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

7 STATE OF WASHINGTON,  
8 DEPARTMENT OF ECOLOGY,

9 Plaintiff,

10 v.

11 CITY OF TACOMA and,

12 Defendants.

NO. 94-2-10917-6

SIXTH AMENDMENT TO CONSENT  
DECREE TO INCLUDE THE SITE-  
SPECIFIC CLEANUP ACTION PLAN  
FOR THE PARCEL 4 SITE

13 Pursuant to Sections 7 and 17 of the First Comprehensive Amendment to the Consent  
14 Decree (hereinafter Decree), the undersigned hereby agree to entry by the Court of this  
15 Amendment to the Decree. The Decree is amended as follows, and in all other respects remains  
16 unchanged.

17 1. The Parcel 4 Site is owned by the Foss Waterway Development Authority  
18 ("FWDA"). The City conducted a remedial investigation of the Parcel 4 site under the terms of  
19 this Decree. The Parcel 4 Site is denominated as Parcel 4A on the Map of Potential Cleanup  
20 Sites attached as Exhibit A to the Decree. The legal description corresponding to FWDA's  
21 ownership of Parcel 4 is included as Appendix A to this Amendment.

22 2. In accordance with Section 17 of the Decree, the Decree is amended to include  
23 the Site-specific Cleanup Action Plan (SCAP) for the Parcel 4 Site attached as Appendix B to  
24 this Amendment. Figure 1 of the SCAP provides a map of the area subject to the SCAP. This  
25 SCAP has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a  
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1 result of this process, Ecology has found that implementation of the SCAP will lead to a more  
2 expeditious cleanup of hazardous substances at the site.

3 3. In accordance with Section 8 of the Decree, the FWDA shall record a Restrictive  
4 Covenant, and provide Ecology and the Attorney General's Office written confirmation of such  
5 recording, attached hereto as Appendix C, within 90 days of entry of this Amendment.  
6 Section 29 of the Decree - the covenant not to sue - shall not apply to this Site until the  
7 Restrictive Covenant is recorded.

8 4. In addition to other required institutional controls, the City, on behalf of itself,  
9 and the FWDA shall provide financial assurances in accordance with the version of WAC 173-  
10 340-440 in effect at the time the City submits its draft remedial design documents for Parcel 4 to  
11 Ecology under Section 7 .H of the Decree. The draft remedial design documents submitted to  
12 Ecology for approval shall include preliminary cost calculations and financial information  
13 describing the basis for the amount and form of financial assurance and a draft financial  
14 assurance document. The financial assurance documents shall be treated as a remedial design  
15 document under Section 7.H. The City shall submit to Ecology as part of the as-built  
16 documentation for the site cleanup, a copy of the financial assurance document and any  
17 procedures for periodic adjustment to the value of the financial assurance mechanism.

18 5. The City reserves its right to transfer or assign its responsibility to provide  
19 financial assurance to another party in accordance with Section 15 (C.) of the Decree provided  
20 the transfer or assignment, and the nature of the financial assurance, is consistent with MTCA  
21 rules in effect at the time of the transfer or assignment regarding financial assurance and is  
22 approved by Ecology prior to such transfer.

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

1           7. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
2 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
3 local government permits or approvals for the remedial action under the Decree and this  
4 Amendment that are known to be applicable at the time of entry of this Amendment have been  
5 included at pages 25 and 26 of the SCAP, and are binding and enforceable requirements.  
6 Defendant(s) has a continuing obligation to determine whether additional permits or approvals  
7 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under  
8 the Decree and this Amendment. In the event either Defendant(s) or Ecology determines that  
9 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required  
10 for the remedial action under the Decree and this Amendment, it shall promptly notify the other  
11 party of this determination. Ecology shall determine whether Ecology or Defendant(s) shall be  
12 responsible to contact appropriate state and/or local agencies. If Ecology so requires,  
13 Defendant(s) shall promptly consult with the appropriate state and/or local agencies and provide  
14 Ecology with written documentation from those agencies of the substantive requirements those  
15 agencies believe are applicable to the remedial action. Ecology shall make the final  
16 determination on the additional substantive requirements that must be met by Defendant(s) and  
17 on how Defendant(s) must meet those requirements. Ecology shall inform Defendant(s) in  
18 writing of these requirements. Once established by Ecology, the additional requirements shall be  
19 enforceable requirements of this Decree. Defendant(s) shall not begin or continue the remedial  
20 action potentially subject to the additional requirements until Ecology makes its final  
21 determination. Ecology shall ensure that notice and opportunity for comment is provided to the  
22 public and appropriate agencies prior to establishing the substantive requirements under this  
23 section.

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

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

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

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

8 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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

2 **DEPARTMENT OF ECOLOGY**

**ATTORNEY GENERAL  
OF WASHINGTON**

3  
4  
5 By: \_\_\_\_\_  
6 JAMES PENDOWSKI  
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. CORPUZ, JR.  
City Manager

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

13 Date: \_\_\_\_\_

Date: \_\_\_\_\_

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: \_\_\_\_\_

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19 **FOSS WATERWAY DEVELOPMENT AUTHORITY**

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21 By: \_\_\_\_\_  
22 DON MEYER  
Executive Director

23 Date: \_\_\_\_\_

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APPENDIX A

**Legal Description Corresponding to the Foss Waterway Development  
Authority's Ownership of Parcel 4**

**Legal Description**

Lots 1 through 6 inclusive, Block 57, according to the official MAP OF  
TACOMA TIDE LANDS filed in the Office of the Commissioner of Public  
Lands at Olympia, Washington, 3 September 1895.

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**APPENDIX B**

**The Parcel 4 Site-Specific Cleanup Action Plan**