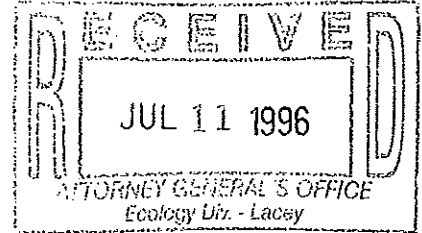




PRESTON GATES & ELLIS
ATTORNEYS



July 3, 1996

Ms. Kathy Gerla
Assistant Attorney General
Office of the Attorney General
Department of Ecology
4407 Woodview Drive S.E., 4th Floor
MS: QA-44
Lacey, WA 99504-8077

Re: State of Washington DOE v. Port of Seattle

Dear Kathy:

Enclosed is a conformed copy of the Stipulation and Order for Entry of First Amendment to Consent Decree including the revised Restrictive Covenant entered by the court on June 24, 1996. The Restrictive Covenant was recorded under Recorder's No. 9606250469. Thank you for your cooperation in allowing the prompt filing of the pleading.

Sincerely,

PRESTON GATES & ELLIS

Dictated But Not Read to Expedite Delivery

By
Bart J. Freedman

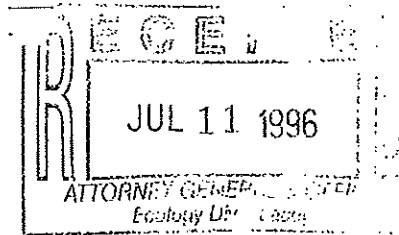
BJF:jr
Enclosure

cc: Tom Tanaka
Tom Newlon

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A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ANCHORAGE • COEUR D'ALENE • LOS ANGELES • PORTLAND • SPOKANE • TACOMA • WASHINGTON, D.C.
5000 COLUMBIA CENTER 701 FIFTH AVENUE SEATTLE, WASHINGTON 98104-7078 PHONE: (206) 623-7580 FACSIMILE: (206) 623-7022



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

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

PORT OF SEATTLE, a Washington Municipal
Corporation,

Defendant.

No. 95-2-05413-3

STIPULATION AND ORDER FOR
ENTRY OF FIRST AMENDMENT TO
CONSENT DECREE

STIPULATION

The parties to this action, the State of Washington Department of Ecology ("Ecology") and the Port of Seattle ("Port") stipulate as follows:

1. Ecology and the Port entered into a Consent Decree dated March 6, 1995 ("Consent Decree") for the purpose of facilitating the remediation of certain property subsequently acquired by the Port.
2. The parties hereby jointly request entry of this First Amendment to Consent Decree to correct an error contained in the legal description attached to the Consent Decree.
3. Specifically, the error involves the legal description of the Site, which is part of Attachment A to the Consent Decree, and part of a restrictive covenant in the Consent Decree (the "Restrictive Covenant"). The Restrictive Covenant places certain limitations on the usage of the property and appears as Attachment C to the original Consent Decree which is the subject of this

STIPULATION AND ORDER FOR
ENTRY OF FIRST AMENDMENT
TO CONSENT DECREE - 1

1 amendment to the Consent Decree. The legal description contained in the Restrictive Covenant
2 inadvertently included certain property which was not acquired by the Port and is not subject to the
3 provisions of the Consent Decree.

4 4. The purpose of the First Amendment to the Consent Decree is to amend the legal
5 description contained in Attachment A to the Consent Decree and the Restrictive Covenant contained
6 in Attachment C to the Decree.

7 DATED: June 24, 1996

8 PORT OF SEATTLE

9 By by Brent Freedman ^{WSBA 14187}
10 Thomas A. Newlon, WSBA # 16397
11 Attorney for Port of Seattle

DATED: June 24, 1996

ATTORNEY GENERAL OF THE STATE
OF WASHINGTON

By by Brent Freedman ^{WSBA 14187}
Kathryn L. Gerla, WSBA # 17498 ^{authority}
Assistant Attorney General
Attorneys for the Department of Ecology

12
13 ORDER

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

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Consent Decree is
17 amended as set follows:

18 FIRST AMENDMENT TO CONSENT DECREE

19 A. Pursuant to Section XII of the Consent Decree in this case entered on March 6, 1995,
20 the Decree is hereby amended as set forth below. Except as specifically set forth in this Order, all
21 other terms and conditions of the Consent Decree remain in effect unchanged.

