

ESN 46

OCT 07 1996

K. M. EATON, YAKIMA COUNTY CLERK

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SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES CORP., a
Washington corporation,

Defendant.

No. 96 2 02448 1
DE MINIMIS CONSENT DECREE

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Exhibit A: Map of Yakima Railroad Area
Exhibit B: Legal Description of Property
Exhibit C: Paxton Property Site History

1 INTRODUCTION

2 A. In entering into this De Minimis Consent Decree
3 (Decree), the mutual objective of the Washington State
4 Department of Ecology ("Ecology") and Paxton Sales is to resolve
5 the liability of Paxton Sales Corporation ("Paxton Sales")
6 relating to the release of hazardous substances, including
7 perchloroethylene (PCE) discovered on property owned by Paxton
8 Sales, which is located within the Yakima Railroad Area in
9 Yakima, Washington. The map of the Yakima Railroad area is
10 attached hereto as Exhibit "A" and incorporated herein (the
11 "Site"). The legal description of the property owned by Paxton
12 Sales is attached hereto as Exhibit "B" and incorporated herein
13 (the "Paxton Property"). To accomplish these objectives and to
14 resolve the matter constructively and without litigation, Paxton
15 Sales and Ecology consent to the actions required by this
16 Decree.

17 B. A Complaint and Answer in this action have been filed.
18 There has not been a trial on any issue of fact or law in this
19 case. However, the parties wish to resolve the issues raised by
20 the Complaint. In addition, the parties agree that settlement
21 of these matters without litigation is reasonable and in the
22 public interest and that entry of this Decree is the most
23 appropriate means of resolving these matters.

24 C. In signing this Decree, Paxton Sales and Ecology agree
25 to its entry and agree to be bound by its terms.
26

1 D. By entering into this Decree, the parties do not
2 intend to discharge nonsettling parties from any liability they
3 may have with respect to investigation and remedial activities
4 at the Site. Except as set forth herein, Paxton Sales and
5 Ecology retain the right to seek reimbursement in whole or in
6 part from any responsible entities for sums expended on
7 investigation and remedial activities at the Site, and to seek
8 any other costs that are legally recoverable.

9 E. By entering into this Decree, Paxton Sales is not
10 admitting any liability or facts alleged herein.

11 I. JURISDICTION AND VENUE

12 A. This Court has jurisdiction over the subject matter
13 and over the parties pursuant to the Model Toxics Control Act
14 (MTCA), which was passed by initiative (Initiative 97) and which
15 took effect on March 1, 1989. The MTCA has been codified as
16 Chapter 70.105D RCW. Venue is properly laid in Yakima County
17 pursuant to RCW 70.105D.050(5)(b).

18 B. Authority is conferred upon the Washington State
19 Attorney General by RCW 70.105D.040(4)(a) to agree to a
20 settlement with any potentially liable person if, after public
21 notice and hearing, Ecology finds the proposed settlement would
22 lead to a more expeditious cleanup of hazardous substances in
23 compliance with cleanup standards under RCW 70.105D.030(2)(d).
24 RCW 70.105D.040(4)(b) requires that such a settlement be entered
25 as a consent decree issued by a court of competent jurisdiction.
26

1 C. Ecology has given notice to Paxton Sales as provided
2 in RCW 70.105D.020(8), of Ecology's determination that Paxton
3 Sales is a potentially liable person for the Site and that there
4 has been a release of hazardous substances at the Site.

5 D. Ecology has determined that past activities at the
6 Paxton Property may have given rise to a release of hazardous
7 substances. Paxton Sales maintains that there is no credible
8 evidence that such a release has occurred on the Paxton Property
9 which might be a threat to human health or the environment, or
10 that Paxton Sales or Paxton's Property is a source of PCE in the
11 groundwater within the Site.

12 E. By entering into this Decree, Paxton Sales agrees not
13 to challenge the jurisdiction of Ecology or the Court in any
14 proceeding to enforce this Decree. Paxton Sales has agreed to
15 undertake the actions specified in this Decree and consents to
16 the issuance of this Decree, pursuant to RCW 70.105D.

17 **II. PARTIES BOUND**

18 This Decree shall apply to and be binding upon the
19 signatories of this Decree (parties), their successors and
20 assigns. The undersigned representative of each party hereby
21 certifies that he or she is fully authorized to enter into this
22 Decree and to execute and legally bind such party to comply with
23 the Decree. No change in ownership or corporate status shall
24 alter the responsibility of Paxton Sales under this Decree.

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III. DEFINITIONS

Unless otherwise specified, the definitions set forth in the Model Toxics Control Act, Ch. 70.105D RCW, and Ch. 173-303 WAC shall control the meaning of the terms used in this Consent Decree.

IV. STATEMENT OF FACTS

The Paxton Property Site History, attached to this Consent Decree as Exhibit "C" and incorporated herein, contains a statement of facts describing Paxton Sales, its operational history, the Paxton Property, and the results of testing for hazardous substances, including PCE at the Paxton Property. Based on the facts outlined in the site history, Ecology has determined that the release or potential release of hazardous substances at the Paxton Property has been resolved, and that a settlement with Plaintiff is appropriate. Paxton Sales has undertaken measures necessary to ensure the protection of public health, welfare and the environment, by participating in and acting as coordinator for a bottled water program pursuant to Department of Ecology Enforcement Order No. DE 92TC-C108, and by successfully completing a remedial investigation of the Paxton Property substantially in satisfaction of Department of Ecology Enforcement Order No. DE 94TC-C421.

V. WORK TO BE PERFORMED

1. Paxton Sales certifies that, pursuant to Ecology Enforcement Order No. DE 92TC-C108, it has contributed \$14,584.61 from April 1992 through August 1995 to help pay for

1 and supply bottled water to residents within the Yakima Railroad
2 Area Site.

3 2. In addition to contributing money for the bottled
4 water program, Paxton Sales, acting by and through its owners
5 and operators, Ken Paxton and Reuben Lair, has acted as the
6 coordinator for the bottled water program temporarily supplying
7 water to residents within the Site. As the coordinators for the
8 bottled water program, Paxton Sales and its agents and employees
9 have expended more than 1,030.75 hours of time implementing the
10 program, which services Paxton Sales reasonably believes have an
11 estimated value of \$111,975.00.

