. If the Defendant sells, assigns, or
9 otherwise transfers its interest in the site while this Decree
10 is in effect, the remedial action costs incurred by Ecology up
11 to the date of such sale, assignment, or transfer shall,
12 subject to paragraph 1 above, become immediately due and
13 payable regardless of whether the payment period described in
14 paragraph 3 above has commenced. Unless the immediate payment
15 required under this paragraph fully satisfies the Defendant's
16 obligation under Section VIII, paragraph 1 of this Decree, the
17 Defendant shall remain liable for payment of Ecology's future
18 remedial action costs at the site according to the terms of
19 this agreement.

20 6. The Defendant consents to the immediate filing of a
21 special lien in the amount of two hundred fifty thousand
22 dollars (\$250,000) on the property located at 11909 N.E. 8th
23 Street, Bellevue, Washington, known as the Tiki Car Wash site,
24 to secure the Defendant's performance under this Decree. Once
25 the Defendant's obligation to reimburse Ecology under this

1 Decree has been satisfied, Ecology will file a lien
2 termination statement with the court and the records office in
3 which the lien was filed. Ecology agrees that its lien will
4 be subordinate to other liens on the site that secure loans
5 totaling no more than \$500,000, the proceeds of which are used
6 to improve the site.

7 7. The Defendant agrees that if it fails to fully
8 reimburse Ecology for its share of remedial action costs or
9 refuses to make the monthly payments required under this
10 Decree after receiving thirty (30) days written demand,
11 Ecology may pursue any means authorized by law including but
12 not limited to foreclosure of its lien to satisfy the
13 Defendant's obligation under this Decree. If foreclosure of
14 the lien occurs but fails to satisfy the Defendant's
15 obligation under this Decree, the Defendant shall remain
16 liable to reimburse Ecology for any outstanding balance owing.
17 The procedures for foreclosing this lien will be the same as
18 those for the foreclosure of mortgages under Washington State
19 law.

20 **IX. ACCESS**

21 Ecology or any Ecology authorized representative or
22 contractor hired by Ecology, shall have the authority to enter
23 and freely move about the site at all reasonable times for the
24 purposes of performing remedial action at the site. Except in
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1 cases of emergency, Ecology will give the Defendant 24 hours
2 notice that Ecology or its representatives will be on site.
3 To the extent possible, the remedial activity conducted by
4 Ecology and its representatives will not interfere with the
5 Defendant's operations at the site. However, where
6 Defendant's operations at the site must cease to accommodate
7 remedial activities, Ecology will provide the Defendant at
8 least 48 hours notice, except in cases of emergency.

9 **X. TRANSFERENCE OF PROPERTY**

10 A. No voluntary conveyance or relinquishment of
11 Defendant's title, easement, leasehold, or other interest in
12 any portion of the site shall be consummated without provision
13 for continued performance of all of Defendant's obligations
14 under this Decree. If an involuntary conveyance or
15 relinquishment of such interest occurs, the Defendant shall,
16 if possible, give prior written notice of this Decree to the
17 transferee.

18 B. If required by Ecology, the Defendant shall record a
19 notice in the title records to that portion of the property
20 underlying the site over which Defendant holds fee title. The
21 notice shall state that a Consent Decree entered in the above-
22 captioned proceeding imposes certain restrictions on the use
23 and improvement of the site, and that said restrictions run
24 with the land. The nature and extent of the restrictions will
25 be determined in conjunction with the development and

1 implementation of the cleanup action plan. Within 30 days of
2 filing the notice with the King County Auditor, the Defendant
3 shall forward a copy of the notice to Ecology.

4 **XI. DISPUTE RESOLUTION**

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

9 (1) Upon receipt of the Ecology project coordinator's
10 decision, the Defendant has fourteen (14) days within which to
11 notify Ecology's project coordinator of its objection to the
12 decision.

13 (2) The parties' project coordinators shall then confer
14 in an effort to resolve the dispute. If the project
15 coordinators cannot resolve the dispute within fourteen (14)
16 days, Ecology's project coordinator shall issue a written
17 decision.

18 (3) Defendant may then request Ecology management review
19 of the decision. This request shall be submitted in writing
20 to the Toxics Cleanup Program Manager within seven (7) days of
21 receipt of Ecology's project coordinator's decision.

22 (4) Ecology's Program Manager shall conduct a review of
23 the dispute and shall issue a written decision regarding the
24 dispute within thirty (30) days of the Defendant's request for
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1 review. The Program Manager's decision shall be Ecology's
2 final decision on the disputed matter.

3 B. If Ecology's final written decision is unacceptable
4 to Defendant, Defendant has the right to submit the dispute to
5 the court for resolution. The parties agree that one judge
6 should retain jurisdiction over this case and shall, as
7 necessary, resolve any dispute arising under this Decree. In
8 the event Defendant presents an issue to the court for review,
9 the court shall review the action or decision of Ecology on
10 the basis of whether such action or decision was arbitrary and
11 capricious and render a decision based on such standard of
12 review.

13 C. The parties agree to only utilize the dispute
14 resolution process in good faith and agree to expedite, to the
15 extent possible, the dispute resolution process whenever it is
16 used. Where either party utilizes the dispute resolution
17 process in bad faith or for purposes of delay, the other party
18 may seek sanctions.

19 Implementation of these dispute resolution procedures
20 shall not provide a basis for delay of any activities required
21 in this Decree, unless Ecology agrees in writing to a schedule
22 extension or the court so orders.

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XII. AMENDMENT OF CONSENT DECREE

Any amendment to this Decree must be in writing and signed by the parties. Such amendment shall become effective when entered by the court.

XIII. INDEMNIFICATION

The Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree; provided, however, that the Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action brought by third parties arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the state, in implementing the activities pursuant to this Decree.

XIV. PUBLIC NOTICE AND PARTICIPATION

Ecology shall be the lead for public notice and participation at the site. If requested, Ecology shall allow the Defendant to review fact sheets, press releases, and public notices prior to issuance.

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XV. EFFECTIVE DATE

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

XVI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree will be subject to public notice and comment under RCW 70.105D.040(4)(a). Ecology reserves the right to withdraw or withhold its consent to the proposed final Decree as the comments received by Ecology disclose facts or considerations which indicate that the proposed Decree is inappropriate, improper, or inadequate.

If the court withholds or withdraws its consent, this Decree shall be null and void at the option of any party and the accompanying complaint shall be dismissed without cause

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1 and without prejudice. In such an event, no party shall be
2 bound by the requirements of this Decree.

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4 Carol L. Fleskes
5 CAROL FLESKES, Program Manager
6 Hazardous Waste Cleanup
7 Washington State
8 Department of Ecology

Jan. 11, 1993
Date

7

8 E. Christina Beusch
9 E. CHRISTINA BEUSCH, WSBA #18226
10 Assistant Attorney General
11 Ecology Division
12 Washington State
13 Office of Attorney General

March 26, 1993
Date

12 Robert Bollman
13 ROBERT BOLLMAN
14 Secretary and
15 Authorized Representative
16 Tiki Enterprises, Inc.
17 515 116th Avenue N.E., Suite 250
18 Bellevue, WA 98004

12/19/92
Date

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CONSENT DECREE

-19-

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