

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

|   |   |                |
|---|---|----------------|
| STATE OF WASHINGTON                       | ) |                |
| DEPARTMENT OF ECOLOGY,                    | ) |                |
|   | ) | No.            |
| v.  | ) |                |
|   | ) |                |
| King County and Chevron Products Company, | ) | CONSENT DECREE |
| a division of Chevron U.S.A. Inc., a      | ) |                |
| <u>Pennsylvania Corp.</u>                 | ) |                |

Table of Contents

|         |  |
|---------|--|
| I.      | INTRODUCTION                               |
| II.     | JURISDICTION                               |
| III.    | PARTIES BOUND                              |
| IV.     | DEFINITIONS                                |
| V.      | STATEMENT OF FACTS                         |
| VI.     | WORK TO BE PERFORMED                       |
| VII.    | DESIGNATED PROJECT COORDINATORS            |
| VIII.   | PERFORMANCE                                |
| IX.     | ACCESS                                     |
| X.      | SAMPLING, DATA REPORTING, AND AVAILABILITY |
| XI.     | PROGRESS REPORTS                           |
| XII.    | GRANT FUNDING                              |
| XIII.   | RETENTION OF RECORDS                       |
| XIV.    | TRANSFER OF INTEREST IN PROPERTY           |
| XV.     | LAND USE RESTRICTIONS                      |
| XVI.    | RESOLUTION OF DISPUTES                     |
| XVII.   | AMENDMENT OF CONSENT DECREE                |
| XVIII.  | EXTENSION OF SCHEDULE                      |
| XIX.    | ENDANGERMENT                               |
| XX.     | INDEMNIFICATION                            |
| XXI.    | COMPLIANCE WITH APPLICABLE LAWS            |
| XXII.   | REMEDIAL AND INVESTIGATIVE COSTS           |
| XXIII.  | IMPLEMENTATION OF REMEDIAL ACTION          |
| XXIV.   | PUBLIC PARTICIPATION                       |
| XXV.    | FIVE YEAR REVIEW                           |
| XXVI.   | DURATION OF DECREE                         |
| XXVII.  | CLAIMS AGAINST THE STATE                   |
| XXVIII. | COVENANT NOT TO SUE                        |
| XXIX.   | RESERVATION OF RIGHTS                      |
| XXX.    | EFFECTIVE DATE                             |
| XXXI.   | PUBLIC NOTICE AND WITHDRAWAL OF CONSENT    |
|         | Exhibit A – Cleanup Action Plan            |
|         | Exhibit B – Site Diagram                   |
|         | Exhibit C – Restrictive Covenant           |

## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Chevron Products Company, a division of Chevron U.S.A. Inc. (Chevron) and King County (collectively Chevron and King County referred to as Defendants) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendants to undertake the remedial actions described in the Cleanup Action Plan attached hereto as Exhibit A. Ecology has determined that these actions are necessary to protect human health and the environment.

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

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

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

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

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

## II. JURISDICTION

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

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

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

D. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(15), of Ecology's determination that the Defendants are potentially liable persons for the Site and that there has been a release or threatened release of hazardous substances at the Site.

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

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

## III. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories to this Decree (parties), their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. Defendants agree to undertake all actions required by the terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change

in ownership, corporate status, or municipal status shall alter the responsibility of the Defendants under this Decree. Defendants shall make a copy of this Decree available to all agents and contractors retained to perform work required by this Decree and shall condition any contract for such work on compliance with the applicable terms of this Decree.

#### IV. DEFINITIONS

Except for as specified herein, all definitions in WAC 173.340-200 apply to the terms in this Decree.

A. Site: For purposes of this Decree, the Site, referred to as the Metro Lake Union Site located at 1602 N. Northlake Way, Seattle, Washington, including rights-of-way as appropriate, is more particularly described in Exhibit B to this Decree, which is a detailed site diagram.

B. Parties: Refers to the Washington State Department of Ecology, Chevron and King County.

C. Defendants: Refers collectively to Chevron and King County.

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

E. Days: Refers to calendar days, unless specified otherwise.

#### V. STATEMENT OF FACTS

Ecology makes the following finding of facts without any express or implied admissions by Defendants and without prejudice to Defendants’ right to deny or otherwise challenge these findings of fact.