12 3. As set forth in Exhibit "C" attached hereto, Paxton
13 Sales also has completed a remedial investigation of alleged
14 releases of hazardous substances at the Paxton Property
15 substantially in accordance with Ecology Enforcement Order
16 No. 94TC-C421. The results of the remedial investigation,
17 including soil and groundwater sampling, indicate that there are
18 no hazardous substances present in, on, or under the Paxton
19 Property in quantities which may be a threat to human health or
20 the environment.

21 4. Paxton Sales will provide access to the Paxton
22 Property in accordance with Section VI of this Consent Decree,
23 and otherwise will comply with all other provisions of this
24 Consent Decree. After this Decree is entered and finalized,
25 Paxton Sales shall allow Ecology continued access, at Ecology's
26 sole cost and expense, to three of the four monitoring wells

1 installed by Paxton Sales as part of the remedial investigation
2 of the Paxton Property, one of which wells is denoted as
3 monitoring well MW-3 and is located at the southwest corner of
4 the Paxton Property, the second of which, denoted as monitoring
5 well MW-4, is located in the southeasterly direction from the
6 Paxton Property in a public right-of-way, and the third of
7 which, denoted as monitoring well MW-2, is located on the south
8 side of the building. The purpose of continued Ecology access
9 to the three wells described above is to allow Ecology to gather
10 additional groundwater information for an "area-wide" study of
11 the Site. Ecology shall, at its sole cost and expense, abandon
12 the wells in accordance with state law once the Yakima Railroad
13 Area Site has come to its legal conclusion.

14 5. Paxton Sales is free to abandon the monitoring wells
15 installed near the drywell on the west side of the Paxton
16 Property (MW-1). The wells shall be abandoned in accordance
17 with Washington law at Paxton Sale's sole cost and expense.

18 6. Paxton Sales agrees that it will not seek
19 reimbursement from the State of Washington, state or local
20 toxics accounts, or other Yakima Railroad Area potentially
21 liable parties ("PLPs"), who have or will be named, other than
22 prior owners and operators of the Paxton Property, for any costs
23 incurred prior to the entry of this Decree and pursuant or
24 related to Enforcement Order No. DE 92TC-C108 or DE 94TC-C421
25 expended to satisfy the terms of this Decree.

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VI. ACCESS

Paxton Sales will grant Ecology or any Ecology authorized representatives reasonable access to the Paxton Property for purposes of inspections, conducting such tests or collecting samples as Ecology may deem necessary as part of its RI/FS or remedial action at the Yakima Railroad Area Site. In the event that Ecology wishes to conduct sampling, Ecology will, except in emergency situations, provide Paxton Sales with *five (5) days'* notice prior to entering the Paxton Property. Upon request, Ecology will split any samples taken at the Paxton Property. All parties with access to the Paxton Property pursuant to this paragraph shall comply with reasonable health and safety requirements.

VII. RETENTION OF RECORDS

Paxton Sales shall preserve for *ten (10) years* from the date of this Decree, all records, reports, documents and underlying data in its possession relevant to the implementation of this Decree. Upon request of Ecology, Paxton Sales shall make all non-privileged, non-archived records available to Ecology and allow access for review. All non-privileged, archived records shall be made available to Ecology within a reasonable period of time.

VIII. TRANSFER OF INTEREST IN PROPERTY

Prior to transfer of any legal or equitable interest in all or any portion of the Paxton Property, Paxton Sales shall serve a copy of this Decree and the attached Exhibits upon any

1 purchaser, lessee, transferee, assignee, or other successor-in-
2 interest of the property; and, at least *thirty (30) days* prior
3 to any transfer, Paxton Sales shall notify Ecology of said
4 transfer.

5 **IX. RESOLUTION OF DISPUTES**

6 If Paxton Sales objects to any Ecology disapproval,
7 proposed modification, or decision made pursuant to this Decree,
8 it shall notify Ecology in writing of its objections within
9 *fourteen (14) calendar days* of receipt of such notice.

10 Thereafter, the parties shall confer in an effort to resolve the
11 dispute. If agreement cannot be reached on the dispute within
12 *fourteen (14) calendar days* after receipt by Ecology of such
13 objection, Ecology shall promptly provide a written statement of
14 its decision to Paxton Sales.

15 If Ecology's final written decision is unacceptable to
16 Paxton Sales, Paxton Sales has the right to submit the dispute
17 within *twenty (20) days* to the Court for resolution. The
18 parties agree that one judge should retain jurisdiction over
19 this case and shall, as necessary, resolve any dispute arising
20 under this Decree. In the event Paxton Sales presents an issue
21 to the Court for review, the Court shall review the action or
22 decision of Ecology on the basis of whether such action or
23 decision was arbitrary and capricious and render a decision
24 based on such standard of review. Ecology and Paxton Sales
25 agree to only utilize the dispute resolution process in good
26 faith and agree to expedite, to the extent possible, the dispute

1 resolution process whenever it is used. Where either party
2 utilizes the dispute resolution in bad faith or for purposes of
3 delay, the other party may seek sanctions. Implementation of
4 these dispute resolution procedures shall not provide a basis
5 for delay of any activities required in this Decree, unless
6 Ecology agrees, in writing, to a schedule extension or the Court
7 so orders.

8 **X. AMENDMENT TO CONSENT DECREE**

9 This Decree may only be amended by a written stipulation
10 between the parties, entered by the Court, or by Court order.
11 Such amendment shall become effective upon entry by the Court.
12 Agreement to amend shall not be unreasonably withheld by any
13 party to this Decree. Paxton Sales shall submit any request for
14 an amendment to Ecology for approval. Ecology shall indicate
15 its approval or disapproval within a reasonable time after the
16 request for amendment is received. Reasons for the disapproval
17 shall be stated in writing. If Ecology does not agree to any
18 proposed amendment, the disagreement may be addressed through
19 the dispute resolution procedures described in Section IX of
20 this Decree. No guidance, suggestions or comments by Ecology
21 will be construed as relieving Paxton Sales of its obligation to
22 obtain formal approval as may be required by this Decree. No
23 verbal communication by Ecology shall relieve Paxton Sales of
24 the obligations specified herein. Ecology shall notify Paxton
25 Sales of any Ecology requested amendment and, within **fifteen**
26 **(15) working days** of receipt of such a request, Paxton Sales

1 shall, in writing, indicate its agreement or disagreement and,
2 if it disagrees, the rationale. If Paxton Sales does not agree
3 with any Ecology proposed amendment, the disagreement may be
4 addressed through the dispute resolution procedures described in
5 Section IX of this Decree.

