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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF TACOMA and
METROPOLITAN PARK DISTRICT
OF TACOMA,

Defendants.

NO. 94-2-10917-6

THIRD AMENDMENT TO
CONSENT DECREE TO INCLUDE
SITE-SPECIFIC CLEANUP ACTION
PLAN FOR DOCK STREET RIGHT-
OF-WAY SITE

Pursuant to Sections IX and XIX of the Consent Decree in this case, entered on October 17, 1994 (hereinafter Decree), the undersigned hereby agree to entry by the Court of this Amendment to the Decree. The Decree is amended as follows, and in all other respects remains unchanged.

1. The Decree is amended to include the Site-Specific Cleanup Action Plan (SCAP) for the Dock Street Right-of-Way Site attached as Appendix A to this Amendment. Figure 1 of the SCAP provides a map of the area subject to the SCAP. This SCAP 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 implementation of the SCAP will lead to a more expeditious cleanup of hazardous substances at the site.

2. For purposes of this agreement, the Burlington Northern and Santa Fe Railway Company (BNSF) owns a portion of the Dock Street Right-of-Way Site, as described in the

1 revised legal description of the Site attached hereto as Appendix B. The City of Tacoma owns
2 the remainder of the Site. Section II.C and Exhibit B of the Decree concerning ownership and
3 description of the Dock Street Right-of-Way Site are amended accordingly.

4 3. In accordance with Section X of the Decree, for the portion of the Site owned by
5 the City, the City shall record the Restrictive Covenant attached hereto as Appendix C within 30
6 days of entry of this Amendment.

7 4. The remedial action conducted by the City on the portion of the Site owned by
8 BNSF shall be considered an interim action and not a final cleanup until BNSF or a successor
9 owner of the property records the Restrictive Covenant attached as Appendix C and provides
10 Ecology and the Attorney General with written confirmation of such recording. In particular
11 Section XXXI of the Decree—the covenant not to sue—shall not apply to this portion of the Site
12 until the Restrictive Covenant is recorded. If the Restrictive Covenant is not recorded within one
13 year of the entry of this Amendment, that portion of the Site shall not be considered to have been
14 remediated under the Decree.

15 5. In addition to other required institutional controls, the City shall provide financial
16 assurances in accordance with the version of WAC 173-340-440 in effect at the time the City
17 submits its draft remedial design documents to Ecology under Section IX.H of the Decree. The
18 draft remedial design documents submitted to Ecology for approval shall include preliminary
19 cost calculations and financial information describing the basis for the amount and form of
20 financial assurance and a draft financial assurance document. The financial assurance
21 documents shall be treated as a remedial design document under Section IX.H. The City shall
22 submit to Ecology as part of the as-built documentation for the site cleanup, a copy of the
23 financial assurance document and any procedures for periodic adjustment to the value of the
24 financial assurance mechanism.

25 6. All actions carried out by the Defendant(s) pursuant to the Decree and this
26 Amendment shall be done in accordance with all applicable federal, state, and local

1 requirements, including requirements to obtain necessary permits, except as provided in
2 Paragraph 7 of this Amendment.

3 7. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
4 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
5 local government permits or approvals for the remedial action under the Decree and this
6 Amendment that are known to be applicable at the time of entry of this Amendment have been
7 included at pages 20 and 21 of the SCAP, and are binding and enforceable requirements.
8 Defendant(s) has a continuing obligation to determine whether additional permits or approvals
9 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
10 the Decree and this Amendment. In the event either Defendant(s) or Ecology determines that
11 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required
12 for the remedial action under the Decree and this Amendment, it shall promptly notify the other
13 party of this determination. Ecology shall determine whether Ecology or Defendant(s) shall be
14 responsible to contact appropriate state and/or local agencies. If Ecology so requires,
15 Defendant(s) shall promptly consult with the appropriate state and/or local agencies and provide
16 Ecology with written documentation from those agencies of the substantive requirements those
17 agencies believe are applicable to the remedial action. Ecology shall make the final
18 determination on the additional substantive requirements that must be met by Defendant(s) and
19 on how Defendant(s) must meet those requirements. Ecology shall inform Defendant(s) in
20 writing of these requirements. Once established by Ecology, the additional requirements shall be
21 enforceable requirements of this Decree. Defendant(s) shall not begin or continue the remedial
22 action potentially subject to the additional requirements until Ecology makes its final
23 determination.

24 8. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
25 exemption from complying with the procedural requirements of the laws referenced in RCW
26 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for

1 the State to administer any federal law, the exemption shall not apply and the Defendant(s) shall
2 comply with both the procedural and substantive requirements of the laws referenced in RCW
3 70.105D.090(1), including any requirements to obtain permits.

4 Being fully advised of the reasons for entry of this Amendment to the Consent Decree
5 and good cause having been shown,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Consent Decree is
7 hereby amended in accordance with the above terms and conditions.

8 DATED this _____ day of _____, 2000.

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11 JUDGE/COMMISSIONER
12 Pierce County Superior Court
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1 IT IS SO AGREED BY THE UNDERSIGNED:

2 **DEPARTMENT OF ECOLOGY**

**ATTORNEY GENERAL
OF WASHINGTON**

3
4
5 By: _____
6 JAMES PENDOWSKI
7 Program Manager
8 Toxics Cleanup Program

By: _____
STEVEN J. THIELE
Assistant Attorney General
WSBA #20275

9 Date: _____

Date: _____

10 **CITY OF TACOMA**

OFFICE OF THE CITY ATTORNEY

11 By: _____
12 RAY E. CORPUS, JR.
13 Program Manager

By: _____
DOUGLAS F. MOSICH
Assistant City Attorney
WSBA #18341

14 Date: _____

Date: _____

15 **METROPOLITAN PARK DISTRICT**

BROWN, DAVIS & ROBERTS, PLLC

16 By: _____
17 JACK C. WILSON

By: _____
MARK R. ROBERTS
Attorney for Metropolitan Park Dist.
WSBA #18811

18 Date: _____

Date: _____

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