1. King County is the current owner and operator of the Site. Chevron, and its predecessor, Standard Oil of California, were a former owner and operator of the Site from approximately 1925 until 1982.

2. The Site is the location of a former bulk fuel storage and distribution facility.

3. Operation of the bulk fuel storage and distribution facility has resulted in the presence of hazardous substances, including petroleum hydrocarbons, volatile organic compounds, and metals in the soil and groundwater.

4. The concentrations of hazardous substances in the soil and groundwater exceed cleanup levels promulgated pursuant to the MTCA. The potential for hazardous substances to be present in the sediments in Lake Union and any cleanup thereof, if necessary, are not addressed in this Decree. Any future action concerning or related in any way to the sediments in Lake Union shall be addressed in a document other than this Decree, and this Decree shall not be amended or interpreted to address the sediments in Lake Union.

5. By letter dated December 29, 1988, Ecology notified the Municipality of Metropolitan Seattle (predecessor in interest to King County) that the Municipality was listed as an owner and/or operator of the Site that was potentially contaminated with hazardous substances and provided information Ecology had in its files regarding the site.

6. A Draft Remedial Investigation/Feasibility Study (RI/FS) dated November 1993 was prepared by Applied Geotechnology Inc. under contract issued by the Municipality of Metropolitan Seattle. Subsequent to the RI/FS, groundwater monitoring at the Site was undertaken in 1995 and 1997 by AGI Technologies (formerly known as Applied Geotechnology Inc.). The RI/FS and groundwater monitoring were conducted as independent remedial actions, and copies of all the reports related to such actions have been provided to Ecology.

7. By letters dated November 27, 1996, Ecology notified King County (successor in interest to the Municipality of Metropolitan Seattle) and Chevron that the Site was listed as a site known to be contaminated by hazardous substances, enclosed information Ecology believed reflected the status of the Site, and stated that if an independent cleanup action did not occur on the Site, Ecology would conduct a more detailed inspection at a future time and determine potentially liable person(s) responsible for cleanup costs.

Based on these facts, Ecology has determined that a release of hazardous substances at the Site requires remedial action to protect human health and the environment. This Decree sets forth the remedial measures necessary to clean up the Site in compliance with the MTCA.

#### VI. WORK TO BE PERFORMED

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

1. King County agrees to perform the remedial actions described as Phase I in Sections 5.1.1.1, 5.2.1.1, 5.3.1.1, 6.2.1.1, and 6.3.1.1 of the Cleanup Action Plan attached hereto as Exhibit A.

2. Defendants agree to perform the remedial actions described as Phase II in Sections 5.1.1.2, 5.1.2, 5.2.1.2, 5.2.2, 5.3.1.2, 5.3.2, 6.2.1.2, 6.2.2, 6.3.1.2, and 6.3.2 of the Cleanup Action Plan attached hereto as Exhibit A.

3. Except for emergency situations, Defendants agree not to perform any remedial actions outside the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Decree shall be done in accordance with Chapter 70.105D RCW and Chapter 173-340 WAC unless otherwise provided herein.

#### VII. GRANT FUNDING

Pursuant to RCW 70.105D.070(3)(a) and Ch. 173-322 WAC, Ecology has made the following determinations:

A. King County is a local government required, pursuant to this Decree, to undertake remedial action at the Site;

B. King County is prepared to proceed promptly to accomplish the remediation set forth in Exhibit A, and expenses incurred in implementing the Section VI Work to Be Performed hereunder are eligible for a local government grant; and

C. Implementation of this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards of RCW 70.105D.030(2) (d).

VIII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Maura S. O'Brien  
Department of Ecology  
3190 – 160<sup>th</sup> Avenue S.E.  
Bellevue, WA 98008-5452  
(425) 649-7249

The project coordinator for King County is:

Judy A. Riley  
King County Department of Transportation  
821 Second Avenue, MS 118  
Seattle, WA 98104-1598  
(206) 684-1401

The project coordinator for Chevron is:

Ann Marie Johnson  
Chevron Products Company  
6001 Bollinger Canyon Road  
San Ramon, CA 94583-0904  
(925) 842-9525

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

formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

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

#### IX. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous substance site investigation and cleanup. Any construction work must be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer.