6 **XI. OTHER ACTIONS**

7 Ecology reserves its right to institute remedial action(s)
8 at the Site and/or the Paxton Property, and subsequently pursue
9 cost recovery, and to issue orders and/or penalties pursuant to
10 available statutory authority, under the following
11 circumstances:

12 1. Where Paxton Sales fails to adhere to any requirement
13 of this Decree;

14 2. In the event or upon the discovery of a release or
15 threatened release at the Paxton Property not addressed by this
16 Decree;

17 3. Upon Ecology's determination that action beyond the
18 terms of this Decree is necessary to abate an emergency
19 situation at the Paxton Property which threatens the public
20 health or welfare or the environment; or

21 4. Upon the occurrence or discovery of facts or
22 conditions at the Paxton Property beyond the scope of this
23 Decree as to which Ecology would be empowered to perform any
24 remedial action or to issue an order and/or penalty, or to take
25 any other enforcement action under applicable laws.
26

1 Paxton Sales reserves its rights to all defenses and
2 procedures as authorized by Ch. 70.105D RCW, should Ecology take
3 other actions described herein.

4 **XII. CONTRIBUTION PROTECTION**

5 With regard to claims for contribution against Paxton Sales
6 for matters addressed in this Consent Decree, the parties hereto
7 agree that Paxton Sales is entitled to such protection from
8 contributions as provided by law. For the purposes of this
9 section, matters addressed shall mean the investigation and
10 remediation of the Yakima Railroad Area and the Paxton Property
11 with respect to the release or threatened release of hazardous
12 substances investigated in the remedial investigation of the
13 Paxton Property, including PCE in soil or groundwater at the
14 Paxton Property, in the volume and toxicity described in
15 Exhibit "C".

16 **XIII. COVENANT NOT TO SUE**

17 In consideration of Paxton Sales' compliance with the terms
18 and conditions of this Decree, Ecology agrees that compliance
19 with this Decree shall stand in lieu of any and all
20 administrative, legal and equitable remedies and enforcement
21 actions available to the state against Paxton Sales for the
22 release or threatened release of hazardous substances
23 investigated in the remedial investigation of the Paxton
24 Property, including PCE, in the amount and toxicity described in
25 Exhibit "C". Consistent with this Covenant Not to Sue, Paxton
26

1 Sales is released from further liability under Enforcement
2 Orders DE 92TC-C108 and DE 94TC-C421.

3 This Covenant Not to Sue is strictly limited in its
4 application to the Paxton Property specifically defined in
5 Exhibit "B", and to the volume and toxicity of hazardous
6 substances, including PCE, described in Exhibit "C". This
7 covenant is not applicable to any other hazardous substances or
8 areas, and the state retains all of its authority relative to
9 any other substances or areas.

10 A. Reopeners: In the following circumstances the state
11 of Washington may exercise its full legal authority to address
12 releases of hazardous substances at the Paxton Property,
13 notwithstanding the Covenant Not to Sue set forth above:

- 14 1. In the event Paxton Sales fails to comply with the
15 terms and conditions of the Consent Decree, including
16 all exhibits, and, after written notice of
17 noncompliance, fails to come into compliance;
- 18 2. In the event information becomes available regarding
19 factors previously unknown to Ecology, including the
20 nature and quantity of hazardous substances at the
21 Paxton Property, and Ecology determines, in light of
22 this information, that remedial action is necessary to
23 address a release of hazardous substances at the
24 Paxton Property to protect human health and the
25 environment.

26

1 B. Applicability: The Covenant Not to Sue set forth
2 above shall have not applicability whatsoever to:

- 3 1. Criminal liability;
- 4 2. Liability for damages to natural resources;
- 5 3. Any Ecology action against potentially liable parties
6 not a party to this Decree; and
- 7 4. "Other Actions" described in Section XI of this
8 Decree.

9 **XIV. CLAIM AGAINST THE STATE**

10 Paxton Sales hereby agrees that it will not seek to recover
11 any costs accrued in implementing this Decree or Enforcement
12 Orders DE 92TC-C108 and DE 94TC-C421 from the state of
13 Washington or any of its agencies and, further, that Paxton
14 Sales will make no claim against the State Toxics Control
15 Account or any local toxics control account for any costs
16 incurred in implementing this Decree or Enforcement Orders
17 DE 92TC-C108 and DE 94TC-C421.

18 **XV. RESERVATION OF RIGHTS**

19 By agreeing to the entry of this Decree, Paxton Sales and
20 Ecology agree to abide by its terms. While the parties believe
21 that the recitals contained in this Decree are accurate, the
22 execution and performance of the Decree is not, however, an
23 admission by Paxton Sales or Ecology of any fact or liability
24 for any purpose other than as a foundation for the entry of this
25 Decree. Paxton Sales' performance under this Decree is
26 undertaken without waiver of or prejudice to any claims or

1 defenses whatsoever that may be asserted in the event of further
2 administrative proceedings or litigation not associated with, or
3 related to, this Decree. Nor is the execution or the
4 performance of the Decree an agreement by Paxton Sales to take
5 any action at the Paxton Property or the Site other than that
6 described in this Decree.

7 **XVI. EFFECTIVE DATE**

8 The effective date of this Consent Decree shall be the date
9 upon which this Consent Decree is entered by the Court.

10 **XVII. DURATION OF DECREE AND RETENTION OF JURISDICTION**

11 This Decree shall remain in effect and this Court shall
12 retain jurisdiction over both the subject matter of this Consent
13 Decree and the parties for the duration of the performance of
14 the terms and provisions of this Consent Decree for the purpose
15 of enabling any of the parties to apply to the Court at any time
16 for such further order, direction, and relief as may be
17 necessary or appropriate to ensure that obligations of the
18 parties have been satisfied. The Decree shall be deemed
19 satisfied by Paxton Sales when the work described in Section V
20 is completed and subject to continuing legal effects of the
21 Decree and the Model Toxics Control Act (RCW 70.105D, et seq.)
22 (i.e., covenant not to sue, contribution protection, etc...).

