

SUPERIOR COURT CLERK
THURSTON COUNTY CLERK

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LEWIS COUNTY, CITY OF
CENTRALIA, CITY OF CHEHALIS,
CITY OF MORTON, CITY OF
MOSSYROCK, TOWN OF PE ELL,
CITY OF VADER,

Defendants.

No. 91 2 1654 0

MOTION FOR ENTRY
OF CONSENT DECREE

State of Washington, Department of Ecology, hereby moves
for entry of the Consent Decree in the above-entitled matter.
The Consent Decree has been signed by all parties to this
action. Moreover, the Consent Decree has been the subject of

MOTION FOR ENTRY
OF CONSENT DECREE

1 public notice and public comment. No written public comments
2 were received by Ecology. Ecology's response to oral comments
3 received are discussed in the attached Affidavit of Lucy E.
4 Phillips.

5 DATED this 3rd day of July, 1991.

6 KENNETH O. EIKENBERRY
7 Attorney General

8 *Lucy E. Phillips*
9 LUCY E. PHILLIPS
10 Assistant Attorney General
11 WSBA #19251

12 Office of the Attorney General
13 Ecology Division, QA-44
14 4407 Woodview Drive S.E.
15 Olympia, WA 98504-8077
16 (206) 459-6800

17 T4:lewis:jmt

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26 MOTION FOR ENTRY
OF CONSENT DECREE

-2-

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

AG # 9113953
Centralia LF

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AUG 10 1991

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ATTORNEY GENERAL'S OFFICE
ECOLOGY DIV.
OLYMPIA

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LEWIS COUNTY, CITY OF
CENTRALIA, CITY OF CHEHALIS,
CITY OF MORTON, CITY OF
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OF VADER,

Defendants.

NO.

C91-5100T

CONSENT DECREE

FILED ENTERED
LODGED RECEIVED

AUG 13 1991

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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Exhibit A - Site Plan

Exhibit B - Scope of Work and Schedule

INTRODUCTION

A. This Consent Decree is a final Consent Decree superseding the proposed Consent Decree filed in this action on March 5, 1991. In entering into this Consent Decree (Decree), the mutual objective of plaintiff Washington State Department of Ecology (Ecology), and defendants Lewis County, the City of Centralia, the City of Chehalis, the City of Morton, the City of Mossyrock, the Town of Pe Ell, and the City of Vader (hereinafter "the Centralia Landfill Closure Group" or "the CLCG") is to provide for interim action at the Centralia Landfill (hereinafter "the Site"), as set forth in Section V.

B. An amended Complaint in this action was filed on March 22, 1991. Pursuant to that complaint, Ecology has made claims against the CLCG under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, the Model Toxics Control Act

1 ("MTCA"), Chapter 70.105D RCW, and the Water Pollution Control
2 Act, Chapter 90.48 RCW. An answer has not been filed, and there
3 has not been a trial on any issue of fact or law in this case.
4 However, the parties wish to resolve the claims set forth in
5 Ecology's complaint without litigation and this Consent Decree
6 resolves those claims. In addition, the parties agree that
7 settlement of these matters without litigation is reasonable and
8 in the public interest and that entry of this Decree is the most
9 appropriate means of resolving these matters.

10 C. In signing this Decree, the CLCG agrees to its
11 entry and agrees to be bound by its terms.

12 D. By entering into this Decree, the parties do not
13 intend to discharge nonsettling parties from any liability they
14 may have with respect to matters alleged in the complaint.

15 E. This Decree shall not be construed as proof of
16 liability or responsibility on the part of the CLCG for any
17 releases or threatened releases of hazardous substances or costs
18 for interim action at or around the Centralia Landfill, nor as
19 an admission of any facts by the CLCG; provided, however, that
20 the CLCG shall not challenge the jurisdiction of Ecology or this
21 Court in any proceeding by Ecology to enforce this Decree.

22 F. The Court is fully advised of the reasons for
23 entry of this Decree, and good cause having been shown, IT IS
24 HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:
25
26

I. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the parties under Section 107 of CERCLA, 42 U.S.C. § 9607. This Court also has jurisdiction under the Water Pollution Control Act, Chapter 90.48 RCW, and MTCA, Chapter 70.105D RCW, based on the doctrine of pendent jurisdiction. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims herein arose in this district.