22 B. The legal description of the Site contained in Section III, Paragraph 19 of the Consent
23 Decree, is amended through substitution of Exhibit A to this First Amendment to the Consent Decree
24 for the legal description attached as Attachment A to the Consent Decree.

25
26
STIPULATION AND ORDER FOR
ENTRY OF FIRST AMENDMENT
TO CONSENT DECREE - 2

C. Attachment C of the Decree, the Restrictive Covenant, is replaced with Exhibit B to this Amendment. The Port of Seattle shall record this amended Restrictive Covenant in place of the Restrictive Covenant formerly recorded, and shall provide Ecology with proof of such recording.

DATED this _____ day of _____, 1996.

JEANETTE BURRAGE

JUDGE/COMMISSIONER
King County Superior Court

Presented by:

PORT OF SEATTLE

By *by Bent Friedman #14187*
Thomas A. Newlon, WSBA # 16397
Attorney for Port of Seattle

Approved as to form and content, notice
of presentation waived:

ATTORNEY GENERAL OF THE
STATE OF WASHINGTON

By *by Bent Friedman #14187*
Kathryn L. Gerla, WSBA # 17498 *per Telephone*
Assistant Attorney General *authority*
Attorney for Department of Ecology

DEPARTMENT OF ECOLOGY

By *by Bent Friedman #14187*
Timothy Nord *per Telephone*
Acting Program Manager *authority*

PORT OF SEATTLE

By *Bent Friedman #14187*
Thomas A. Newlon, WSBA # 16397
Attorney for Port of Seattle

STIPULATION AND ORDER FOR
ENTRY OF FIRST AMENDMENT
TO CONSENT DECREE - 3

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Legal Department
PORT OF SEATTLE
Post Office Box 1209
Seattle, WA 98111
(206) 728-3212/3122

EXHIBIT A

THOSE PORTIONS OF BLOCKS 434 AND 437, SEATTLE TIDELANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, AND OF 28TH AVENUE SOUTHWEST AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 86694, AND OF SOUTHWEST HANFORD STREET AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 94599, IN SECTION 13, TOWNSHIP 24 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF LOT 25 IN SAID BLOCK 434 OF SEATTLE TIDELANDS WHICH IS 5 FEET SOUTHERLY FROM THE NORTHEAST CORNER OF SAID LOT (SAID POINT ALSO BEING ON THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTHWEST SPOKANE STREET); THENCE WESTERLY ALONG SAID NORTHERLY MARGIN IN SAID BLOCK 434, NORTH 89°59'57" WEST 127.90 FEET;
THENCE NORTH 84°17'19" WEST 109.65 FEET;
THENCE NORTH 89°59'43" WEST 265.82 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTER POINT WHICH LIES NORTH 08°18'55" EAST A DISTANCE OF 650.81 FEET;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°42'43" AN ARC LENGTH OF 394.29 FEET TO A POINT OF COMPOUND CURVATURE OF A 763.78 FOOT RADIUS CURVE;

THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 3°48'48" AN ARC LENGTH OF 50.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTER POINT WHICH BEARS SOUTH 83°14'30" WEST A DISTANCE OF 57.72 FEET;

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THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°51'25" AN ARC LENGTH OF 438.00 FEET TO THE SOUTH LINE OF LOT 12, BLOCK 437, SEATTLE TIDELANDS;

THENCE NORTH 89°59'16" EAST 197.29 FEET TO THE SOUTHEAST CORNER OF SAID LOT;
THENCE NORTH 00°01'41" EAST ALONG THE NORTH-SOUTH CENTERLINE OF SAID BLOCK 437;
DISTANCE OF 239.97 FEET TO THE NORTHWEST CORNER OF LOT 40 IN SAID BLOCK 437;

THENCE NORTH 89°59'26" EAST 315.33 FEET ALONG THE NORTH LINE OF SAID LOT 40 AND ITS EASTERLY PRODUCTION TO AN INTERSECTION WITH THE CENTERLINE OF SAID VACATED 28TH AVENUE SOUTHWEST;

