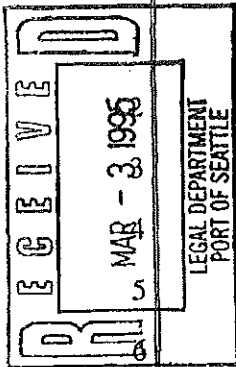


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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

STATE OF WASHINGTON DEPARTMENT OF)  
ECOLOGY,

Plaintiff,

v.

THE PORT OF SEATTLE, a Washington)  
municipal corporation,

Defendant.

No. \_\_\_\_\_  
PROSPECTIVE PURCHASER  
CONSENT DECREE RE: SALMON  
BAY STEEL NORTH PROPERTY AND  
29TH AVENUE RIGHT OF WAY

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1 terminal facilities, and the Port proposes to clean up and  
2 redevelop the Site for industrial use of that type.

3 5. WHEREAS, in the absence of this Decree, at the time  
4 it acquires the Site, the Port would incur potential liability  
5 under RCW 70.105D.040(1)(a) of the Model Toxics Control Act  
6 ("MTCA") for performing remedial actions, or for paying remedial  
7 costs incurred by Ecology, resulting from past releases or  
8 threatened releases of hazardous substances at the Site. The Port  
9 has certified that it is not otherwise currently liable under MTCA  
10 for remedial action at the Site.

11 6. WHEREAS, the Port has performed a Remedial  
12 Investigation and Feasibility Study ("RI/FS") which revealed that  
13 Soils at the Site contain concentrations of hazardous substances,  
14 above MTCA Method A and B cleanup levels.

15 7. WHEREAS, this Decree promotes the public interest by  
16 expediting cleanup activities at and near the Site and by  
17 facilitating the redevelopment and reuse of the Site for industrial  
18 uses.

19 8. WHEREAS, the Port has offered to further certain  
20 Ecology goals as provided in this Decree, in exchange for a  
21 covenant not to sue and protection from contribution under MTCA.  
22 Among other things, the Port will perform the Soil remediation and  
23 compliance monitoring measures specified in the Cleanup Action Plan  
24 ("CAP") (attached to this Decree as Attachment B).

25 9. WHEREAS, the Port's plans for the Site are not  
26 likely to aggravate or contribute to contamination at the Site,

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1 interfere with remedial actions that may be needed on the Site, or  
2 increase human health risks to persons at or in the vicinity of the  
3 Site.

4 10. WHEREAS, this Decree will provide a substantial  
5 public benefit by promoting the cleanup, redevelopment and reuse of  
6 contaminated urban industrial property, and will yield substantial  
7 new resources for cleanup.

8 11. WHEREAS, the Port's cleanup of Soil contamination  
9 and compliance monitoring will lead to a more expeditious cleanup'  
10 of hazardous substances at the Site and will promote protection of  
11 the public health and the environment.

12 12. WHEREAS, the Court is fully advised of the reasons  
13 for entry of this Decree, and good cause having been shown:

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

15 I. AUTHORITY, JURISDICTION AND VENUE

16 13. This Court has authority, under the Model Toxics  
17 Control Act (Ch. 70.105D RCW) to resolve the liability of the  
18 parties to this Decree.

19 14. This Court has jurisdiction over the subject matter  
20 and over the parties pursuant to MTCA, RCW 70.105D . Venue is  
21 proper in King County pursuant to RCW 70.105D.050(5)(b).

22 15. Authority is conferred upon the Washington State  
23 Attorney General by RCW 70.105D.040(4)(a) and 70.105D.040(5) to  
24 agree to a settlement with any potentially liable person ("PLP")  
25 if, after public notice and hearing, Ecology finds the proposed  
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1 settlement would lead to a more expeditious cleanup of hazardous  
2 substances in compliance with cleanup standards under RCW  
3 70.105D.030(2)(d). RCW 70.105D.040(4) and RCW 70.105D.040(5)  
4 require that such a settlement be entered as a consent decree  
5 issued by a court of competent jurisdiction.

6 16. Ecology has determined that hazardous substances  
7 have been released at the Site. Ecology has not made a  
8 determination that the Port is a potentially liable person for the  
9 Site and the Port has certified that it is not currently liable  
10 under Chapter 70.105D RCW. Were the Port to acquire an interest in  
11 the Site, however, it could become a PLP as an owner or operator  
12 under RCW 70.105D.040(1)(a). This Decree is entered prior to the  
13 Port's acquisition of the Site to resolve its potential liability  
14 for known, documented on-Site contamination described in the RI/FS  
15 and/or CAP, except for groundwater contamination, and to facilitate  
16 a more comprehensive and expeditious cleanup at the Site than  
17 otherwise would occur.

18 17. By entering into this Decree, the Port agrees not to  
19 challenge Ecology's jurisdiction in any proceeding to enforce this  
20 Decree. The Port consents to the issuance of this Decree and has  
21 agreed to perform cleanup and monitoring and pay oversight costs as  
22 specified in this Decree.

## 23 II. DEFINITIONS

24 18. Unless otherwise expressly provided herein, terms  
25 used in this Decree that are defined in MTCA or in regulations  
26

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1 promulgated under MTCA shall have the meaning assigned to them in  
2 MTCA or in such regulations. Whenever terms listed below are used  
3 in this Decree or in the attachments hereto, the following  
4 definitions shall apply:

5 "Decree" shall mean this Decree and all attachments  
6 hereto. In the event of conflict between this Decree and any  
7 attachment, this Decree shall control;

8 "Paragraph" shall mean a portion of this Decree  
9 identified by an Arabic numeral;

10 "Section" shall mean a portion of this Decree identified  
11 by a Roman numeral and including one or more Paragraphs.

12 "Successors in Interest and Assigns" shall mean any  
13 person who acquires an interest in the Site through purchase,  
14 lease, transfer, assignment, or otherwise and who becomes a party  
15 to this Decree as provided in Sections XI and XII.

16 **III. DESCRIPTION OF SITE AND CONTAMINATION PROBLEMS**

17 19. The Site includes both the Salmon Bay Steel North  
18 Property and the 29th Avenue Right of Way. The Salmon Bay Steel  
19 North Property is located at 3425 26th Avenue SW and is  
20 approximately 22 acres in size. The property is bounded on the  
21 south by SW Spokane Street and on the east by 26th Avenue SW. The  
22 north boundary is approximately 800 feet south of abandoned Hanford  
23 Street. The 29th Avenue Right of Way Parcel is approximately  
24 0.75 acres in size, located approximately 100 feet west of the  
25 Salmon Bay Steel North Property. The 29th Avenue Right of Way  
26

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1 includes an approximately 20 foot wide access which extends to  
2 Harbor Avenue. A diagram and legal description of the Site is  
3 included as Attachment A. The Site was originally tideflat, which  
4 in the late 1800s began to be filled with dredged sediments from  
5 the Duwamish Waterway. Subsequent filling with slag, mill scale,  
6 and other steel mill debris continued into the 1970s. Slag fill  
7 predominates the Site, up to 25 feet deep in places.