B. Authority to enter into this Decree is contained in RCW 70.105D.040(4)(a), which confers upon the Washington Attorney General the authority to agree to settlement with any potentially liable person if, after public notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

C. The CLCG, by letter dated October 26, 1990, voluntarily waived the rights of its members to notice and comment under RCW 70.105D.020(8) and accepted, solely for purposes of entry of this Decree and for no other purpose, Ecology's determination that they are potentially liable persons at the Site within the meaning of RCW 70.105D.020(8). Acceptance by the members of the CLCG of status as potentially liable persons with respect to this Site is not to be construed as an

1 admission of liability or waiver of any defense that each or any
2 of the members of the CLCG may have to any claims other than
3 those resolved by this Consent Decree.

4 D. The threat of a release of hazardous substances to
5 groundwater or surface waters at the Site and the need to
6 restrict access to the Site has created a need for interim action
7 as defined in WAC 173-340-200.

8 E. The actions to be taken pursuant to this Decree
9 are necessary to protect human health, welfare, and the
10 environment, and will lead to more expeditious cleanup of
11 hazardous substances in compliance with the cleanup standards of
12 RCW 70.105D.030(2)(d) and the regulations adopted pursuant
13 thereto.

14 II. PARTIES BOUND

15 This Decree shall apply to and be binding upon the State
16 of Washington, the members of the CLCG as defined in Section
17 III.H, and their successors and assigns.

18 The undersigned representatives of the CLCG, Ecology,
19 and the Office of the Attorney General of Washington hereby
20 certify that they are fully authorized to enter into this Decree
21 and to execute and legally bind the municipalities and other
22 entities and residents they represent to comply with the Decree.
23 The CLCG agrees to undertake all actions required by the terms
24 and conditions of this Decree and not to contest the jurisdiction
25 of the State to enforce the terms of this Decree. No change in
26

ownership of the Site or municipal status of the CLCG members shall alter their responsibilities under this Decree. The CLCG shall provide a copy of this Decree to all contractors and subcontractors retained to perform work required by this Decree and shall insure that all work undertaken by such contractors and subcontractors will be in compliance with this Decree.

III. DEFINITIONS

A. Site: The Centralia Landfill and the area immediately surrounding the Landfill. The Site is located at 1411 South Tower, Centralia, Washington 98531. The Landfill is in the SW and NW quarters of Section 17, Township 14N, Range 2W of the Willamette Meridian, at latitude 46° 42' 00" N and longitude 122° 57' 36" W. The Site is more particularly described in Exhibit A to this Decree which is a detailed site plan.

B. Remedial Action: This term shall have the same meaning as set forth at RCW 70.105D.020(11).

C. Interim Action: This term shall have the same meaning as set forth at WAC 173-340-200.

D. Model Toxics Control Act: Refers to Chapter 70.105D RCW, which took effect on March 1, 1989.

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

F. Parties: Refers to the Washington State Department of Ecology and the members of the CLCG.

1 G. Potentially Liable Persons: Refers to
2 "potentially liable person" as defined at RCW 70.105D.020(8), and
3 "potentially responsible party" within the meaning of CERCLA, 42
4 U.S.C. § 9601 et seq.

5 H. CLCG: Refers to Lewis County, City of Centralia,
6 City of Chehalis, City of Morton, City of Mossyrock, Town of Pe
7 Ell, and City of Vader and all natural persons who reside within
8 any of those jurisdictions and who contributed household
9 hazardous waste to the Centralia Landfill and whose liability
10 rests solely upon the fact that they contributed household
11 hazardous waste to the Centralia Landfill.

12 I. Consent Decree or Decree: Refers to this Consent
13 Decree and each of the exhibits to the Decree. All exhibits are
14 integral and enforceable parts of this Consent Decree.

15 J. Surface Water Monitoring and Contingency Plan:
16 The Surface Water Monitoring and Contingency Plan developed
17 pursuant to the work plan contained in Exhibit B.