THENCE NORTH 00°01'49" EAST 519.97 FEET ALONG SAID CENTERLINE, TO AN INTERSECTION WITH THE CENTERLINE OF VACATED SOUTHWEST HANFORD STREET;

THENCE NORTH 89°59'40" EAST 90.73 FEET ALONG SAID CENTERLINE TO THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO BETHLEHEM STEEL CORPORATION BY DEED RECORDED UNDER RECORDING NUMBER 7208280279;

THENCE SOUTH 31°26'59" EAST 412.54 FEET ALONG THE EASTERLY LINE OF SAID TRACT TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF A TRACT OF LAND CONVEYED TO NORTHERN PACIFIC RAILWAY COMPANY BY DEED RECORDED UNDER RECORDING NUMBER 6514579; THENCE SOUTH 42°10'03" EAST 406.65 FEET ALONG SAID SOUTHWESTERLY LINE TO AN INTERSECTION WITH THE EAST LINE OF SAID BLOCK 434;

THENCE SOUTH 00°00'07" WEST 771.51 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

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FILED BY:
CHICAGO TITLE

STATUTORY WARRANTY DEED
117929-0008/58952000.03214

PAGE 3
7/21/95

After Recording, Please Return To:

Christopher M. Carletti
Preston Gates & Ellis
701 Fifth Avenue, Suite 5000
Seattle, WA 98104

AMENDED AND RESTATED RESTRICTIVE COVENANT

This Amended and Restated Restrictive Covenant has been signed and agreed to by the Port of Seattle in furtherance of that certain First Amendment to Consent Decree entered by the King County Superior Court on _____, 1996, and serves to amend and restate that certain Restrictive Covenant dated June 19, 1995 and recorded in King County, Washington under King County Recording No. 9510190644 (the "Original Covenant"), in order to correct the legal description of the property subject to the Original Covenant. The only property subject to the restrictions set forth herein shall be that certain real property legally described in the attached Exhibit A and hereinafter referred to as the Site.

The property that is the subject of this Amended and Restated Restrictive Covenant has been the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property (hereafter the "Cleanup Action") is described in the Consent Decree entered in State of Washington Department of Ecology v. Port of Seattle, King County Superior Court Cause No. 952-05415-3, and in attachments to the Decree and in documents referenced in the Decree. This Amended and Restated Restrictive Covenant is required by Ecology under Ecology's rule WAC 173-340-440 (1991 ed.) because the Cleanup Action on the Site resulted in residual concentrations of total petroleum hydrocarbons, polychlorinated biphenyls, arsenic, lead, cadmium, and other hazardous substances which exceed Ecology's Method A and B cleanup levels for soil established under WAC 173-340-740(3). Method C and A industrial soil cleanup standards were used in the Cleanup Action. A closed municipal solid waste landfill and overlying soil and slag, including materials that exceed Method A and C cleanup standards, are contained on site under various covers. The property also contains a system of monitoring wells and a landfill gas collection and treatment system.

The undersigned, Port of Seattle, is the fee owner of real property in the County of King, State of Washington (legal description attached hereto as Exhibit A), hereafter referred to as the "Site." The Site refers to the former Seattle Steel, Inc., property located in Seattle and bounded on the north by S. W. Florida Street; on the east by Burlington Northern railroad tracks; and on the west by Harbor Avenue S.W. The south boundary extends approximately 800 feet south of abandoned Hanford Street. The Port of Seattle makes the following declaration as to limitations, restrictions, and uses to which the Site may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Site.

Section 1. No groundwater may be taken for domestic purposes from any well in the area encompassed by the Port's Southwest Harbor Project, which includes the area bounded to the north by Elliott Bay, to the West by Harbor Avenue, to the south by Spokane Street, and to the East by the West Waterway.

Section 2. Any activity on the Site that may interfere with the Cleanup Action is prohibited. Any activity on the Site that may result in the release to the environment of a hazardous substance that was contained as a part of the Cleanup Action is prohibited unless approved by Ecology or in compliance with the approved Operations and Maintenance Plan. Some examples of activities that are prohibited in the capped areas unless approved by Ecology or in compliance with the approved Operations and Maintenance Plan include; drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 3. The Site shall not be used for any activities other than traditional industrial uses, as described in RCW 70.105D.020(13), and defined in and allowed under the City of Seattle's zoning regulations.