8           20. The Salmon Bay Steel North property has historically  
9 been used to support operations of the steel mill which operated  
10 south of Spokane Street. Support operations included the storage  
11 of scrap metal, slag disposal and storage, and miscellaneous waste  
12 storage and disposal. Existing slag/Soil/debris fill on the Site  
13 is approximately 20-25 feet thick. Slag and debris piles exist  
14 over the slag fill throughout the Site. The 29th Avenue Right of  
15 Way has been used for storage of materials by the steel mill  
16 operations, and recently for parking of automobiles by an adjacent  
17 towing company.

18           21. Birmingham Steel Corporation Seattle Division is the  
19 current owner of the Salmon Bay Steel North Property. The City of  
20 Seattle is the current owner of the 29th Avenue Right of Way. The  
21 Port of Seattle has agreements with both parties to own the  
22 properties by June, 1995. Birmingham Steel and their lessee  
23 Heckett Engineering Inc. will continue to operate the Salmon Bay  
24 Steel North Property to the point of sale. The 29th Avenue Right  
25 of Way will continue to be used for automobile storage to the point  
26 of sale.

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1           22. The Site has been used for industrial purposes and  
2 is zoned for industrial use by the City of Seattle, which is a city  
3 that has conducted land use planning under chapter 36.70A RCW. The  
4 hazardous substances in Soil remaining at the property after the  
5 remedial action will not pose a threat to human health and the  
6 environment in adjacent nonindustrial areas.

7           23. The Port intends to redevelop the Site and other  
8 adjacent properties for industrial use as a container shipping  
9 facility.

10           24. Site investigations have been conducted at the  
11 subject property since 1987 that provide information on Site  
12 characteristics and the nature and extent of contamination at the  
13 property, and that aid in the formation of design plans for future  
14 development. More than five investigations that studied  
15 groundwater, surface water, surface and subsurface Soil conditions  
16 have been completed at or near the Site. In addition, beginning in  
17 1993, the Port conducted investigations which included surface and  
18 subsurface Soil sampling, groundwater well installation and  
19 sampling at the Site. Aquifer testing and monitoring of  
20 groundwater level changes in response to tidal fluctuations in  
21 Elliott Bay has also been conducted. These studies since 1993, and  
22 how previous information was utilized, are presented in the RI/FS  
23 and CAP.

24           25. The primary hazardous substances at the Site that  
25 exceed MTCA Method B cleanup levels for soils (or when no Method B  
26 cleanup level exists, Method A) are polychlorinated biphenyls

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1 ("PCBs"), total petroleum hydrocarbons ("TPH"), and various metals,  
2 as documented in the RI/FS and CAP. These contaminants are  
3 widespread, but generally at low levels, with discrete, random  
4 locations that have higher concentrations. The slag used to fill  
5 the Site contains metals bound in a lime matrix, and also contains  
6 PCBs from the mill, as well as TPH contamination.

7 26. As documented in the RI/FS and CAP, reuse,  
8 destruction or detoxification of all the hazardous substances at  
9 the Site is not practicable due to the high cost of such reuse,  
10 destruction or detoxification, and the lack of additional  
11 environmental benefit in comparison to the on-Site isolation and  
12 containment remedy proposed for Site hazardous substances by the  
13 CAP. The proposed remedy includes long-term monitoring and  
14 institutional controls, as required by WAC 173-340-360(8)(b).

#### 15 IV. DESCRIPTION OF PLANNED PROJECT

16 27. The Port proposes to acquire the Site through  
17 purchase, or as necessary through its powers of eminent domain,  
18 pursuant to RCW 53.08.010, and through the vacation of the 29th  
19 Avenue SW right of way.

20 28. The Port proposes to clean up and redevelop the Site  
21 to enlarge currently-existing container shipping facilities to meet  
22 projected needs for marine transportation infrastructure. This  
23 expansion project, the Southwest Harbor Project, necessitates  
24 acquisition and cleanup by the Port of approximately 200 acres of  
25 industrial land adjacent to Terminal 5. The expansion area  
26

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1 includes the Salmon Bay Steel North Property and the 29th Avenue  
2 Right of Way.

3 29. Although some of the proposed Southwest Harbor  
4 Project expansion area has active industrial uses, a substantial  
5 portion is composed of abandoned industrial property. Much of this  
6 area has contaminated soils and sediments that need to be cleaned  
7 up under state and federal laws. The project will provide cleanup  
8 and pollution prevention on more than 200 acres, restore and  
9 enhance habitat and natural resources, and increase water-dependent  
10 maritime uses and public use of the shoreline.

11 30. Based on the RI/FS, Ecology has determined that Site  
12 Soils require remedial action to include containment of Site Soils  
13 below surface caps, and excavation and placement under more  
14 protective caps of materials that exceed cleanup action levels.  
15 The Port will conduct Soil remediation in conjunction with its  
16 redevelopment of the property in accordance with this Decree.

17 31. The provisions of this Decree shall not apply if the  
18 Port has not conducted the remediation measures specified in this  
19 Decree and redeveloped the Site for a container shipping facility  
20 within five (5) years from the effective date of this Decree. The  
21 Port or its Successors in Interest and Assigns shall be required to  
22 continue use of the Site in a manner that provides this public  
23 benefit for a minimum of fifteen (15) years from the date of  
24 completion of the Soil remediation measures required by this  
25 Decree.  
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V. WORK TO BE PERFORMED

32. This Decree contains a program designed to protect public health, welfare, and the environment from the known release of hazardous substances or contaminants at, on, or from the Site. The requirements of this program are outlined in detail in the CAP, Attachment B.

33. Scope of Work. The Port, through its contractor(s) and subcontractor(s) as necessary, shall accomplish the following work:

(1) The Port shall obtain any and all state, federal, or local permits required by applicable law before work on Site can begin.

(2) Pursuant to WAC 173-340-810, the Port shall prepare a Site Safety and Health Plan in accordance with the most recent OSHA, WISHA, Department of Ecology, and EPA guidance as well as applicable regulations, to be reviewed by Ecology. Specific elements that must be included in the plan are decontamination areas for vehicles, equipment, and materials coming into contact with hazardous substances; measures to limit general and fugitive dust emissions; and procedures to control erosion for temporary Soil stockpiles.