18
19 IV. STATEMENT OF FACTS

20 Ecology makes the following finding of facts without any
21 express or implied admissions by the CLCG.
22
23
24
25
26

1 1. The City of Centralia ("Centralia") owns the Site,
2 an approximately 55 acre municipal solid waste landfill located
3 at 1411 South Tower, Centralia, Washington 98531.

4 2. The Site has been operated as a landfill since
5 1958. From approximately 1970 to 1978, the Site was operated by
6 Harold LeMay Enterprises, a private contractor. At all other
7 times, it has been operated by Centralia.

8 3. Since 1958, the Site has received solid waste
9 generated in Lewis County and south Thurston County. In
10 addition, various industries have disposed of hazardous
11 substances at the Site.

12 4. The members of the CLCG by contract agreement or
13 otherwise arranged for disposal of municipal solid waste owned or
14 possessed by members of the CLCG at the Centralia Landfill.

15 5. On August 28, 1990 the Site was listed on the
16 State Hazardous Sites List pursuant to WAC 173-340-330, and on
17 August 30, 1990, the Site was listed on the federal National
18 Priorities List, pursuant to Section 105 of CERCLA, 42 U.S.C.
19 9605 (55 Fed. Reg. 35502 (August 30, 1990)).

20 6. The threat of a release of hazardous substances
21 exists at the Site.

22
23 V. WORK TO BE PERFORMED

24 Based on the foregoing facts and determinations, the
25 CLCG agrees to perform the interim measures set forth in the work
26 plan and schedule attached to this Decree as Exhibit B. This

1 interim action at the Site is designed to reduce leachate
2 generation, improve the separation of leachate and stormwater,
3 and to restrict access to the Site. The work plan and schedule
4 set forth in Exhibit B are designed to protect human health and
5 welfare and the environment from the known or threatened release
6 of hazardous substances or contaminants at, on, or from the Site.
7 This interim action constitutes a removal action pursuant to 42
8 U.S.C. § 9601(23).

9
10 VI. TERMS AND CONDITIONS OF DECREE

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

13 1. the members of the CLCG are local governments
14 required, pursuant to this Consent Decree, to undertake interim
15 action at the Site;

16 2. the members of the CLCG are prepared to
17 proceed promptly to accomplish the scope of work set forth in
18 Exhibit B; and

19 3. implementation of this Consent Decree will
20 lead to more expeditious cleanup of hazardous substances in
21 compliance with the cleanup standards of RCW 70.105D.030(2)(d).

22 B. Consistency with National Contingency Plan.

23 Ecology and the CLCG agree that the interim action as set forth
24 in Exhibit B is consistent with the National Contingency Plan
25 ("NCP," 40 C.F.R. Part 300) in effect on the date of this Decree
26 and that amounts paid by the CLCG to perform the interim action

1 are necessary costs of response. In the event amendments to the
2 NCP are promulgated after the date of this Decree which
3 materially affect the rights of any party, the parties agree to
4 negotiate in good faith a written amendment to this Decree to
5 provide for such changes.

6
7 VII. DESIGNATED PROJECT COORDINATORS

8 The project coordinator for Ecology is:

9 Tina Masterson
10 7272 Cleanwater Lane
11 Mail Stop LU-11
12 Olympia, Washington 98504-6811
13 (Phone: (206) 753-2705)

14 The project coordinator for the CLCG is:

15 Terry Calkins
16 Centralia Landfill Closure Group
17 P.O. Box 609
18 Centralia, Washington 98531
19 (Phone: (206) 736-8284)

20 Each project coordinator shall be responsible for
21 overseeing the implementation of this Decree. The Ecology
22 project coordinator will be Ecology's designated representative
23 at the Site. To the maximum extent possible, communications
24 between Ecology and the CLCG and all documents, including
25 reports, approvals, and other correspondence concerning the
26 activities performed pursuant to the terms and conditions of this
Decree, shall be directed through the project coordinators. The
project coordinators may designate, in writing, working level
staff contacts for all or portions of the implementation of the
work required by this Decree.

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

4
5 VIII. PERFORMANCE

6 All work performed pursuant to this Decree shall be
7 under the direction and supervision, as necessary, of a
8 professional engineer or hydrogeologist, or equivalent, with
9 experience and expertise in hazardous waste site investigation
10 and cleanup. The CLCG shall notify Ecology in writing as to the
11 identity of such engineer(s) or hydrogeologist(s), or equivalent
12 and of any contractors and subcontractors to be used in carrying
13 out the terms of this Decree, in advance of their involvement at
14 the Site.