Section 4. The owner of the Site must give written notice to the Department of Ecology, or to a successor agency, of the owner's intent to convey any interest in the Site. No conveyance of title, easement, lease or other interest in the Site shall be consummated by the owner without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action.

Section 5. The owner must notify and obtain approval from the Department of Ecology, or from a successor agency, prior to any use of the Site that is inconsistent with the terms of this Amended and Restated Restrictive Covenant. The Department of Ecology or its successor agency may approve such a use only after public notice and comment.

Section 6. The owner shall allow authorized representatives of the Department of Ecology or of a successor agency, the right to enter the Site at reasonable times for the purpose of evaluating compliance with the Cleanup Action Plan and the Consent Decree, to take samples, to inspect Cleanup Actions conducted at the Site and to inspect records that are related to the Cleanup Action.

Section 7. The owner of the Site and the owner's assigns and successors in interest reserve the right under WAC 173-340-440 (1991 ed.) to record an instrument which provides that this Amended and Restated Restrictive Covenant shall no longer limit use of the Site or be of any further force or effect. However, such an instrument may be recorded only with the consent of the Department of Ecology, or of a successor agency. The Department of Ecology or a successor agency may consent to the recording of such an instrument only after public notice and comment.

PORT OF SEATTLE

By: [Signature]
Name: Andrea Riniker
Title: Deputy Executive Director
Dated: 6/20/96

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

This is to certify that on the 20th day of June, 1996, before me, the undersigned Notary Public, personally appeared Andrea Riniker, to me known to be the Deputy Executive Director of the **Port of Seattle** described in and who executed the foregoing document, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Thomas H. Tanaka
NOTARY PUBLIC in and for the State
of Washington, residing at Bellevue
My Commission Expires: 11/1/96
Print Name: Thomas H. Tanaka

EXHIBIT A

THOSE PORTIONS OF BLOCKS 434 AND 437, SEATTLE TIDELANDS, IN KING COUNTY, WASHINGTON, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE OF THE COMMISSIONER OF PUBLIC LANDS AT OLYMPIA, WASHINGTON, AND OF 28TH AVENUE SOUTHWEST AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 86694, AND OF SOUTHWEST HANFORD STREET AS VACATED BY CITY OF SEATTLE ORDINANCE NUMBER 94599, IN SECTION 13, TOWNSHIP 24 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CHICAGO TITLE

STATUTORY WARRANTY DEED
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PAGE 3
7/21/95

RECEIVED
KING COUNTY, WASHINGTON

MAR 06 1995

DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

STATE OF WASHINGTON, DEPARTMENT OF
ECOLOGY,

Plaintiff,

v.

PORT OF SEATTLE, A Washington
Municipal Corporation,

Defendants.

95 2-05415 3

No.

ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to
this matter, the Joint Motion for Entry of the Consent Decree,
the Affidavit of Kathryn L. Gerla, and the file herein, it is
hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter
is Entered and that the Court shall retain jurisdiction over the
Consent Decree to enforce its terms.

DATED this _____ day of MAR 06 1995, 1995.

Lawrence Shaw

JUDGE/COMMISSIONER

///

///

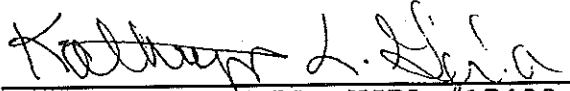
ORDER ENTERING
CONSENT DECREE
TS/portsea.ord

ORIGINAL


ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (206) 438-7743

1 Presented by:

2 CHRISTINE O. GREGOIRE
3 Attorney General

4 
5 KATHRYN L. GERLA, WSBA #17498
6 Assistant Attorney General
7 (360) 459-6321

8 APPROVED FOR ENTRY AND NOTICE
9 OF PRESENTATION WAIVED:

10 Per 3/1/95 Telephonic Approval:
11 
12 THOMAS A. NEWLON, WSBA #16397
13 Attorney for Port of Seattle
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3 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
4 FOR KING COUNTY

5 STATE OF WASHINGTON
6 DEPARTMENT OF ECOLOGY,

7 Plaintiff,

8 v.