(3) The Port shall prepare an engineering design report, construction plans and specifications, and an operation and maintenance plan for the cleanup actions that meet the requirements of WAC 173-340-400(4), to be approved by Ecology. The operation and maintenance plan shall include procedures for inspecting and

1 maintaining the constructed covers to be installed over the  
2 hazardous substances remaining on the Site. It shall also include  
3 activities to ensure that Site security is maintained. Upon  
4 approval, the engineering design report, construction plans and  
5 specifications, and operation and maintenance plan shall become  
6 integral and enforceable parts of this Decree, and shall be  
7 complied with by the Port.

8 (4) The Port shall prepare a compliance monitoring  
9 plan that meets the requirements of WAC 173-340-410 and  
10 WAC 173-340-720 through -750, to be approved by Ecology. The  
11 compliance monitoring plan shall contain a sampling and analysis  
12 plan that meets the requirements of WAC 173-340-820, and shall  
13 provide that all analyses of Soil and water performed pursuant to  
14 this Decree be conducted by a laboratory accredited under  
15 chapter 173-50 WAC. The Port shall conduct protection,  
16 performance, and confirmational monitoring in accordance with the  
17 approved plan. Upon approval, the compliance monitoring plan shall  
18 become an integral and enforceable part of this Decree.

19 (5) The Port shall provide security at the Site to  
20 discourage entry by unauthorized persons. Site security shall  
21 include maintenance of current fencing, installation of any  
22 additional fencing needed to establish Site perimeter security,  
23 temporary fencing around stockpiled Soil, and signs. Security  
24 measures shall be maintained during the duration of this Decree,  
25 unless otherwise agreed to by Ecology.

26  
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1                   (6) Soil with TPH, PCB and Lead Contamination. The  
2 Port shall leave all Soil in place other than PCB contaminated Soil  
3 in proposed ballast areas. The Port shall ensure that constructed  
4 covers are installed above all Site Soils. Soils may be regraded  
5 in conformance with redevelopment plans and the Ecology-approved  
6 Engineering Design Report. Grading activities must be conducted in  
7 compliance with Health and Safety Plan Provisions. Following  
8 grading activities, constructed covers will be installed to cap all  
9 exposed Site Soils. Future penetration of the constructed covers  
10 will be allowed if performed in compliance with the Ecology-  
11 approved Operations and Maintenance Plan and Health and Safety  
12 Plan.

13                   (7) Soil with PCB Contamination in Proposed Ballast  
14 Areas. The Port shall excavate all vadose zone Soils with PCB  
15 concentrations above 2.3 mg/kg under 'proposedballast areas. The  
16 Port shall relocate the excavated soils to areas on the Site that  
17 will be capped with asphalt pavement or concrete surface  
18 treatments. Excavated Soils will be compacted in place as fill  
19 material prior to installation of constructed covers. Excavated  
20 areas shall be back-filled with site materials below the action  
21 level.

22                   (8) Constructed Covers. As part of the  
23 redevelopment of the Site into a container terminal, constructed  
24 covers shall be installed that will isolate contaminated materials.  
25 Constructed covers will include asphalt pavement, concrete pavement  
26 and building floor slabs, ballast surface treatments below railroad

1 track areas, and clean soil fill in vegetated areas. Asphalt and  
2 concrete covers will prevent surface water from infiltrating into  
3 the contaminated materials. The Port shall construct these various  
4 types of covers in the general areas indicated in the CAP. The  
5 cover designs shall be submitted to Ecology as part of the  
6 engineering design report, and shall include an evaluation of  
7 thickness and permeability, load-bearing capabilities, inspection  
8 and maintenance, erosion control, and surface water control. The  
9 final constructed cover shall meet the requirements and perform  
10 according to the specifications in the approved engineering design  
11 report.

12 34. Schedule of Work. The schedule for performance of  
13 the work identified above is as follows. No work shall be  
14 performed until Ecology has approved the plans and reports required  
15 in this Decree governing that work.

16 (1) State, Federal, and Local Permits. Apply  
17 within 30 days of the effective date of the Decree.

18 (2) Safety and Health Plan. Submit to Ecology  
19 within 30 days of the effective date of the Decree. Ecology shall  
20 use its best efforts to review and comment on the plan within  
21 21 days.

22 (3) Engineering Design Report, Construction Plans  
23 and Specifications, and Operation and Maintenance Plan. Submit  
24 drafts to Ecology within 60 days of the effective date of the  
25 Decree. Ecology shall use its best efforts to review and comment  
26 on the documents within 21 days. Within 30 days of receipt of

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1 Ecology's comments on the drafts, the Port shall submit to Ecology  
2 the final documents, which shall incorporate Ecology's comments.  
3 The documents shall not be final until approved by Ecology in  
4 writing. The documents may be submitted in separate volumes or  
5 sections, as appropriate, to coincide with the phases of the work  
6 to be performed.

7 (4) Compliance Monitoring Plan. Submit a draft to  
8 Ecology within 60 days of the effective date of the Decree.  
9 Ecology shall use its best efforts to review and comment on the  
10 plan within 30 days. Within 30 days of receipt of Ecology's  
11 comments on the draft, the Port shall submit to Ecology the final  
12 plan, which shall incorporate Ecology's comments. The plan shall  
13 not be final until approved by Ecology in writing. The plan may be  
14 submitted in separate volumes or sections, as appropriate, to  
15 coincide with the phases of the work to be performed.

16 (5) Within two years of the effective date of the  
17 Decree, the following work shall be completed. All PCB  
18 contaminated Soil below proposed ballast areas shall be excavated  
19 and relocated on Site. Excavated areas shall be backfilled. All  
20 Site Soils shall be regraded in preparation for installation of  
21 constructed covers.

22 (6) Within one year following the completion of the  
23 work described in subsection (5), the constructed covers shall be  
24 installed.

25 (7) Compliance monitoring shall occur in accordance  
26 with the schedule in the approved compliance monitoring plan.

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35. During the operation of this Decree, The Port or Successors in Interest and Assigns 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 173-340 WAC unless otherwise provided herein.

36. The Port and its Successors in Interest and Assigns agree to exercise due care or other higher standard if required by applicable laws in implementation of this Decree.

37. The parties anticipate that the long-term monitoring, operation and maintenance activities' required under this Decree will eventually be included in a master Consent Decree for all properties being cleaned up under MTCA or CERCLA that are owned or leased by the Port in the immediate area and are being used as part of the container shipping terminal facility.

38. For each individual parcel or part of the property within the Site, the Port shall record the restrictive covenant shown in Attachment C with the King County Auditor's Office within 30 days of the date on which title to that portion of the Site vests in the Port, and shall provide Ecology with proof of such recording.