15
16 IX. ACCESS

17 Upon reasonable notice to the project coordinator for
18 the CLCG, Ecology or any Ecology authorized representatives shall
19 have the authority to enter and freely move about all property at
20 the Site at all reasonable times for the purposes of, inter alia:
21 inspecting records, operation logs, and contracts related to the
22 work being performed pursuant to this Decree; reviewing the
23 progress in carrying out the terms of this Decree; conducting
24 such tests or collecting samples as Ecology may deem necessary;
25 using a camera, sound recording, or other documentary type
26 equipment to record work done pursuant to this Decree; and

1 verifying the data submitted to Ecology by the CLCG. Upon
2 request, Ecology shall split any samples taken during an
3 inspection unless the CLCG fails to make available a
4 representative for the purpose of splitting samples. Ecology
5 agrees to provide reasonable notice of its intent to obtain
6 samples at the Site to CLCG to have representatives present
7 during Ecology's sampling. All parties with access to the Site
8 pursuant to this paragraph shall comply with approved health and
9 safety plans. Ecology shall make the results of all sampling,
10 laboratory reports, and/or test results generated by it, or on
11 its behalf, and which have been verified pursuant to the Surface
12 Water Monitoring and Contingency Plan for the Site, available to
13 the CLCG.

14
15 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

16 Both Ecology and the CLCG shall conduct all sampling and
17 analysis in a manner consistent with the Surface Water Monitoring
18 and Contingency Plan established for the Site. With respect to
19 the implementation of this Decree, the CLCG shall make the
20 results of all sampling, laboratory reports, and/or test results
21 generated by it, or on its behalf, and which have been verified
22 pursuant to the Surface Water Monitoring and Contingency Plan,
23 available to Ecology and shall submit these results in monthly
24 progress reports submitted in accordance with Section XI of this
25 Decree.

1 If requested by Ecology, the CLCG shall allow split or
2 duplicate samples to be taken by Ecology and/or its authorized
3 representatives of any samples collected by the CLCG pursuant to
4 the implementation of this Decree. The CLCG shall use best
5 efforts to notify Ecology five (5) working days in advance of any
6 sample collection or work activity at the Site. Ecology shall,
7 upon request, allow split or duplicate samples to be taken by the
8 CLCG or its authorized representatives of any samples collected
9 by Ecology pursuant to the implementation of this Decree.
10 Without limitation on Ecology's rights under Section IX, Ecology
11 shall endeavor to notify the CLCG prior to any sample collection
12 activity.

13 14 XI. PROGRESS REPORTS

15 The CLCG shall submit to Ecology written monthly
16 progress reports which describe the actions taken during the
17 previous month to implement the requirements of this Decree. The
18 progress report shall include the following:

19 A. A list of on-site activities that have taken place
20 during the previous month;

21 B. Detailed description of any deviations from
22 required tasks not otherwise documented in project plans or
23 amendment requests;

24 C. Description of all deviations from the schedule
25 (Exhibit B) during the previous month and any planned deviations
26 in the upcoming month;

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

4 E. All data which has been verified under the Surface
5 Water Monitoring and Contingency Plan (including laboratory
6 analysis) received by the CLCG during the past month and an
7 identification of the source of the sample; and

8 F. A list of deliverables for the upcoming month if
9 different from the schedule.

10 All progress reports shall be submitted within 10 days
11 after the end of each month. The first progress report shall be
12 due within 10 days after the end of the first full month
13 following the effective date of this Decree. Progress reports
14 shall be sent by certified mail, return receipt requested, to
15 Ecology's project coordinator.

16
17 XII. RETENTION OF RECORDS

18 The CLCG shall preserve, during the pendency of this
19 Decree and for ten (10) years from the date of Ecology's written
20 notification pursuant to Section XXV of this Decree all records,
21 reports, documents, and underlying data in its possession
22 relevant to the implementation of this Decree and shall insert in
23 contracts with project contractors a similar record retention
24 requirement. Upon reasonable notice by Ecology, the CLCG shall
25 make all nonarchived records available to Ecology and allow
26

1 access for review. All archived records shall be made available
2 to Ecology within a reasonable period of time.