23 This Decree shall be terminated as of record by Ecology at the
24 legal conclusion of the Yakima Railroad Area as certified by the
25 Office of the Attorney General.

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XVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree has been the subject of public notice and comment under RCW 70.105D(4)(a). If the Court withholds or withdraws its consent, this Decree shall be null and void at the option of any party. In such event, no party shall be bound by the requirements of this Decree.

The undersigned parties enter into this De Minimis Consent Decree on the dates specified below:

DEPARTMENT OF ECOLOGY

PAXTON SALES CORPORATION

By: Mary E. Burg
Mary E. Burg, Program Manager
Toxics Cleanup Program

By: Ken Paxton
Ken Paxton, President

Date: 8.22.96

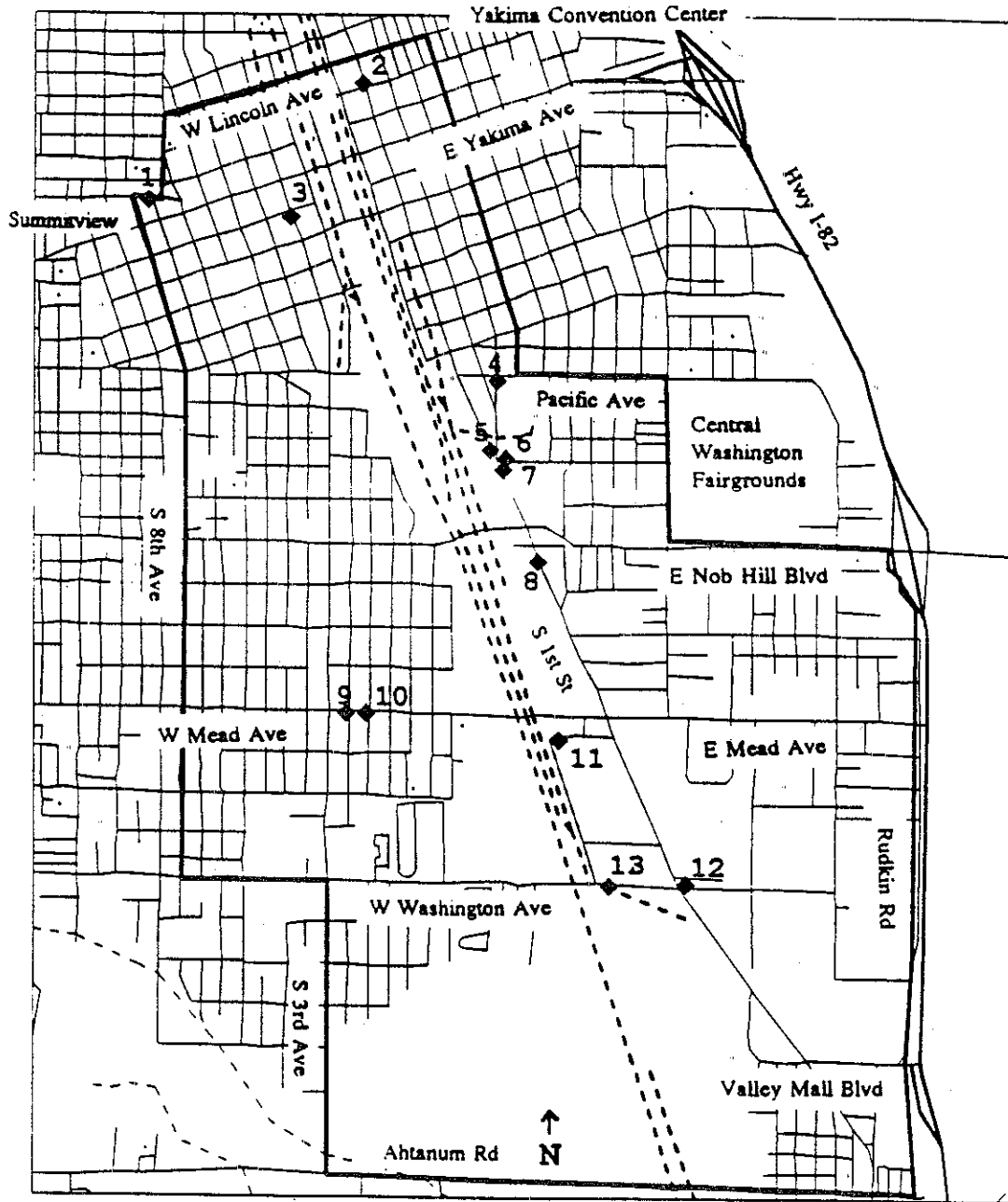
Date: 9-24-96

ATTORNEY GENERAL'S OFFICE

By: [Signature]
Steven J. Thiele
WSBA #20275
Assistant Attorney General

Date: 8/19/96

Yakima Railroad Area



Subfacilities within the Yakima Railroad Area

- | | |
|---------------------------------|--|
| 1: Westco Martinizing | 8: Cameron-Yakima, Inc. |
| 2: Yakima County (Crest Linen)* | 9: CMX Corporation * |
| 3: Frank Wear Cleaners | 10: Paxton Sales |
| 4: Nu-Way Cleaners | 11: Crop King/Woods Ind. (BNRR) |
| 5: Yakima Valley Spray | 12: Briar Development * |
| 6: 5th Wheel Truck Repair | 13: Agri-Tech/Yakima Steel Fabricators |
| 7: Hahn Motor Company | |

* = These sites have completed Deminimus Settlements

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EXHIBIT B

PAXTON SALES CORPORATION

LEGAL DESCRIPTION

Lots 19 and 20, I J Hackett Addition, as recorded in Volume I of Plats, page 40 records of Yakima County, Washington

EXCEPT portion of Northwest corner of Lot 19 conveyed to City of Yakima by instrument recorded under Auditor's file No. 2226480, records of Yakima County, Washington.