#### X. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records and operation log related to the work being performed pursuant to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the Defendants. While Ecology reserves its right to enter and inspect as set forth in the previous sentence, Ecology shall make best efforts to provide Defendants with 48 hours advance notice prior to entering the Site. Ecology shall make the results of all sampling, laboratory reports, videos, and/or test results generated by it or on its behalf, collected for the purposes of this Decree, available to Defendants. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans.



## XI. SAMPLING, DATA REPORTING, AND AVAILABILITY

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

In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Section XII. These submittals shall be provided to Ecology in accordance with Section XII of this Decree.

If requested by Ecology, Defendants shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to the implementation of this Decree. Defendants shall make best efforts to provide Ecology with notice at least five (5) days in advance of any sample collection activity at the Site. Defendants shall provide Ecology with reasonable notice of any emergency sampling at the Site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendants or their authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere with Ecology's sampling.

## XII. PROGRESS REPORTS

Defendants shall submit to Ecology written progress reports on all even months (e.g., February, April, June, etc.) which reports shall describe the actions taken during the previous two months to implement the requirements of this Decree. The progress reports shall include the following:

- A. A list of on-site activities that have taken place during the previous two months;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule during the previous two months and any planned deviations in the upcoming two months;

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

E. After quality assurance/quality control review is complete, all data (including laboratory analysis) will be reported and summarized, including hard copy and electronic copy and identification of the source of the sample.

F. A list of deliverables for the upcoming two months if different from the schedule.

All progress reports shall be submitted by the tenth day of the month in which they are due after the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be sent by mail or by facsimile to Ecology's project coordinator.

### XIII. RETENTION OF RECORDS

Defendants shall preserve, during the pendency of this Decree and for ten (10) years from the date the hydrogen peroxide injection system has been taken out of service, all records, reports, documents, and underlying data in their possession relevant to the implementation of this Decree. Upon request of Ecology, Defendants, shall make all records developed pursuant to this Decree and in their possession available to Ecology and allow access for review. All records, developed pursuant to this Decree and in Defendant's possession, shall be made available to Ecology within a reasonable period of time.

### XIV. TRANSFER OF INTEREST IN PROPERTY

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

Prior to transfer of any legal or equitable interest in all or any portion of the property, and during the effective period of this Decree, Defendants shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property;

and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said contemplated transfer.

#### XV. LAND USE RESTRICTIONS

Defendants agree that the restrictive covenant, Exhibit C, shall be recorded with the office of the King County Auditor within 10 days of the entry of this Decree and shall restrict future uses of the Site. Defendants will provide a copy of the recorded, restrictive covenant within thirty (30) days of the recording date.

#### XVI. RESOLUTION OF DISPUTES

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

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

(2) The parties' project coordinators and Ecology's project coordinator's supervisor shall then confer in an effort to resolve the dispute. If the project coordinators and Ecology's project coordinator's supervisor cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator and his/her supervisor shall issue a written decision.

(3) Defendants may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's and his/her supervisor's written decision.

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

B. If Ecology's final written decision is unacceptable to a Defendant or if Ecology fails to issue a final decision within said thirty (30) day period, the Defendant has the right to submit the dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event a Defendant presents an issue to the Court for review and the issue is related to any action or decision of Ecology within the scope of RCW 70.105D.060, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review. For all other actions or decisions of Ecology, the appropriate standard of review shall be determined by the Court.

C. The parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

Unless delay of an activity poses an imminent and substantial threat to human health or the environment, all activities required in this Decree shall be stayed during the pendency of these dispute resolution procedures.

#### XVII. AMENDMENT OF CONSENT DECREE

A. Except as set forth in Paragraph C below, and minor modifications as set forth in Section VIII (Designation of Project Coordinators), this Decree may only be amended by a written stipulation among the parties to this Decree that is entered by the Court or by order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by any party to the Decree.

B. Defendants shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received, but no longer than thirty (30) days after receipt of the request. If the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does not

agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XVI of this Decree.

C. Written stipulation by the parties is not needed for schedule extensions granted pursuant to Section XVIII of this Decree.