3
4 XIII. TRANSFER OF INTEREST IN PROPERTY

5 No voluntary conveyance or relinquishment of title,
6 easement, leasehold, or other interest in any portion of the Site
7 shall be consummated without provision for continued operation
8 and maintenance of any containment system, treatment system, and
9 monitoring system installed or implemented pursuant to this
10 Decree, so long as the continued operation and maintenance of
11 such system is determined by Ecology to be necessary to carry out
12 the terms of the Decree.

13 Prior to transfer of any legal or equitable interest in
14 all or any portion of the property, and during the effective
15 period of this Decree, the CLCG shall serve a copy of this Decree
16 upon any prospective purchaser, lessee, transferee, assignee, or
17 other successor in interest of the property; and, at least thirty
18 (30) days prior to any transfer, the CLCG shall notify Ecology of
19 said contemplated transfer.

20
21 XIV. RESOLUTION OF DISPUTES

22 A. Ecology and the CLCG shall resolve any dispute
23 which arises as to a decision or action by Ecology's project
24 coordinator during the implementation of this Decree pursuant to
25 the dispute resolution procedures set forth below.
26

1 1. The party seeking dispute resolution shall
2 send written notice specifying the nature of the dispute to the
3 project coordinator for the responding party, by certified mail.
4 The Ecology project coordinator shall deliver a copy of the
5 written notice of dispute to the Ecology section supervisor.

6 2. The parties, project coordinators and the
7 Ecology section supervisor shall then confer in a good faith
8 effort to resolve the dispute. The parties shall have ten (10)
9 working days to resolve the dispute from the date notice of
10 dispute is received. At the end of those ten (10) working days,
11 Ecology's project coordinator shall issue a written decision
12 signed by the section supervisor.

13 3. If the dispute remains unresolved, within
14 seven (7) working days of receipt of the section supervisor's
15 written decision, the party seeking dispute resolution may then
16 submit a written request for review of the dispute to the Toxics
17 Cleanup Program Manager.

18 4. The Toxics Cleanup Program Manager shall
19 conduct a review of the dispute and shall issue a written
20 decision regarding the dispute within five (5) working days of
21 receipt of the request for review. If the Toxics Cleanup Program
22 Manager is unavailable to review the dispute within five (5)
23 working days, an extension of five (5) working days shall be
24 allowed.

25 5. If the decision of the Toxics Cleanup Program
26 Manager is unacceptable to the party requesting dispute

1 resolution, then that party has the right to submit the dispute
2 to the Court for resolution.

3 B. The Court shall review any action or decision of
4 Ecology within the scope of RCW 70.105D.060 on the basis of
5 whether such action or decision was arbitrary and capricious.
6 All other actions or decisions of Ecology shall be reviewed on a
7 standard to be determined by the Court.

8 B. The parties agree to only utilize the dispute
9 resolution process in good faith and agree to expedite, to the
10 extent possible, the dispute resolution process whenever it is
11 used. Where either party utilizes the dispute resolution process
12 in bad faith or for purposes of delay, the other party may seek
13 sanctions.

14 C. Each party shall bear its own attorney's fees,
15 expert witness fees and other legal costs resulting from
16 utilization of the judicial review provisions of this dispute
17 resolution procedure.

18 Implementation of these dispute resolution procedures
19 shall not provide a basis for delay of any activities required in
20 this Decree, unless Ecology agrees in writing to a schedule
21 extension or the Court so orders.

22
23 XV. AMENDMENT OF CONSENT DECREE

24 A. With the exception set forth in B below, this
25 Decree may only be amended by a written stipulation among the
26 parties to this Decree that is entered by the Court. Such

1 amendment shall become effective upon entry by the Court.
2 Agreement to amend shall not be unreasonably withheld by any
3 party to the Decree. If any party does not agree to any proposed
4 amendment, the disagreement may be addressed through the dispute
5 resolution procedures described in Section XIV of this Decree.