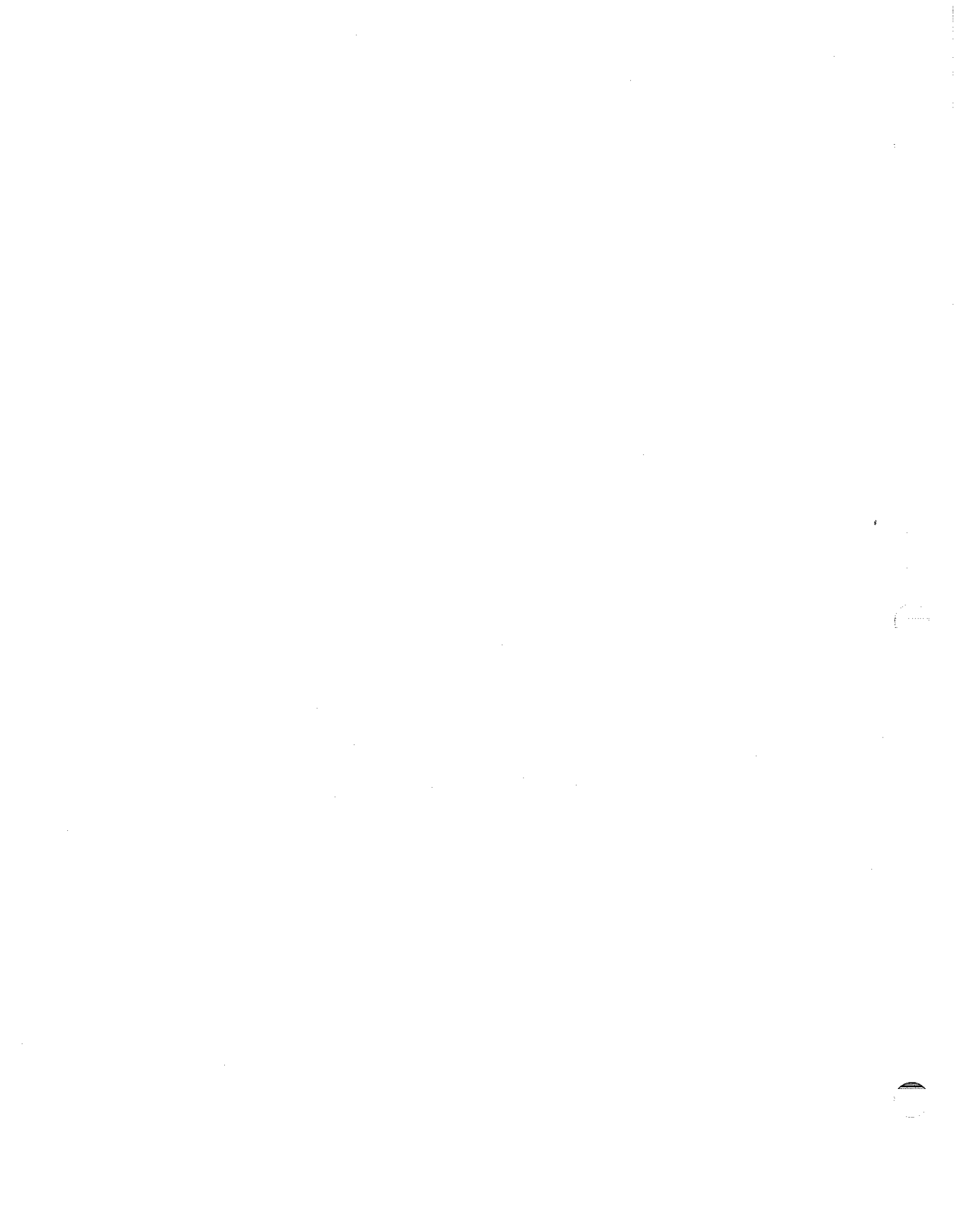


EXHIBIT C
PAXTON SITE HISTORY

Paxton Sales Corporation (Paxton) operates a small machine parts and metal fabrication facility in Yakima, Washington. The building Paxton currently occupies was constructed in the 1950s or early 1960s. Paxton purchased the building and property in 1966.

In June 1988 Ecology and Environment, Inc. (E&E), under contract with to the Environmental Protection Agency (EPA), prepared a "Preliminary Assessment Report" of Paxtons business operations. A "Site Inspection Report" of the Facility was prepared by E&E in November 1989. The E&E reports identified Paxtons use of a halogenated hydrocarbon containing cutting solution (Trim-Sol) and a cyanide containing salt (Houghtons Perliton 60), and the possible introduction of those compounds to the subsurface via an onsite dry well. E&E's 1989 site activities included the collection and testing of a sludge/sediment sample from the dry well. That sample contained both organic and inorganic constituents including tetrachloroethene (PCE) at 34 mg/kg. E&E did not determine if Paxtons cutting solution contained PCE, nor was it determined if the PCE detected in the dry well sample was a result of Paxtons activities.

In about 1992 Ecology recommended that Paxton clean out the dry well and remove accumulated sludge and reduce the potential for any then-existing contaminants to migrate to groundwater. Shortly thereafter Paxton removed about two-feet of oily residue from the dry well. That material was taken to a hazardous waste collection station for disposal. By 1992 any wastewater streams which had been directed to the dry well were either discontinued or routed to the sanitary sewer.

In 1994 Paxton hired Landau Associates, Inc. to prepare a "Site History Report" and perform various remedial investigation tasks per the requirements of Ecology Order Number 94TC-C421. The "Site History Report" dated December 12, 1994 concluded the following: 1) the dry well was the only onsite entry point for substances of concern to reach soil and/or groundwater; 2) compounds used by Paxton may have been discharged to the dry well; 3) a tenant had also discharged substances of possible environmental concern to the dry well via normal business operations (e.g. during parts washing, steam cleaning, etc.); and 4) compounds of concern may have migrated to the Paxton property from neighboring sites.