#### XVIII. EXTENSION OF SCHEDULE

A. Except for minor modifications as set forth in Section VII (Designation of Project Coordinators), an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least fifteen (15) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed.

An extension shall only be granted for such period of time as is reasonable under the circumstances. A requested extension shall not be effective until approved by Ecology or the Court. Ecology shall act upon any written request for extension in a timely fashion and, to the extent possible, within seven (7) days of the request. It shall not be necessary to formally amend this Decree pursuant to Section XVII when a schedule extension is granted.

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

(1) Circumstances beyond the reasonable control and despite the due diligence of Defendants including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendants; or

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

(3) Delays resulting from changes in permit terms or refusal to grant a permit needed to implement the requirements of the this Decree, provided the Defendants filed a timely application for the permit;

(4) Judicial review of the issuance, non-issuance, or reissuance of a permit necessary for the continuation of work;

(5) Other circumstances deemed in written notice by Ecology to be exceptional, extraordinary, or otherwise necessary to protect the environment or public interest; or

(6) Endangerment as described in Section XIX.

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

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

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

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

(3) Endangerment as described in Section XIX.

Ecology shall give Defendants written notification in a timely fashion of any extensions granted pursuant to this Decree.

#### XIX. ENDANGERMENT

In the event Ecology determines that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendants to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this Section, the obligations of Defendants with

respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVIII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Defendants determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Site or in the surrounding area or to the environment, Defendants may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Defendants should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Defendants shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the Defendants' determination, it may order Defendants to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Defendants' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XVIII of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved through the dispute resolution procedures in Section XVI.

## XX. INDEMNIFICATION

A. Defendants agree 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 Defendants, their officers, employees, agents, or contractors in implementing this Decree. However, the Defendants shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the intentional

or 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.

B. To the extent permitted by law, Ecology agrees to indemnify and save and hold the Defendants, their agents and employees 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 Ecology, its employees, agents, or contractors in implementing this Decree. However, Ecology shall not indemnify the Defendants nor save nor hold their employees and agents harmless from any claims or causes of action arising out of the intentional or negligent acts or omissions of the Defendants, or the employees or agents of the Defendants, in implementing the activities pursuant to this Decree.

#### XXI. COMPLIANCE WITH APPLICABLE LAWS

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

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Decree that are known to be applicable at the time of entry of the Decree have been included in Exhibit A, the Cleanup Action Plan, and are binding and enforceable requirements of the Decree.

Defendants have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree. In the event either Defendants or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether Ecology or Defendants shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly



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

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

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and the Defendants shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits. Ecology shall provide Defendants with written notice within fifteen (15) days of its determination.

## XXII. REMEDIAL AND INVESTIGATIVE COSTS

The Defendants agree to pay costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW subsequent to the issuance of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Defendants agree to pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on

the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in interest charges. Any dispute regarding Ecology's costs for the Site shall be subject to dispute resolution pursuant to Section XVI of this Decree.

### XXIII. IMPLEMENTATION OF REMEDIAL ACTION

If Ecology determines that Defendants have failed without good cause to implement any material requirement of Section VI.2 of this Decree, Ecology may, after notice to Defendants, order Defendants to suspend implementation of this Decree. The parties shall then attempt in good faith to resolve any dispute pursuant to Section XVI (Resolution of Disputes). If the dispute remains unresolved and is submitted to court for resolution, Ecology may, after notice to Defendants, perform any or all portions of the work required under this Decree that remain incomplete. If Ecology performs all or portions of the remedial action, Defendants shall reimburse Ecology for the costs of doing work in accordance with Section XXII, provided that Defendants are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

If Ecology determines that King County has failed without good cause to implement any material requirement of Section VI.1 of this Decree, Ecology may, after notice to King County, order King County to suspend implementation of this Decree. The parties shall then attempt in good faith to resolve any dispute pursuant to Section XVI (Resolution of Disputes). If the dispute remains unresolved and is submitted to court for resolution, Ecology may, after notice to King County, perform any or all portions of the work required under this Decree that remain incomplete. If Ecology performs all or portions of the remedial action, King County shall reimburse Ecology for the costs of doing work in accordance with Section XXII, provided that King County is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