6 B. Written stipulation by the parties is not needed
7 for schedule extensions granted pursuant to Section XVI of this
8 Decree. Any such extension shall become effective on the date on
9 which Ecology issues its written approval.

10
11 XVI. EXTENSION OF SCHEDULE

12 A. An extension of schedule shall be granted by
13 Ecology only when a request for an extension is submitted in a
14 timely fashion and good cause exists for granting the extension.
15 All extensions shall be requested in writing. The request shall
16 specify the reason(s) the extension is needed.

17 An extension shall only be granted for such period of
18 time as Ecology determines is reasonable under the circumstances.
19 A requested extension shall not be effective until approved by
20 Ecology in writing. Ecology shall act upon any written request
21 for extension in a timely fashion and shall not unreasonably
22 withhold its approval of such extension. It shall not be
23 necessary to formally amend this Decree pursuant to Section XV
24 when a schedule extension is granted.

25 B. The burden shall be on the CLCG to demonstrate to
26 the satisfaction of Ecology that the request for such extension

1 has been submitted in a timely fashion and that good cause exists
2 for granting the extension. Good cause includes, but is not
3 limited to, the following.

4 1. Circumstances beyond the reasonable control
5 and despite the due diligence of the CLCG, including delays
6 caused by unrelated third parties, third parties under contract
7 with the CLCG, or Ecology, such as (but not limited to) delays by
8 Ecology in reviewing, approving, or modifying documents submitted
9 by the CLCG; or

10 2. Delays resulting from changes in permit terms
11 or conditions, or a delay in issuing or refusal to grant a permit
12 needed to implement the requirements of this Decree, provided the
13 CLCG filed a timely application for the permit; or

14 3. Judicial review of the issuance, nonissuance,
15 or reissuance of a permit necessary for the continuation of work;
16 or

17 4. Acts of God, including fire, flood, blizzard,
18 extreme temperatures, storm, wave or water conditions, or other
19 unavoidable casualty; or

20 5. Other circumstances deemed exceptional or
21 extraordinary by Ecology; or

22 6. Endangerment as described in Section XVII.

23 However, neither increased costs of performance of
24 the terms of the Decree nor changed economic circumstances shall
25 be considered circumstances beyond the reasonable control of the
26 CLCG.

1 Ecology shall give the CLCG written notice in a
2 timely fashion of any extensions granted pursuant to the Decree.

3
4 XVII. ENDANGERMENT

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

20 In the event the CLCG determines that activities
21 undertaken in furtherance of this Decree or any other
22 circumstances or activities are creating an endangerment to the
23 people on the Site or in the surrounding area or to the
24 environment, the CLCG may stop implementation of this Decree for
25 such period of time necessary for Ecology to evaluate the
26 situation and determine whether the CLCG should proceed with

1 implementation of the Decree or whether the work stoppage should
2 be continued until the danger is abated. The CLCG shall notify
3 Ecology's project coordinator as soon as is possible, but no
4 later than one business day after such stoppage of work, and
5 thereafter provide Ecology with documentation of the basis for
6 the work stoppage. If Ecology disagrees with the defendant's
7 determination, it may order the CLCG to resume implementation of
8 this Decree. If Ecology concurs in the work stoppage, the CLCG's
9 obligations shall be suspended and the time period for
10 performance of that work, as well as the time period for any
11 other work dependent upon the work which was stopped, shall be
12 extended, pursuant to Section XVI of this Decree, for such period
13 of time as Ecology determines is reasonable under the
14 circumstances. Any disagreements pursuant to this Section XVII
15 shall be resolved through the dispute resolution procedures in
16 Section XIV.

17
18 XVIII. OTHER ACTIONS

19 A. Ecology reserves its rights to institute remedial
20 action(s) at the Site and subsequently pursue cost recovery, and
21 Ecology reserves its rights to issue orders and/or seek penalties
22 or take any other enforcement action pursuant to available
23 statutory authority under the following circumstances:

24 1. Where the CLCG fails to substantially comply
25 with any material requirement of this Decree;
26

1 2. In the event or upon the discovery of a
2 release or threatened release of hazardous substances not
3 addressed by this Decree;

4 3. Upon Ecology's determination that action
5 beyond the terms of this Decree is necessary to abate an
6 emergency situation which threatens human health or welfare or
7 the environment; or

8 4. Upon the occurrence or discovery of a
9 situation beyond the scope of this Decree as to which Ecology
10 would be empowered to perform any remedial action or to issue an
11 order and/or seek a penalty, or to take any other enforcement
12 action. This Decree is limited in scope to the geographic Site
13 described in Exhibit A and to those contaminants which Ecology
14 knows to be at the Site when this Decree is entered.