During the RI a sample of the Trim-Sol cutting solution was chemically analyzed, soil samples were collected and analyzed from several borings, and four monitoring wells were installed. Groundwater samples were collected from the monitoring wells for

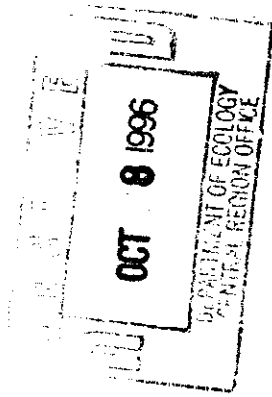
four quarters, and numerous water level measurements were taken to determine groundwater flow direction. Data collected indicated the following:

- The Trim-Sol solution contained no PCE. That finding is consistent with information provided by the manufacturer.
- Analysis of site soil indicates volatile organic compounds (VOCs, petroleum hydrocarbons, semi-volatile organic compounds and cyanide are not present in the samples analyzed. The soil samples analyzed are believed to be representative of overall site soil conditions including soil conditions at/near the dry well.
- Groundwater samples from the Paxton site were analyzed for Voc's, semi-volatile organic compounds (SVOCs), 13 metals, total petroleum hydrocarbons (as diesel) and cyanide. Four monitoring wells were installed for the study, and were placed in locations most likely to detect releases from the site. SVOC's and diesel range hydrocarbons were not detected in site groundwater.

Of the VOCs analyzed, only PCE has been detected in site groundwater. Sampling events show groundwater concentrations ranging from 1.2 ug/l to 3.1 ug/L across the site. The pattern of occurrence does not suggest that Paxton is a source of PCE to the groundwater situation. PCE was detected in groundwater at 1.8ug/L at the CMX subfacility located about 1/8 mile upgradient of Paxton. That data point and PCE concentrations at Paxton are similar and appear to represent background conditions for the area. The reported concentrations at Paxton are below the MTCA Method A cleanup level(5 ug/L) and are also below the 4 ug/L Department of Health advisory level for PCE in groundwater.

- Groundwater elevation measurements at the monitoring well locations have been made on a regular basis. Groundwater elevation data shows that flow is generally to the east with either a northerly or southerly component to flow depending on seasonal effects.

The history and synopsis of environmental conditions provided in this exhibit are believed to provide an accurate summary of information collected to date. The various document and reports containing details of information summarized herein are available in the files of the Central Regional Office of the Washington State department of Ecology, and are available for public review.



OCT 07 1996

**SUPERIOR COURT OF WASHINGTON
FOR COUNTY OF YAKIMA**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES CORP., a
Washington corporation,

Defendant.

No. **96 2 02448**

MEMORANDUM IN SUPPORT
OF JOINT MOTION

I. INTRODUCTION

Pursuant to RCW 70.105D.040(4), the parties to this action have jointly moved for entry of a Consent Decree in the above-entitled matter. The Consent Decree has been the subject of public notice and comment and a public hearing pursuant to RCW 70.105D.040(4)(a). The Washington State Department of Ecology (Ecology) has determined that the proposed Consent Decree will lead to a more expeditious cleanup of hazardous substances.

II. FACTUAL BACKGROUND

The project area in this matter is known as the Paxton Property. The Site, referred to as Paxton Sales Corp. ("Paxton"), is located at the Southeast corner of Second Avenue and Mead Avenue, Yakima, Washington. The location and boundaries of the Paxton Property are described in Exhibit B to the De Minimis Consent Decree ("Decree") attached hereto. The Paxton Property is located within the boundaries of the Yakima Railroad Area,

1 which has been designated by Ecology as a "Facility" or "Site" pursuant to RCW
2 70.105D.020.

3 A single building has been located on the property since the 1950s or 1960s when it
4 was built. Paxton acquired the property and existing building in 1966. Paxton has
5 operated a machine shop at the property since its acquisition in 1966.

6 In 1989 tetrachloroethylene (PCE) was detected in sludge sampled from a dry well on
7 the Paxton Property at levels of 34mg/kg. PCE is the contaminant of concern at the
8 Yakima Railroad Area.

9 In 1992 Paxton removed approximately two feet of oily residue from the dry well
10 and diverted wastewater which had previously been routed into the dry well.

11 Investigation and sampling at the Paxton Property between 1994 and the present has
12 shown that PCE exists only in the ground water underlying the property and that
13 concentrations of PCE in the groundwater are substantially the same upgradient from the
14 property as they are downgradient. Such data suggests that the Paxton Property is not a
15 significant source of PCE contamination in the groundwater.

16 On October 23, 1991 Ecology issued a "Determination of Potentially Liable Person
17 Status" and thereupon issued an enforcement order, effective February 11, 1992, directing
18 Paxton and other respondents to finance an "interim remedial action" consisting of
19 providing bottled water to designated households with wells potentially affected by PCE
20 contamination.

21 Based on the facts set forth herein, Ecology concluded that there has been a release
22 of PCE from the Paxton Property. Ecology has also determined that, based on the facts set
23 forth in the Decree, Paxton is entitled to an expedited settlement pursuant to RCW
24 70.105D.040(4)(a).

25 Remedial measures necessary to lead to a more expeditious cleanup under
26 ch. 70.105D RCW are set forth in the De Minimis Consent Decree filed herewith.

1 The work to be performed described in the Decree is consistent with the MTCA, has
2 been agreed upon by Paxton and by Ecology as reasonable, and is in the public interest.
3 The Decree has been the subject of public notice and comment.

4 III. DISCUSSION

5 The Model Toxics Control Act (MTCA) is codified at Chapter 70.105D RCW.
6 Ecology is charged with the duty of administering MTCA. RCW 70.105D.030. The stated
7 purpose of MTCA is "to raise sufficient funds to clean up all hazardous waste sites and to
8 prevent the creation of future hazards due to improper disposal of toxic wastes into the
9 state's land and waters." RCW 70.105D.010(2).

10 Ecology has determined that Paxton is a potentially liable person (PLP) with respect
11 to the facility covered by this Consent Decree. As a PLP, Paxton is jointly and severally
12 liable for the cleanup of the Site. RCW 70.105D.010(5). Under MTCA, Ecology can
13 issue an order directing Paxton to institute remedial actions at the Site. RCW
14 70.105D.050(1). However, if the parties can reach an agreement on the required remedial
15 actions, MTCA authorizes the Washington State Attorney General to negotiate a settlement
16 with a PLP in the form of a Consent Decree. RCW 70.105D.040(4).