## VI. ECOLOGY COSTS

39. The Port or its Successors in Interest and Assigns agree to pay all costs incurred by Ecology pursuant to this Decree except for costs paid pursuant to the Interagency Agreement between

1 Ecology and the Port dated May 28, 1991, and all amendments to that  
2 prepayment agreement. The costs required to be paid under this  
3 Decree shall include work performed by Ecology or its contractors  
4 for, or on, the Site under ch. 70.105D RCW both before and after  
5 the issuance of this Decree for investigations, remedial actions,  
6 and Decree preparation, negotiations, oversight and administration  
7 (except for any such costs incurred prior to entry of this Decree  
8 that are not remedial actions of Ecology under MTCA) . Ecology  
9 costs shall include costs of direct activities and support costs of  
10 direct activities as defined in WAC 173-340-550(2) .

11 40. The Port or its Successors in Interests and Assigns  
12 agree to pay the required amount within ninety (90) days of  
13 receiving from Ecology an itemized statement of costs that includes  
14 a summary of costs incurred, an identification of involved staff,  
15 and the amount spent by involved staff members on the project. A  
16 general statement of work performed will be provided upon request.  
17 Itemized statements shall be prepared quarterly. Failure to pay  
18 Ecology's costs within ninety (90) days of receipt of the itemized  
19 statement will result in interest charges.

20 VII. DESIGNATED PROJECT COORDINATORS

21 41. The project coordinator for Ecology is:

22 Glynis Carrosino  
23 Washington Department of Ecology  
24 NWRO  
25 3190 160th Avenue S.E.  
26 Bellevue, WA 98008-5452

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1 The project coordinator for the Port is:

2 Elizabeth Stetz  
3 Port of Seattle  
4 Post Office Box 1209  
5 Seattle, Washington 98111  
6 (206) 728-3191

7 42. Each project coordinator shall be responsible for  
8 overseeing the implementation of this Decree. The Ecology project  
9 coordinator will be Ecology's designated representative at the  
10 Site. To the maximum extent possible, communications between  
11 Ecology and the Port or its Successors in Interest and Assigns and  
12 all documents, including reports, approvals, and other  
13 correspondence concerning the activities performed pursuant to the  
14 terms and conditions of this Decree, shall be directed through the  
15 project coordinators. The project coordinators may designate, in  
16 writing, working-level staff contacts for all or portions of the  
17 implementation of the Work to be Performed under Section V of this  
18 Decree and the CAP incorporated in this Decree as Attachment B.  
19 The project coordinators may agree to minor modifications to the  
20 work to be performed without formal amendments to this Decree.  
21 Minor modifications will be documented in writing by Ecology.

22 43. Any party may change its respective project  
23 coordinator. Written notification shall be given to the other  
24 party at least ten (10) calendar days prior to the change.  
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VIII. PERFORMANCE

44. 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 waste Site investigation and cleanup. Any construction work must be under the supervision of a professional engineer. The Port or its Successors in Interest and Assigns shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

IX. CERTIFICATION OF THE PORT

45. The Port certifies that to the best of its knowledge and belief it has fully and accurately disclosed to Ecology the information currently in its possession or control that relates to the environmental conditions at and in the vicinity of the Site, or to the Port's right and title thereto.

46. If the information provided by the Port pursuant to this Section is not materially true and complete, the Covenant Not to Sue in Section XV shall not be effective with respect to the Port, and Ecology reserves all rights it may have against the Port.

X. CERTIFICATION OF THE PORT AND SUCCESSORS AND ASSIGNS

47. The Port and its Successors in Interest and Assigns certify that they did not participate in the discharge of hazardous materials at the Site.

1           48. The Port and its Successors in Interest and Assigns  
2 represent and certify that they did not cause or contribute to a  
3 release or threat of release of hazardous substances at the Site  
4 and are not otherwise potentially liable under RCW 70.105D.040(1),  
5 except by becoming an owner (in the case of the Port) or a  
6 Successor in Interest and Assign.

7           49. If the certification provided by the Port and  
8 Successors in Interest and Assigns pursuant to this Section is not  
9 true, the Covenant Not to Sue in Section XV shall not be effective  
10 with respect to the Port or its Successors in Interest and Assigns,  
11 and Ecology reserves all rights it may have against the Port or  
12 Successors in Interest and Assigns.

#### 13                           XI. CONVEYANCE OF PROPERTY

14           50. The restrictions, obligations and rights set forth  
15 in this Decree shall be binding upon any and all persons who  
16 acquire any interest in all or any portion of the Site, provided  
17 that such persons become Successors in Interest and Assigns by  
18 becoming parties to this Decree and following the amendment  
19 procedures set forth in Section XII. Provided, however, that  
20 persons who obtain minor less-than-fee interests in the Site shall  
21 not be required to become parties to this Decree and shall not be  
22 subject to the restrictions and obligations set forth in this  
23 Decree, except that the Port or Successors in Interest and Assigns  
24 who have fee interests shall retain sufficient access rights in  
25 such interests to meet the requirements set forth in Section XIX of  
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1 this Decree. Minor less-than-fee interests in the Site encompass  
2 the following: (a) leasehold interests of less than 10,000 square  
3 feet and/or less than ten (10) years; (b) easement interests; and  
4 (c) such other interests for purposes incidental to container  
5 shipping terminal uses. By excluding certain types of property  
6 interest transfers from the obligation to become a party to this  
7 Decree, the parties make no statement regarding MTCA liability that  
8 may be incurred as a result of acquiring such interest and the  
9 parties recognize that any MTCA liability created by such an  
10 acquisition may only be resolved by entering into this or another  
11 Consent Decree with the State. Within twenty-one (21) calendar  
12 days of the effective date of this Decree, the Port shall record a  
13 memorandum of this Decree with the Recorder's Office, City of  
14 Seattle, Washington.

15           51. The Port and its Successors in Interest and Assigns  
16 may freely alienate their interest, or any portion thereof, in the  
17 Site, provided that for any transfer other than the transfer of a  
18 minor less-than-fee interest the proposed Successor in Interest and  
19 Assigns is eligible to become a party to this Decree and does  
20 become a party to this Decree, and provided that prior to the date  
21 of any transfer of interest in the Site, other than the transfer of  
22 a minor less-than-fee interest, the Port or its Successors in  
23 Interest and Assigns proposing to transfer such interest shall  
24 notify Ecology and the Attorney General's office of the proposed  
25 transfer, the name of the proposed transferee, and the proposed  
26 transferee's intended use of the Site. The notification required

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1 by this paragraph shall occur at least sixty (60) days before the  
2 date of any sale or lease. subject to the stipulated penalty  
3 provisions of Paragraph 52. Such notification shall be in the form  
4 of Attachment D to this Decree.