15 B. With the exceptions set forth in paragraph A, in
16 consideration of the CLCG's performance of the terms and
17 conditions of this Decree, Ecology agrees that, during the period
18 of performance of the terms and conditions of this Decree,
19 compliance with this Decree shall stand in lieu of any and all
20 administrative, legal, and equitable remedies available to
21 Ecology to respond to any release or threatened release of
22 hazardous substances addressed by this Consent Decree.

23 C. Ecology reserves the right to take any enforcement
24 action whatsoever, including a cost recovery action, against
25 potentially liable persons that are not parties to this Consent
26 Decree.

XIX. INDEMNIFICATION

The CLCG agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of the CLCG, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, the CLCG shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent or intentional acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Decree.

Ecology agrees to indemnify and save and hold the CLCG, its agents and employees harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Ecology, its employees, agents, or contractors in entering into and implementing this Decree. However, Ecology shall not indemnify the CLCG nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent or intentional acts or omissions of the CLCG, or the employees and agents of the CLCG in implementing the activities pursuant to this Decree.

XX. COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by the CLCG pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements.

XXI. REMEDIAL AND INVESTIGATIVE COSTS

The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors for investigations, the interim action, Decree preparation, and negotiations, including costs incurred by Ecology in the oversight or administration of this Decree. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, contractor fees, and employee benefit packages; and Ecology indirect costs of direct activities. Within ninety (90) days of the end of each fiscal quarter, Ecology will submit to the Defendants a summary statement of Ecology's expenses for the previous quarter. The Defendant agrees to pay the required amount within ninety (90) days of receiving a summary statement of Ecology expenses, payable to the State Toxics Control Account. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement may result in interest charges.

XXII. LIABILITY INSURANCE

Within thirty (30) days of the entry of this Decree and for the duration of the interim action required by this Decree,

1 Defendant City of Centralia shall provide Ecology with current
2 certificates of insurance certifying coverage for general
3 liability which may arise in carrying out this Decree with
4 minimum limits of one million dollars (\$1,000,000) per occurrence
5 and an annual aggregate of at least two million dollars
6 (\$2,000,000), exclusive of legal defense costs, for bodily injury
7 and property damage liability combined. Defendant City of
8 Centralia shall provide thirty (30) day written notice prior to
9 canceling such insurance.

10 These limits are not to be construed as maximum limits.
11 Defendant City of Centralia is solely responsible for determining
12 the appropriate maximum amount of insurance it should carry for
13 injuries or damages that may result from the implementation of
14 this Decree.

15
16 XXIII. IMPLEMENTATION OF INTERIM ACTION

17 If Ecology determines that the CLCG has failed, without
18 good cause, to implement any material terms of this Decree,
19 Ecology may, after notice to the CLCG, order the CLCG to suspend
20 implementation of this Consent Decree. Ecology thereafter shall
21 provide the CLCG with the notice required by the dispute
22 resolution provisions of Section XIV and attempt in good faith to
23 resolve its dispute pursuant to that Section. If the party
24 seeking dispute resolution pursues its complaint in court, then
25 Ecology may, after notice to the CLCG, perform any or all of the
26 interim action covered by Attachment C that remain incomplete,

1 unless ordered otherwise by the Court. If Ecology performs all
2 or portions of the interim action because of the CLCG's failure
3 to comply with its obligations under this Decree, Ecology may
4 seek to recover from the CLCG its costs of performing the interim
5 action to the extent Ecology is entitled to such cost recovery
6 under state or federal law.