17 The settlement process under MTCA requires notice to the public of the proposed
18 settlement, an opportunity for the public to comment on the proposed settlement and a
19 public hearing to encourage public comment. MTCA also requires that Ecology make a
20 finding that any settlement will lead to a more expeditious cleanup of hazardous substances
21 in compliance with MTCA cleanup standards. RCW 70.105D.040(4)(a). Finally, MTCA
22 requires that a settlement in the form of a consent decree must be issued by a court of
23 competent jurisdiction. RCW 70.105D.040(4)(b).


24 Jurisdiction over the Consent Decree process is vested by MTCA in the superior
25 court of Thurston County or of the county in which the release exists. RCW
26 70.105D.050(5)(b). The release covered by this Consent Decree exists in Yakima County,

1 and thus this Court may exercise jurisdiction over the parties' request that the Court enter
2 this Consent Decree.

3 Ecology has made the required finding that the proposed consent decree will lead to
4 a more expeditious cleanup, and it has determined that no further public notice or comment
5 is required prior to the entry of the Consent Decree.

6 Accordingly, the parties respectfully request that this Court enter the Consent
7 Decree pursuant to RCW 70.105D.040(4)(b).

8 Dated this 16th day of ~~August~~ Sept, 1996.

9 CHRISTINE O. GREGOIRE
10 Attorney General


11 STEVEN J. THIELE, WSBA #20275
12 Assistant Attorney General

13 Attorneys for Plaintiff
14 State of Washington
Department of Ecology
15 (360) 459-6134

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1 Any intentional or unintentional entry of any hazardous
2 substance into the environment, including but not limited to the
3 abandonment or disposal of containers of hazardous
substances.

4 22. Hazardous substances within the meaning of RCW 70.105D.020(5) have been
5 "released" into the environment, or future releases are threatened within the meaning of
6 RCW 70.105D.020(10).

7 23. The Paxton Property is part of a "Facility" or "Site," known as the Yakima
8 Railroad Area, with the meaning of RCW 70.105D.020(3).

9 24. Ecology has determined that remedial action is necessary to identify,
10 eliminate or mitigate any threat or potential threat to human health or the environment with
11 respect to the Site and is in the public interest.

12 25. After having the opportunity to comment, Paxton received final notice of its
13 potential liability pursuant to RCW 70.105D.020.

14 26. Paxton is a liable person within the terms of RCW 70.105D.040.

15 27. Paxton is liable for conducting remedial action for releases from the Paxton
16 Property in accordance with the terms of the Decree.

17 28. Ecology and Paxton, pursuant to RCW 70.105D.040, have reached a
18 settlement agreement.

19 29. Pursuant to RCW 70.105D.040, this voluntary settlement agreement is
20 embodied in a De Minimis Consent Decree, which is being filed with the Court
21 simultaneously with the filing of this Complaint. It provides for appropriate remedial
22 action related to the Paxton Property that will lead to a more expeditious cleanup at the
23 Site.

24 30. Without making any admissions as to the factual or legal allegations
25 contained in this Complaint, Paxton has agreed to perform the work embodied in the
26 proposed Decree and agrees to the entry of the Decree by the Court.

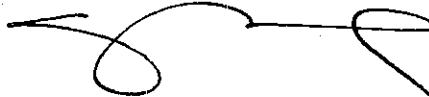
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VI. PRAYER FOR RELIEF

WHEREAS Ecology and Paxton have voluntarily entered into a De Minimis Consent Decree, Ecology requests that the Court enter the Consent Decree and retain jurisdiction to enforce its terms.

DATED this 30th day of September, 1996.

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE, WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
State Department of Ecology
(360) 459-6134

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K. J. H. EATON, YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR YAKIMA COUNTY

96 2 02448

No.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

JOINT MOTION FOR ENTRY OF
CONSENT DECREE

Plaintiff,

v.

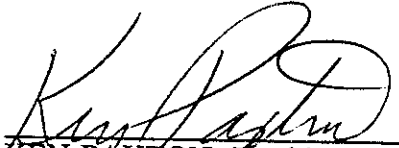
PAXTON SALES CORP., a
Washington corporation,


Defendant.

The parties to this action, through their attorneys, hereby jointly move for entry of the Consent Decree in the above-entitled matter. The Consent Decree has been signed by the parties to this action. Moreover, the Consent Decree has been the subject of public notice and comment and a public hearing. This motion is supported by the attached Affidavit of Richard Roeder.