5 52. The Covenant Not to Sue shall not be effective with  
6 respect to any transferees who fail to execute the attached  
7 Agreement of Successors in Interest and Assigns, or a substantially  
8 equivalent document, and follow the amendment procedure set forth  
9 in Section XII. Failure of the Port or Successors in Interest and  
10 Assigns to timely comply with this Section's notification  
11 requirements shall subject such party to a stipulated penalty of  
12 \$5,000, and does not in any way alter the rights and obligations of  
13 such party as set forth in this Decree, including Ecology's  
14 reservation of rights under Section XII of this Decree.

15 **XII. AMENDMENT OF CONSENT DECREE; ADDING NEW PARTIES TO DECREE**

16 53. This Decree may only be amended by a written  
17 stipulation among the parties to this Decree that is thereafter  
18 entered and approved by order of the Court, except as provided in  
19 Paragraph 52. Such amendment shall become effective upon entry by  
20 the Court, or upon a later date if such date is expressly stated in  
21 the parties' written stipulation or the Court so orders.

22 54. Amendments may cover any subject or be for any  
23 purpose agreed to by the parties to this Decree, including for the  
24 purpose of making proposed Successors in Interest and Assigns new  
25 parties to the Decree. If Ecology determines that the subject of  
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1 an amendment requires public input, Ecology shall provide thirty  
2 (30) days public notice prior to seeking entry of the amendment by  
3 the Court, except that Ecology agrees that an amendment to make  
4 proposed Successors in Interest and Assigns parties to this Decree  
5 does not by itself require public notice or comment.

6 55. As part of the notice to Ecology required by  
7 Section XI of this Decree, when the Port or Successors in Interest  
8 and Assigns contemplate conveyance of an interest in the Site,  
9 other than a minor less-than-fee interest in the Site, the proposed  
10 Successors in Interest and Assigns shall request that the Decree be  
11 amended as provided for in this paragraph. The amendment to the  
12 Decree may be in the form of Attachment E, "Agreement of Successors  
13 in Interest and Assigns". Ecology may only withhold consent to an  
14 amendment making proposed Successors in Interest and Assigns party  
15 to this Decree if it provides written notification to the party or  
16 parties notifying Ecology of the proposed transfer in interest  
17 pursuant to Section XI of this Decree. The written notification  
18 shall state that the Port or its Successors in Interest and Assigns  
19 are in violation of, or will be in violation of, a material term of  
20 the Decree or that the use proposed by the proposed Successors in  
21 Interest and Assigns would not comply with RCW 70.105D.040(5).  
22 Provided, however, that Ecology shall not withhold consent to an  
23 amendment making proposed Successors in Interest and Assigns  
24 parties to the Decree on the basis that their proposed use fails to  
25 provide a public benefit or expedite cleanup so long as the Site as  
26 a whole meets or is anticipated to meet those requirements. Such

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1 written notification must be received within thirty (30) days of  
2 the date Ecology was notified of the proposed transfer. If Ecology  
3 does not provide such notification within thirty (30) days, the  
4 Court is authorized to enter the amendment without further action  
5 by Ecology. Provided, however; that failure of Ecology to comment  
6 within thirty (30) days does not compromise or affect any rights  
7 Ecology may have under this Decree, MTCA, or other applicable law.

### 8 XIII. DISPUTE RESOLUTION

9 56. In the event a dispute arises as to an approval,  
10 disapproval, proposed modificati'on, or other decision or action by  
11 Ecology's project coordinator, the parties shall use the dispute  
12 resolution procedure set forth below.

13 (1) Upon receipt of the Ecology project  
14 coordinator's decision, the Port or its Successors in Interest and  
15 Assigns have fourteen (14) days within which to notify Ecology's  
16 project coordinator of any objection to the decision.

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

21 (3) The Port or its Successors in Interest and  
22 Assigns may then request Ecology management review of the decision.  
23 This request shall be submitted in writing to the Toxics Cleanup  
24 Program Manager within seven (7) days of receipt of Ecology's  
25 project coordinator's written decision.  
26

1 (4) Ecology's Toxics Cleanup Program Manager shall  
2 conduct a review of the dispute and shall issue a written decision  
3 regarding the dispute within thirty (30) days of the Port's or its  
4 Successors' in Interest and Assigns' request for review. The  
5 Toxics Cleanup Program Manager's decision shall be Ecology's final  
6 decision on the disputed matter.

7 57. If Ecology's final written decision is unacceptable  
8 to the Port or its Successors in Interest and Assigns, the Port or  
9 its Successors in Interest and Assigns have the right to submit the  
10 dispute to the Court for resolution. The parties agree that one  
11 judge should retain jurisdiction over this case and shall, as  
12 necessary, resolve any dispute arising under this Decree. In the  
13 event the Port or its Successors in Interest and Assigns present an  
14 issue to the Court for review, the Court shall review the action or  
15 decision of Ecology under an arbitrary and capricious standard of  
16 review.

17 58. The parties may agree to substitute an Alternative  
18 Dispute Resolution (ADR) process, such as mediation, for the formal  
19 dispute resolution process set forth in this section.

20 59. The parties agree to use the dispute resolution  
21 process in good faith and agree to expedite, to the extent  
22 possible, the dispute resolution process whenever it is used. When  
23 either party uses the dispute resolution in bad faith or for  
24 purposes of delay, the other party may seek sanctions.

25 60. The implementation of these dispute resolution  
26 procedures shall not provide a basis for delay of any activities

1 required in this Decree, unless Ecology agrees in writing to a  
2 schedule extension or the Court so orders.

3  
4 **XIV. CONTRIBUTION PROTECTION**

5 61. With regard to claims for contribution against the  
6 Port or its Successors in Interest and Assigns for matters  
7 addressed in this Decree, Ecology agrees that the Port and its  
8 Successors in Interest and Assigns are entitled to protection from  
9 contribution actions or claims as is provided by MTCA, RCW  
10 70.105D.040(4)(d), or as otherwise provided by law.

11 **XV. COVENANT NOT TO SUE UNDER MTCA; REOPENERS**

12 62. In consideration of the Port's or Successors in  
13 Interest's and Assign's compliance with the terms and conditions of  
14 this Decree, Ecology agrees that compliance with this Decree shall  
15 stand in lieu of any and all administrative, legal, and equitable  
16 remedies and enforcement actions available to Ecology against the  
17 Port or Successors in Interest and Assigns for the release or  
18 threatened release of hazardous substances covered by the terms of  
19 this Decree.

20 63. This covenant is strictly limited in its  
21 application to the liability for Soil contamination at the Site  
22 specifically defined in Exhibit A and to those hazardous substances  
23 which Ecology knows to be located in the Soil at the Site as of the  
24 entry of this Decree. This Covenant is not applicable to any other  
25 hazardous substance or area and the state retains all of its  
26 authority relative to such substances and areas.