7
8 XXIV. PUBLIC PARTICIPATION

9 Ecology shall maintain the responsibility for public
10 participation at the Site. However, the CLCG shall cooperate
11 with Ecology and shall:

12 A. Prepare drafts of public notices and fact sheets
13 upon request by Ecology. Ecology will finalize (including
14 editing if necessary) and distribute such fact sheets and prepare
15 and distribute public notices of Ecology's presentations and
16 meetings;

17 B. Notify Ecology's project coordinator prior to the
18 issuance of all press releases and before major meetings with the
19 interested public and local governments. Likewise, Ecology shall
20 notify the CLCG prior to the issuance of all press releases and
21 fact sheets, and before major meetings with the interested public
22 and local governments;

23 C. Participate in public presentations, if any, on
24 the progress of the interim action at the Site. Participation
25 may be through attendance at public meetings to assist in
26 answering questions or as a presenter;

1 D. In cooperation with Ecology, arrange and/or
2 continue information repositories to be located at:

3 Public Works Department
4 City of Centralia
5 118 West Maple
6 Centralia, Washington 98531

7 Southwestern Regional Office
8 Department of Ecology
9 Mail Stop LU-11
10 7272 Cleanwater Lane
11 Olympia, Washington 98504-6811

12 Centralia Timberland Regional Library
13 110 South Silver
14 Centralia, Washington 98531

15 At a minimum, copies of all public notices, fact sheets, and
16 press releases; all quality assured ground water, surface water,
17 soil sediment, and air monitoring data; the interim action plan;
18 supplemental planning documents; and all other similar documents
19 relating to performance of the interim action required by this
20 Decree shall be promptly placed in these repositories.

21 XXV. DURATION OF DECREE

22 This Decree shall remain in effect and the interim
23 action program described in the Decree shall be maintained and
24 continued until the CLCG receives written notification from
25 Ecology that the requirements of the Consent Decree have been
26 satisfied.

XXVI. COVENANT NOT TO SUE

Subject to the terms and conditions of this Decree,
including Section XIV governing Resolution of Disputes, and upon

1 Ecology's issuance of the Notice of Completion described in
2 Section XXV, Ecology covenants not to sue the CLCG for matters
3 covered by this Decree. Matters covered by this Decree do not
4 include factors discovered after entry of the Decree which
5 present a previously unknown threat to human health and the
6 environment.

7
8 XXVII. CLAIMS AGAINST THIRD PARTIES

9 The CLCG expressly reserves its right to recover any
10 costs incurred in implementing this Decree from any other
11 potentially liable person, including the State of Washington,
12 with the sole exception that the CLCG agrees not to seek to
13 recover any such costs from the State of Washington or one of its
14 agencies on the ground that it is an owner or operator of the
15 Site, as defined in WAC 173-340-200(29).

16
17 XXVIII. CONTRIBUTION PROTECTION

18 The CLCG shall not be liable for claims of contribution
19 regarding matters addressed in this Decree. The percentage of
20 response costs paid by the CLCG under this Decree shall in no way
21 constitute an admission as to an appropriate allocation of
22 liability at the Site.

23
24 XXIX. EFFECTIVE DATE

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

XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

DATED this 13th day of August, 1991.

William D. Sawyer
UNITED STATES DISTRICT
COURT JUDGE

Carol L. Fleskes 6/20/91
CAROL FLESKES Date
Program Manager
Washington Department of Ecology
Toxics Cleanup Program

Lucy E. Phillips 6/20/91
LUCY E. PHILLIPS Date
Assistant Attorney General

For Lewis County

Bradley M. Marten
BRADLEY M. MARTEN
CESTJON L. MCFARLAND
Preston Thorgrimson
Shidler Gates & Ellis
Attorneys for Centralia
Landfill Closure Group

Jay Winter 6-7-91
Date

1 For City of Centralia

2 *Joan M. [illegible]* 6-10-91
3 Date

4
5 For City of Chehalis

6 *David M. Campbell* 6-4-91
7 Date

8
9 For City of Morton

10 *Ray R. [illegible]* 6-4-91
11 Date

12
13 For City of Mossyrock

14 *Ray R. [illegible]* 6-4-91
15 Date

16
17 For Town of Pe Ell

18 *David [illegible]* 6-10-91
19 Date

20
21 For City of Vader

22 *Andrew [illegible]* 6-4-91
23 Date