

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF TACOMA;
METROPOLITAN PARK DISTRICT
OF TACOMA, and FOSS
WATERWAY DEVELOPMENT
AUTHORITY

Defendants.

NO. 94-2-10917-6

2/24/05
AMENDMENT TO CONSENT
DECREE TO INCLUDE SITE-
SPECIFIC CLEANUP ACTION PLAN
FOR THE PARCEL 3 AND 15TH
STREET RIGHT-OF-WAY SITE

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

1. Parcel 3 is owned by the Metropolitan Park District. It is denominated as Parcels 3A, 3B, and 3C in the Decree, and is depicted as such in the Map of Potential Cleanup Sites attached as Exhibit A to the Decree. The legal description of Parcel 3 is included in Exhibit B to the Decree. **[The legal description in the decree and the legal description provided by Bob in the April 24, 1997 Notice of Intent to Proceed aren't exactly the same. Bob was going to double-check to make sure the description in the Decree was correct.]**

1 2. The 15th Street Right-of-Way is owned by the City of Tacoma. The legal
2 description of the 15th Street Right-of-Way is included in Exhibit B to the Decree.

3 3 The Decree is amended to include the Site-Specific Cleanup Action Plan (SCAP)
4 for the Parcel 3 and 15th Street Right-of-Way Site, attached as Appendix A to this Amendment.
5 This SCAP has been the subject of public notice and comment under RCW 70.105D.040(4)(a).
6 As a result of this process, Ecology has found that implementation of the SCAP will lead to a
7 more expeditious cleanup of hazardous substances at the site.

8 4. Pursuant to Section II.A of the Decree, the remedial action on the portion of the
9 Parcel 3 and 15th Street Right-of-Way Site located between the mean high high water mark and
10 the mean low low water mark is an interim action and does not constitute final cleanup of that
11 property. Section XXXI of the Decree—the covenant not to sue—does not apply to this portion
12 of the cleanup action

13 5. In accordance with Section X of the Decree, the City and the Park District shall
14 each record a Restrictive Covenant for the portion of the Site that they own, attached hereto as
15 Appendices C and D respectively, within 30 days of entry of this Amendment.

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

1 7. All actions carried out by the Defendant(s) pursuant to the Decree and this
2 Amendment shall be done in accordance with all applicable federal, state, and local
3 requirements, including requirements to obtain necessary permits, except as provided in
4 paragraph 8 of this Amendment.

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

1 IT IS SO AGREED BY THE UNDERSIGNED:

2 **DEPARTMENT OF ECOLOGY**

**ATTORNEY GENERAL
OF WASHINGTON**

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

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

7 Date: _____

Date: _____

8 **CITY OF TACOMA**

OFFICE OF THE CITY ATTORNEY

9
10
11 By: _____
12 RAY E. CORPUS, JR.
Program Manager

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

13 Date: _____

Date: _____

14 **METROPOLITAN PARK DISTRICT**

BROWN, DAVIS & ROBERTS, PLLC

15
16
17 By: _____
18 JACK C. WILSON

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

19 Date: _____

Date: _____

20 **FOSS WATERWAY DEVELOPMENT AUTHORITY**

21
22
23 By: _____
24 DON MEYER
Executive Director

25 Date: _____

26 \ . \thiele\thea foss\Parcel 3 CD Amdmt doc