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1                   A. Reopeners: In the following circumstances the  
2 State of Washington may exercise its full legal authority to  
3 address releases of hazardous substances at the Site  
4 notwithstanding the Covenant Not to Sue set forth above:

5                   1. In the event the Port or Successors In Interest  
6 and Assigns fail to comply with the terms and conditions of this  
7 Consent Decree, including all attachments, and, after written  
8 notice of noncompliance, fails to come into compliance;

9                   2. In the event new information becomes available  
10 regarding factors previously unknown to Ecology, including the  
11 nature or quantity of hazardous substances at the Site, and Ecology  
12 determines, in light of this information, that further remedial  
13 action is necessary at the Site to protect human health or the  
14 environment, and the Port or Successors in Interest and Assigns  
15 after notice, fail to take the necessary action within a reasonable  
16 time;

17                   3. In the event conditions at the Site cause an  
18 endangerment to human health or the environment under Section XXIV  
19 of this Consent Decree, and the Port or Successors in Interest and  
20 Assigns, after notice, fail to eliminate the endangerment within a  
21 reasonable time;

22                   4. In the event the remedial action conducted at  
23 the Site fails to meet the requirements set forth in the Cleanup  
24 Action Plan and Section V of this Decree.

1                   5. To the extent the Port or its Successors in  
2 Interest or Assigns exacerbate the known, documented Soil  
3 contamination described in this Decree.

4                   6. In the event the Port or its Successors and  
5 Assigns interfere with any remediation of the Site conducted or  
6 required by Ecology.

7                   B. Applicability. The Covenant Not to Sue set  
8 forth above shall have no applicability whatsoever to:

- 9                   1. Criminal liability;  
10                   2. Liability for damages to natural resources;  
11                   3. Any Ecology action against potentially liable  
12 parties not a party to this Decree;  
13                   4. Liability for groundwater contamination on or  
14 off the Site.

15                   XVI. THE PORT RESERVATION OF RIGHTS

16                   64. The Port and any Successors in Interest and Assigns  
17 reserve all rights and defenses which they may have and which are  
18 not otherwise addressed in this Decree. Entry into this Decree by  
19 the Port or Successors in Interest and Assigns is not an admission  
20 of liability on their part.

21                   65. Except as provided herein for the Port and  
22 Successors in Interest and Assigns, this Decree does not grant any  
23 rights or affect any liabilities of any person, firm or corporation  
24 or subdivision or division of state, federal, or local government.  
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XVII. DISCLAIMER

66. This Decree does not constitute a representation by Ecology that the Site is fit for any particular purpose.

XVIII. RETENTION OF RECORDS

67. The Port or its Successors in Interest and Assigns shall preserve, 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 XXVIII, all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors and subcontractors a similar record retention requirement. Upon request of Ecology, the Port or its Successors in Interest and Assigns, shall make all non-archived records available to Ecology and allow access for review. All archived records shall be made available to Ecology within a reasonable period of time.

XIX. SITE ACCESS

68. The Port and Successors in Interest and Assigns grant to Ecology, its employees, agents, contractors and authorized representatives, an irrevocable right to enter upon the Site, with reasonable notice and at any reasonable time, for purposes of allowing Ecology to monitor or enforce compliance with this Decree. The Port and Successors in Interest and Assigns recognize and acknowledge that Ecology's entry onto the Site for purposes of monitoring or enforcing compliance with this Decree or implementing remediation at the Site may interfere with the Port's and

1 Successors in Interest and Assigns' full use of the Site. The Port  
2 and Successors in Interest and Assigns agree that they will not  
3 object to any interruption or interference with their use of the  
4 Site caused by Ecology's entry onto the Site for such purposes.  
5 The right of entry granted in this Section is in addition to any  
6 right Ecology may have to enter onto the Site pursuant to specific  
7 statutory or regulatory authority. Consistent with Ecology's  
8 responsibilities under state and federal law, Ecology, and any  
9 persons acting for it, shall use reasonable effort to minimize any  
10 interference and use reasonable effort not to interfere with the  
11 operations of the Port or Successors in Interest and Assigns by any  
12 such entry. In the event Ecology enters the Site for reasons other  
13 than emergency response, Ecology agrees that it shall provide  
14 reasonable advance notice to the Port or its Successors in Interest  
15 and Assigns of any planned entry, as well as schedules and  
16 locations of activity on the Site. Ecology further agrees to  
17 accommodate reasonable requests that it modify its scheduled entry  
18 or activities at the Site.

19 69. Notwithstanding any provision of this Decree,  
20 Ecology retains all of its access authorities and access rights,  
21 including enforcement authorities related thereto, under MTCA and  
22 any other applicable state statute or regulations.

#### 23 XX. OTHER APPLICABLE LAWS

24 70. All actions carried out by the Port or Successors in  
25 Interest and Assigns pursuant to this Decree shall be done in  
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1 accordance with all applicable federal, state, and local  
2 requirements, including requirements to obtain necessary permits.  
3 Pursuant to RCW 70.105D.090(1), the known and applicable  
4 substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20,  
5 90.48, and 90.58 RCW, and any laws requiring or authorizing local  
6 government permits or approvals for remedial action, have been  
7 included in the CAP and are incorporated by reference here as  
8 binding and enforceable requirements in this Decree. In the event  
9 Ecology determines or the Port or Successors in Interest and  
10 Assigns becomes aware that additional permits addressed in RCW  
11 70.105D.090(1) are required for the remedial action in the CAP, the  
12 Port or Successors in Interest and Assigns will be required to  
13 consult with the appropriate state or local jurisdictions and  
14 provide Ecology with written documentation from those jurisdictions  
15 of substantive requirements those agencies believe are applicable  
16 to the remedial actions, prior to conducting the remedial actions.  
17 Ecology shall make the final determination on the additional  
18 substantive requirements that must be met by the Port or Successors  
19 in Interest and Assigns and on how the Port or Successors in  
20 Interest and Assigns must meet those requirements. The additional  
21 requirements shall become enforceable requirements of the work to  
22 be performed under this Decree. Ecology shall ensure that public  
23 notice and opportunity for comment is provided.

24 71. Pursuant to RCW 70.105D.090(2), in the event that  
25 Ecology determines that the exemption from complying with the  
26 procedural requirements of the laws referenced in RCW

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1 70.105D.090(1) would result in the loss of approval from a federal  
2 agency necessary for the state to administer any federal law, such  
3 exemption shall not apply and the Port or Successors in Interest  
4 and Assigns shall be required to comply with both the procedural  
5 and substantive requirements of the laws referenced in RCW  
6 70.105D.090(1).

7 **XXI. SAMPLING, DATA REPORTING, AND AVAILABILITY**

8 72. With respect to the implementation of this Decree,  
9 the Port or Successors in Interest and Assigns shall make the  
10 results of all sampling, laboratory reports, and/or test results  
11 generated by it, or on its behalf available to Ecology and shall  
12 submit these results in accordance with Section XXII of this  
13 Decree.