9 PORT OF SEATTLE, A Washington
10 Municipal Corporation,

11 Defendant.

No. 95-2-0541-S-5

CERTIFICATE OF MAILING
(Salmon Bay Steel North
and 29th Avenue Right of
Way Site)


12 Pursuant to RCW 9A.72.085, I certify that on the ^{2nd}~~1st~~ day of
13 March, 1995, I caused to be served the SUMMONS; COMPLAINT; JOINT
14 MOTION FOR ENTRY OF CONSENT DECREE; AFFIDAVIT OF KATHRYN L.
15 GERLA; CONSENT DECREE; and the ORDER ENTERING CONSENT DECREE, in
16 the above-captioned matter upon the parties herein, by mailing
17 with proper first-class postage affixed thereto, a true and
18 correct copy of said documents to the following:

19 Thomas A. Newlon, Esq.
20 Port of Seattle Legal Dept.
21 P.O. Box 1209
22 Seattle, WA 98111

23 the foregoing being the last known business address.

24 I certify under penalty of perjury under the laws of the
25 State of Washington that the foregoing is true and correct.

26 3.2.95, Lacey, WA
Date and Place


HEIDI PLUMMER

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4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
6 FOR KING COUNTY

7 STATE OF WASHINGTON
8 DEPARTMENT OF ECOLOGY,

9 Plaintiff,

10 v.

11 PORT OF SEATTLE, A Washington
12 Municipal Corporation,

13 Defendant.

No. 95-2-05415-3

SUMMONS

Salmon Bay.

14 TO THE DEFENDANTS: A lawsuit has been started against you
15 in the above-entitled court by the State of Washington,
16 Department of Ecology, plaintiff. Plaintiff's claim is stated
17 in the written Complaint, a copy of which is served upon you
18 with this Summons.

19 In order to defend against this lawsuit, you must respond
20 to the Complaint by stating your defense in writing, and serve a
21 copy upon the undersigned attorney for the plaintiff within 20
22 days after the service of this Summons, excluding the day of
23 service, or a default judgment may be entered against you
24 without notice. A default judgment is one where plaintiff is
25 entitled to what he asks for because you have not responded. If
26 you serve a Notice of Appearance on the undersigned attorney,

1 | you are entitled to notice before a default judgment may be
2 | entered.

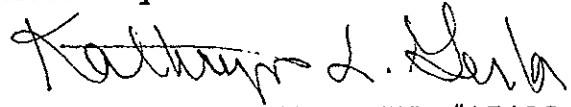
3 | You may demand that the plaintiff file this lawsuit with
4 | the court. If you do so, the demand must be in writing and must
5 | be served upon the plaintiff. Within 14 days after you serve
6 | the demand, the plaintiff must file this lawsuit with the court,
7 | or the service on you of this Summons and Complaint will be
8 | void.

9 | If you wish to seek the advice of an attorney in this
10 | matter, you should do so promptly so that your written response,
11 | if any, may be served on time.

12 | This Summons is issued pursuant to Rule 4 of the Superior
13 | Court Civil Rules of the State of Washington.

14 | DATED this 1st day of March, 1995.

15 | CHRISTINE O. GREGOIRE
16 | Attorney General

17 | 
18 | KATHRYN L. GERLA, WSBA #17498
19 | Assistant Attorney General

20 | Attorneys for Plaintiff
21 | State of Washington
22 | Department of Ecology
23 | (360) 459-6321
24 |
25 |
26 |

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

7 STATE OF WASHINGTON
8 DEPARTMENT OF ECOLOGY,

9 Plaintiff,

10 v.

11 PORT OF SEATTLE, A Washington
12 Municipal Corporation,

13 Defendant.

No. 95-2-05415-3

COMPLAINT

Salmon Bay

14 Plaintiff, State of Washington, Department of Ecology
15 (Ecology), alleges as follows:

16 I. JURISDICTION

17 This Court has jurisdiction pursuant to Ch. 70.105D RCW,
18 the Model Toxics Control Act ("MTCA").

19 II. PARTIES

20 1. Ecology is an agency of the State of Washington
21 charged with the implementation of the MTCA.