#### XXIV. PUBLIC PARTICIPATION

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

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and at least five (5) days before major meetings with the interested public and local governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets, and at least five (5) days before major meetings with the interested public and local governments;

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

D. In cooperation with Ecology, arrange and/or continue information repositories to be located at King County Metro Transit Library, 9<sup>th</sup> Floor, 821 Second Avenue, Seattle, and Ecology's Northwest Regional Office, 3190-160<sup>th</sup> Avenue SE, Bellevue. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil, and air monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

#### XXV. FIVE YEAR REVIEW

As remedial action, including ground water monitoring, continues at the Site, the parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of Site monitoring as often as is necessary and appropriate under the circumstances. At

least every five years the parties shall meet to discuss the status of the Site and the need, if any, of further remedial action at the Site pursuant to WAC 173-340-420. This provision shall remain in effect for the duration of the Decree.

#### XXVI. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendants have received written notification from Ecology or the Court determines that the requirements of this Decree have been satisfactorily completed. Ecology shall issue a notice of completion when the requirements of this Decree have been satisfactorily completed.

#### XXVII. CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the Defendants will make no 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, however, Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person not a party to this Decree.

Nothing in this Decree shall impair King County's right to obtain grant funding from the Local Toxics Control Account under RCW 70.105D.070(3) and Ch. 173-322 WAC for any eligible portion of the work required by this Decree. The submission of an application for such grant funding shall not be deemed to be the filing of a "claim" for the purposes of this Section.

#### XXVIII. COVENANT NOT TO SUE

Ecology has determined that the requirements set forth under this Decree are protective of human health and the environment and that compliance with this Decree fully satisfies Defendant's obligations under RCW 70.105D for the type and location of contamination covered by this Decree. Therefore, in consideration of Defendants' compliance with the terms and

conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendants regarding the type and location of contamination covered by this Decree unless confirmational monitoring indicates that additional remedial actions are necessary at the Site to attain the MTCA cleanup standards identified in the Cleanup Action Plan. Until cleanup standards identified in the Cleanup Action Plan are met at the Site, compliance with this Decree shall satisfy Defendants' cleanup obligations for the release or threatened release of hazardous substances covered by the terms of this Decree.

The terms and application of this Covenant Not to Sue are strictly limited to the contamination identified in the RI/FS and Cleanup Action Plan and only to the identified contamination located within the Site. This Covenant Not To Sue does not apply to any contamination of sediments or water in Lake Union.

A. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against Defendants seeking to require them to perform additional response actions at the Site, and to pursue appropriate cost recovery in accordance with provisions set out in RCW 70.105D.050, under the following circumstances:

(1) Upon Defendants failure to meet the requirements of this Decree, including, but not limited to, failure of the remedial action to meet the cleanup standards identified in the Cleanup Action Plan;

(2) Upon Ecology's determination that confirmation monitoring indicates that additional remedial actions are necessary to meet the cleanup standards identified in the Cleanup Action Plan;

(3) Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to public health or welfare or the environment;

(4) In the event new information becomes available regarding factors previously unknown to Ecology, including the nature or quantity of hazardous substances at the

Site, and Ecology determines, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment, and Defendants after notice, fail to take the necessary action within a reasonable time.

B. Applicability: Any Covenant Not To Sue concerning work performed under this Consent Decree shall have no applicability whatsoever to:

- (1) Criminal liability;
- (2) Liability for damages to natural resources;
- (3) Any Ecology action against potentially liable persons not a party to this Decree, including cost recovery.

#### XXIX. RESERVATION OF RIGHTS

The Defendants shall not be liable for claims of contribution by other persons not signatories to the Decree regarding matters addressed in this Decree. The percentage of response costs paid by Defendants under this Decree shall in no way constitute an admission as to an appropriate allocation of liability, if any, at the Site. This Section shall apply but is not limited to successors in interest who assume obligations under this Decree.

#### XXX. EFFECTIVE DATE

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

#### XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site.

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.

*Signatures on next page.*

\_\_\_\_\_  
JAMES J. PENDOWSKI  
Toxics Cleanup Program

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chevron Products Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
King County

\_\_\_\_\_  
Date

THIS DECREE is approved and IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
SUPERIOR COURT JUDGE  
King County Superior Court