14 73. In accordance with WAC 173-340-840(5), groundwater  
15 sampling data shall be submitted to Ecology. These submittals  
16 shall be provided to Ecology in accordance with Section XXII of  
17 this Decree.

18 74. If requested by Ecology, the Port or Successors in  
19 Interest and Assigns shall allow split or duplicate samples to be  
20 taken by Ecology and/or its authorized representatives of any  
21 samples collected by the Port or Successors in Interest and Assigns  
22 pursuant to the implementation of this Decree. The Port or  
23 Successors in Interest and Assigns shall notify Ecology at least  
24 five (5) working days in advance of any sample collection or work  
25 activity at the site. Ecology shall, upon request, allow split or  
26

1 duplicate samples to be taken by the Port or Successors in Interest  
2 and Assigns or their authorized representatives of any samples  
3 collected by Ecology pursuant to the implementation of this Decree  
4 provided it does not interfere with the Department's sampling.  
5 Without limitation on Ecology's rights under Section XIX, Ecology  
6 shall endeavor to notify the Port or Successors in Interest and  
7 Assigns at least five (5) working days prior to any sampling  
8 collection activity.

9  
XXII. PROGRESS REPORTS

10 75. The Port or Successors in Interest and Assigns shall  
11 submit to Ecology written monthly progress reports which describe  
12 the actions taken during the previous month to implement the  
13 requirements of this Decree. The progress shall include the  
14 following:

15 A. A list of on-Site activities that have taken place  
16 during the month;

17 B. Detailed description of any deviations from required  
18 tasks not otherwise documented in project plans or amendment  
19 requests;

20 C. Description of all deviations from the schedule  
21 during the current month and any planned deviations in the upcoming  
22 month;

23 D. For any deviations in schedule, a plan for recovering  
24 lost time and maintaining compliance with the sch'edule;  
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1 E. All raw data (including laboratory analyses) received  
2 by the Port or Successors in Interest and Assigns during the past  
3 month and an identification of the source of the sample; and

4 F. A list of deliverables for the upcoming month if  
5 different from the schedule.

6 76. All progress reports shall be submitted by the  
7 fifteenth day of the month in which they are due after the  
8 effective date of this Decree. Unless otherwise specified,  
9 progress reports and any other documents submitted pursuant to this  
10 Decree shall be sent by certified mail, return receipt requested,  
11 to Ecology's project coordinator.

12  
13 **XXIII. EXTENSION OF SCHEDULE**

14 77. An extension of schedule shall be granted only when  
15 a request for an extension is submitted in a timely fashion,  
16 generally at least 30 days prior to expiration of the deadline for  
17 which the extension is requested, and good cause exists for  
18 granting the extension. All extensions shall be requested in  
19 writing. The request shall specify the reason(s) the extension is  
20 needed.

21 78. An extension shall only be granted for such period  
22 of time as Ecology determines is reasonable under the  
23 circumstances. A requested extension shall not be effective until  
24 approved by Ecology or the Court. Ecology shall act upon any  
25 written request for extension in a timely fashion. It shall not be  
26

1 necessary to formally amend this Decree pursuant to Section XII  
2 when a schedule extension is granted.

3 79. The burden shall be on the Port or Successors in  
4 Interest and Assigns to demonstrate to the satisfaction of Ecology  
5 that the request for such extension has been submitted in a timely  
6 fashion and that good cause exists for granting the extension.  
7 Good cause includes, but is not limited to, the following:

8 (1) Circumstances beyond the reasonable control and  
9 despite the due diligence of the Port or Successors in Interest and  
10 Assigns including delays caused by unrelated third parties or  
11 Ecology, such as (but not limited to) delays by Ecology in  
12 reviewing, approving, or modifying documents submitted by the Port  
13 or Successors in Interest and Assigns; or

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

16 (3) Endangerment as described in Section XXIV.

17 However, neither increased costs of performance of the  
18 terms of the Decree nor changed economic circumstances shall be  
19 considered circumstances beyond the reasonable control of the Port  
20 or Successors in Interest and Assigns.

21 80. Ecology may extend the schedule for a period not to  
22 exceed ninety (90) days, except where an extension is needed as a  
23 result of:

24 (1) Delays in the issuance of a necessary permit which  
25 was applied for in a timely manner; or  
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1 (2) Other circumstances deemed exceptional or  
2 extraordinary by Ecology; or

3 (3) Endangerment as described in Section XXIV.  
4

5 Ecology shall give the Port or Successors in Interest and  
6 Assigns written notification in a timely fashion of any extensions  
7 granted pursuant to this Decree.  
8

9 MIV. ENDANGERMENT

10 81. In the event Ecology determines that activities  
11 implementing or in noncompliance with this Decree, or any other  
12 circumstances or activities, are creating or have the potential to  
13 create a danger to the health or welfare of the people on the Site  
14 or in the surrounding area or to the environment, Ecology may order  
15 the Port or Successors in Interest and Assigns to stop further  
16 implementation of this Decree for such period of time as needed to  
17 abate the danger or may petition the Court for an order as  
18 appropriate. During any stoppage of work under this Section, the  
19 obligations of the Port or Successors in Interest and Assigns with  
20 respect to the work under this Decree which is ordered to be  
21 stopped shall be suspended and the time periods for performance of  
22 that work, as well as the time period for any other work dependent  
23 upon the work which is stopped, shall be extended, pursuant to  
24 Section XXVIII of this Decree, for such period of time as Ecology  
25 determines is reasonable under the circumstances.  
26

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1           82. In the event the Port or Successors in Interest and  
2 Assigns determine that activities undertaken in furtherance of this  
3 Decree or any other circumstances or activities are creating an  
4 endangerment to the people on the Site or in the surrounding area  
5 or to the environment, the Port or Successors in Interest and  
6 Assigns may stop implementation of this Decree for such period of  
7 time necessary for Ecology to evaluate the situation and determine  
8 whether the Port or Successors in Interest and Assigns should  
9 proceed with implementation of the Decree or whether the work  
10 stoppage should be continued until the danger is abated. The Port  
11 or Successors in Interest and Assigns shall notify Ecology's  
12 project coordinator as soon as possible, but no later than twenty-  
13 four (24) hours after such stoppage of work, and thereafter provide  
14 Ecology with documentation of the basis for the work stoppage. If  
15 Ecology disagrees with the Port's or Successors in Interest and  
16 Assigns' determination, it may order the Port or Successors in  
17 Interest and Assigns to resume implementation of this Decree. If  
18 Ecology concurs with the work stoppage, the Port's or Successors in  
19 Interest and Assigns' obligations shall be suspended and the time  
20 period for performance of that work, as well as the time period for  
21 any other work dependent upon the work which was stopped, shall be  
22 extended, pursuant to Section XXIII of this Decree, for such period  
23 of time as Ecology determines is reasonable under the  
24 circumstances. Any disagreements related to this Section shall be  
25 resolved through the dispute resolution procedures in Section XIII.  
26