22 2. Defendant Port of Seattle (Port) is a Washington
23 municipal corporation. The Port has agreed to enter into the
24 Prospective Purchaser Consent Decree, being filed with this
25 complaint, to remedy releases of hazardous substances on
26

1 property the Port intends to purchase, known as the Salmon Bay
2 Steel North and 29th Avenue Right of Way Site.

3 III. FACTUAL ALLEGATIONS

4 3. The Site is located in Seattle, Washington. The Site
5 includes both the Salmon Bay Steel North Property and the 29th
6 Avenue Right of Way. The Salmon Bay Steel North Property is
7 located at 3425 26th Avenue SW and is approximately 22 acres in
8 size. The property is bounded on the south by SW Spokane Street
9 and on the east by 26th Avenue SW. The north boundary is
10 approximately 800 feet south of abandoned Hanford Street. The
11 29th Avenue Right of Way Parcel is approximately 0.75 acres in
12 size, located approximately 100 feet west of the Salmon Bay
13 Steel North Property. The 29th Avenue Right of Way includes an
14 approximately 20 foot wide access which extends to Harbor
15 Avenue.

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

1 5. Site investigations have been conducted at the subject
2 property since 1987 that provide information on Site
3 characteristics and the nature and extent of contamination at
4 the property, and that aid in the formation of design plans for
5 future development. More than five investigations that studied
6 groundwater, surface water, surface and subsurface Soil
7 conditions have been completed at or near the Site. In
8 addition, beginning in 1993, the Port conducted investigations
9 which included surface and subsurface Soil sampling, groundwater
10 well installation and sampling at the Site. Aquifer testing and
11 monitoring of groundwater level changes in response to tidal
12 fluctuations in Elliott Bay has also been conducted.

13 6. The soil at the Site is contaminated with hazardous
14 substances that exceed MTCA cleanup levels. The primary
15 hazardous substances at the Site that exceed MTCA Method B
16 cleanup levels for soils (or when no Method B cleanup level
17 exists, Method A) are polychlorinated biphenyls ("PCBs"), total
18 petroleum hydrocarbons ("TPH") and various metals, as documented
19 in the Remedial Investigations/Feasibility Study conducted for
20 the Site and in the CAP, attached to the Consent Decree being
21 filed herewith. These contaminants are widespread, but
22 generally at low levels, with discrete, random locations that
23 have higher concentrations. The slag used to fill the Site
24 contains metals bound in a lime matrix, and also contains PCBs
25 from the mill, as well as TPH contamination.

26

1 7. Birmingham Steel Corporation Seattle Division is the
2 current owner of the Salmon Bay Steel North Property. The City
3 of Seattle is the current owner of the 29th Avenue Right of Way.
4 The Port of Seattle has agreements with both parties to own the
5 properties by June, 1995. The Port proposes to acquire the Site
6 through purchase, or as necessary through its powers of eminent
7 domain, pursuant to RCW 53.08.010, and through the vacation of
8 the 29th Avenue SW right of way.

9 8. The Port proposes to clean up and redevelop the Site
10 to enlarge currently-existing container shipping facilities to
11 meet projected needs for marine transportation infrastructure.
12 This expansion project, the Southwest Harbor Project,
13 necessitates acquisition and cleanup by the Port of
14 approximately 200 acres of industrial land adjacent to Terminal
15 5. The expansion area includes the Salmon Bay Steel North
16 Property and the 29th Avenue Right of Way.

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

25 10. Based on the facts set forth herein, Ecology has
26 concluded that there has been a release of hazardous substances

1 from the Site, which requires remedial action to protect the
2 public health, welfare and the environment.

3 11. Ecology and the Defendants have agreed to a Consent
4 Decree for the purpose of implementing the cleanup action plan
5 at the Site. Implementation of the cleanup action is necessary
6 to address releases of hazardous substances at the Site.

7 12. Ecology and the Attorney General have determined that
8 the work to be performed described in the Consent Decree is
9 consistent with MTCA, is reasonable, and is in the public
10 interest. The Consent Decree has been the subject of public
11 notice and comment. The public comments and Ecology's responses
12 are attached to the Affidavit of Kathryn Gerla, filed with this
13 Complaint.

14 IV. FIRST CLAIM FOR RELIEF

15 13. The allegations of paragraphs 1 through 12 are
16 realleged and incorporated herein by reference.

17 14. The Salmon Bay Steel north and 29th Avenue Right of
18 Way Site is a "Facility" as defined in RCW 70.105D.020(4).

19 15. The contaminated soil found on the Site contains
20 "hazardous substances," as defined in RCW 70.105D.020(6).

21 16. RCW 70.105D.020(11) defines a "release" as:

22 [A]ny intentional or unintentional entry of any hazardous
23 substance into the environment, including but not limited
24 to the abandonment or disposal of containers of hazardous
substances.

25 There has been a release of hazardous substances at the Site.

26 17. Ecology has determined that remedial action is
necessary to identify, eliminate or mitigate any threat or

1 potential threat to human health or the environment with respect
2 to the Site and is in the public interest.

3 18. Defendant is not now a liable person under MTCA for
4 the releases at the Site, but will become liable as an "owner or
5 operator", pursuant to RCW 70.105D.040(1)(a), once the Port
6 purchases the Site.

7 19. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050,
8 Ecology may require potentially liable persons to investigate or
9 conduct other remedial actions with respect to the release or
10 threatened release of hazardous substances, whenever it believes
11 such action to be in the public interest.

12 20. RCW 70.105D.040(5) authorizes the Attorney General to
13 settle liability under MTCA with prospective purchasers of
14 facilities.

15 21. The Attorney General, Ecology and Defendants, pursuant
16 to RCW 70.105D.040, have entered into a Consent Decree.

17 22. The Consent Decree is being filed with the Court
18 simultaneously with the filing of this Complaint. The Consent
19 Decree provides for appropriate remedial action that will lead
20 to a more expeditious cleanup at the Site.

21 23. Defendants have agreed to perform the work embodied in
22 the proposed Decree and agree to the entry of the Consent Decree
23 by the Court.

24 ///

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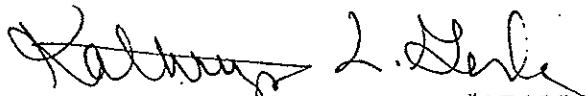
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V. PRAYER FOR RELIEF

WHEREAS the Attorney General, Ecology and the Port of Seattle request that the Court enter the Consent Decree and retain jurisdiction to enforce its terms.

DATED this 1st day of March, 1995.

CHRISTINE O. GREGOIRE
Attorney General


KATHRYN L. GERLA, WSBA #17498
Assistant Attorney General

Attorneys for Plaintiff,
State of Washington
Department of Ecology
(360) 459-6321

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

7 STATE OF WASHINGTON
8 DEPARTMENT OF ECOLOGY,

9 Plaintiff,

10 v.

11 PORT OF SEATTLE, A Washington
12 Municipal Corporation,

13 Defendant.

No. 95-2-05415-3

JOINT MOTION FOR ENTRY
OF CONSENT DECREE
Salmon Bay

14 The parties to this action hereby jointly move for entry of
15 the Consent Decree in the above-entitled matter. The Consent
16 Decree has been signed by the parties to this action, and has
17 been the subject of public notice and a public hearing.
18

19 *Per Telephonic Approval:*

20 *Kathryn L. Gerla for*
21 THOMAS A. NEWLON, WSB# 16397
Attorney for Port of Seattle

Kathryn L. Gerla
KATHRYN L. GERLA, WSB# 17498
Assistant Attorney General
Department of Ecology

22 DATE: 3-1-95

DATE: 3-1-95

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

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

PORT OF SEATTLE, A Washington
Municipal Corporation,

Defendant.

NO. 95-2-05415.3

AFFIDAVIT OF
KATHRYN L. GERLA

Solomon B. G.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I. KATHRYN L. GERLA, being first duly sworn upon oath,
depose and say:

1. I am over twenty-one years of age and am competent to
testify herein. The facts set forth in this Affidavit are from
my own personal knowledge.

2. I am an Assistant Attorney General assigned to the
Ecology Division of the Attorney General's Office. I have
represented the Department of Ecology in negotiations that led
to the Consent Decree being presented to the Court. These
negotiations lasted for several months.