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3 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

4 83. If Ecology determines that the Port or Successors in  
5 Interest and Assigns has failed without good cause to implement the  
6 remedial action, Ecology may, after notice to the Port or  
7 Successors in Interest and Assigns, perform any or all portions of  
8 the remedial action that remain incomplete. If Ecology performs  
9 all or portions of the remedial action because of the Port's or  
10 Successors in Interest and Assigns' failure to comply with its  
11 obligations under this Decree, the Port or Successors in Interest  
12 and Assigns shall reimburse Ecology for the costs of doing such  
13 work in accordance with Section VI, provided that the Port or  
14 Successors in Interest and Assigns is not obligated under this  
15 Section to reimburse Ecology for costs incurred for work  
16 inconsistent with or beyond the scope of this Decree.

17 **XXVI. FIVE YEAR REVIEW**

18 84. As remedial action, including groundwater  
19 monitoring, continues at the Site, the parties agree to review the  
20 progress of remedial action at the Site, and to review the data  
21 accumulated as a result of Site monitoring as often as is necessary  
22 and appropriate under the circumstances. At least every five years  
23 the parties shall meet to discuss the status of the Site and the  
24 need, if any, of further remedial action at the Site. Ecology  
25 reserves the right to require further remedial action at the site  
26

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1 under appropriate circumstances. This provision shall remain in  
2 effect for the duration of the Decree. Notwithstanding any  
3 provision in this Decree, Ecology reserves all its rights to  
4 require investigation and cleanup of groundwater at the Site.  
5

#### 6 XXVII. PUBLIC PARTICIPATION

7 85. Ecology shall maintain the responsibility for public  
8 participation at the Site. However, the Port or Successors in  
9 Interest and Assigns shall cooperate with Ecology and, if agreed to  
10 by Ecology, shall:  
11

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

18 B. Notify Ecology's project coordinator prior to the  
19 preparation of all press releases and fact sheets, and before major  
20 meetings with the interested public and local governments.  
21 Likewise, Ecology shall notify the Port or Successors in Interest  
22 and Assigns prior to the issuance of all press releases and fact  
23 sheets, and before major meetings with the interested public and  
24 local governments;  
25  
26



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

5 D. In cooperation with Ecology, arrange and/or continue  
6 information repositories to be located at the Port's office at Pier  
7 69, Seattle, Washington 98111 and Ecology's Northwest Regional  
8 Office at 3190 - 160th Avenue S.E., Bellevue, Washington 98008-  
9 5452. At a minimum, copies of all public notices, fact sheets, and  
10 press releases; all quality assured ground water, surface water,  
11 Soil, sediment, and air monitoring data; remedial actions plans,  
12 supplemental remedial planning documents, and all other similar  
13 documents relating to performance of the remedial action required  
14 by this Decree shall be promptly placed in these repositories.  
15

16 XXVIII. DURATION OF DECREE AND RETENTION OF JURISDICTION

17 86. This Decree shall remain in effect and this Court  
18 shall retain jurisdiction over both the subject matter of this  
19 Decree and the parties for the duration of the performance of the  
20 terms and provisions of this Decree for the purpose of enabling any  
21 of the parties to apply to the Court, consistent with the dispute  
22 resolution process set forth in Section XIII, and the amendment  
23 process set forth in Section XII, at any time for such further  
24 order, direction, and relief as may be necessary or appropriate to  
25 ensure that obligations of the parties have been satisfied. The  
26

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1 Decree shall remain in effect until the Port has received written  
2 notification from Ecology that the requirements of this Decree have  
3 been satisfactorily completed.

4           **XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

5           87. This Decree has been the subject of public notice  
6 and comment under RCW 70.105D.040(4)(a). As a result of this  
7 process, Ecology has found that this Decree will lead to a more  
8 expeditious cleanup of hazardous substances at the Site, in  
9 compliance with applicable cleanup standards, and is in the public  
10 interest.

11           88. If the Court withdraws its consent, this Decree  
12 shall be null and void at the option of any party and the  
13 accompanying complaint shall be dismissed without costs and without  
14 prejudice. In such an event, no party shall be bound by the  
15 requirements of this Decree.

16           **XXX. INDEMNIFICATION**

17           89. The Port or Successors in Interest and Assigns agree  
18 to indemnify and save and hold the State of Washington, its  
19 employees, and agents harmless from any and all claims or causes of  
20 action for death or injuries to persons or for loss or damage to  
21 property arising from or on account of acts or omissions of the  
22 Port or Successors in Interest and Assigns, their officers,  
23 employees, agents, or contractors in entering into and implementing  
24 this Decree. However, the Port or Successors in Interest and  
25 Assigns shall not indemnify the State of Washington nor save nor  
26 hold its employees and agents harmless from any claims or causes of

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1 action arising out of the negligent acts or omissions of the State  
2 of Washington, or employees or agents of the State, in implementing  
3 the activities pursuant to this Decree.

4 **XXXI. CLAIMS AGAINST THE STATE**

5 90. The Port or Successors in Interest and Assigns  
6 hereby agree that they will not seek to recover any costs accrued  
7 in implementing the remedial action required by this Decree from  
8 the State of Washington or any of its agencies, except that the  
9 Port may make a claim against the Local Toxics Control Account for  
10 certain costs incurred by the Port in implementing this Decree.  
11 Except as provided above, however, the Port or Successors in  
12 Interest and Assigns expressly reserves its right to seek to  
13 recover any costs incurred in implementing this Decree from any  
14 other potentially liable person.

15 **XXXII. EFFECTIVE DATE**

16 91. The effective date of this Decree is the date on  
17 which title to any of the individual parcels within the Site vests  
18 in the Port. At such time the Decree shall be effective as to the  
19 Site as a whole.  
20

21  
22 So ordered this \_\_\_\_ day of \_\_\_\_\_, 1995.

23  
24 \_\_\_\_\_  
25 Judge  
26 King County Superior Court

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1 The undersigned parties enter into this Prospective Purchaser  
2 Consent Decree on the date specified below.

3 THE PORT

4 By: 1712 Silas

5 Date: 2/17/95

6  
7 DEPARTMENT OF ECOLOGY

8 By: Mary E. Burg

9 Date: 22 February 1995

10  
11 ATTORNEY GENERAL'S OFFICE

12  
13 By: Kathleen L. Laska

14 Date: 2/22/95

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