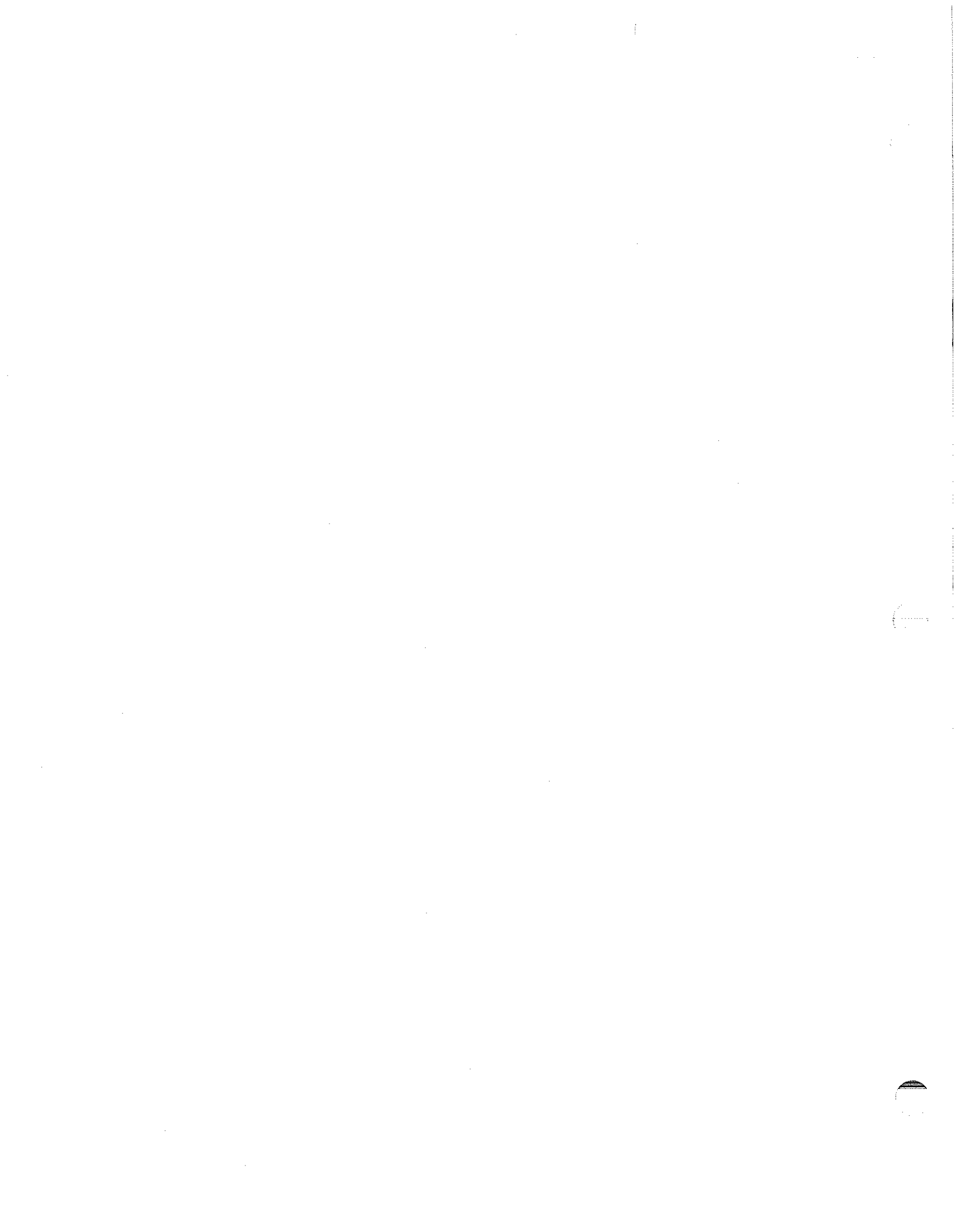
DATED this 16th day of September, 1996.

CHRISTINE O. GREGOIRE
Attorney General


KEN PAXTON, President
PAXTON SALES CORPORATION


STEVEN J. THIELE, WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology

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SUPERIOR COURT OF WASHINGTON
FOR COUNTY OF YAKIMA

96 2 02448 1

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES CORP., a
Washington corporation,

Defendant.

No.

SUMMONS


To: Paxton Sales Corp.:

A lawsuit has been started against you in the above-entitled court by the State of Washington, Department of Ecology, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree. Accordingly, this Summons shall not require the filing of an answer.

Respectfully submitted this 16th day of September, 1996.

CHRISTINE O. GREGOIRE
Attorney General



STEVEN J. THIELE
WSBA #20275
Assistant Attorney General
Attorneys for Plaintiff
State of Washington
Department of Ecology
(360) 459-6134

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

96 2 02443 1

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES CORP., a
Washington corporation,

Defendant(s).

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 Richard Roeder, 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 _____, 1996.

JUDGE/COMMISSIONER

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ORDER ENTERING
CONSENT DECREE

1 Presented by:

2 CHRISTINE O. GREGOIRE
3 Attorney General

4 

5 STEVEN J. THIELE, WSBA #20275
6 Assistant Attorney General
7 Attorney for Ecology

8 **APPROVED FOR ENTRY AND NOTICE
9 OF PRESENTATION WAIVED:**

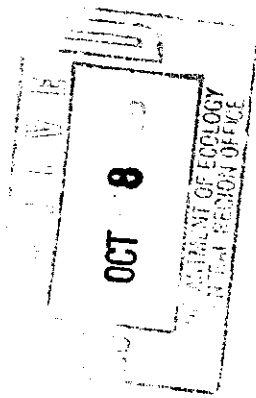
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ORDER ENTERING
CONSENT DECREE



OCT 07 1996

YAKIMA COUNTY CLERK

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**SUPERIOR COURT OF WASHINGTON
FOR COUNTY OF YAKIMA**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES CORP., a
Washington corporation,

Defendant.

No. **96 2 02448 1**
COMPLAINT

Plaintiff, State of Washington, Department of Ecology, alleges as follows:

I. JURISDICTION

1. This Court has jurisdiction under the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW. Venue is properly laid in Yakima County.

II. PARTIES

2. Plaintiff, State of Washington, Department of Ecology ("Ecology"), is an agency of the State of Washington responsible for the regulation and abatement of releases or threatened releases of hazardous substances.

3. Ecology is empowered to bring any appropriate action at law or in equity, including an action for injunctive relief, as may be necessary to protect human health and the environment under ch. 70.105D RCW.

4. Defendant Paxton Sales, Inc. (Paxton) is a duly constituted corporation in the State of Washington.

1 providing bottled water to designated households with wells potentially affected by PCE
2 contamination.

3 12. Based on the facts set forth herein, Ecology concluded that there has been a
4 release of PCE from the Paxton Property. Ecology has also determined that, based on the
5 facts set forth in the Decree, Paxton is entitled to an expedited settlement pursuant to RCW
6 70.105D.040(4)(a).

7 13. Remedial measures necessary to lead to a more expeditious cleanup under
8 ch. 70.105D RCW are set forth in the De Minimis Consent Decree filed herewith.

9 14. The work to be performed described in the Decree is consistent with the
10 MTCA, has been agreed upon by Paxton and by Ecology as reasonable, and is in the public
11 interest. The Decree has been the subject of public notice and comment.

12 15. Without making any admissions as to the factual or legal allegations
13 contained in this Complaint, Defendant has consented to entry of the De Minimis Consent
14 Decree attached to this Complaint.

15 **IV. FIRST CLAIM FOR RELIEF**

16 16. The allegations of paragraphs 1 through 18 are realleged and incorporated
17 herein by reference.

18 17. RCW 70.105D.040 provides in pertinent part:

- 19 (1) Except as provided in subsection (3) of this section, the
20 following persons are liable with respect to a facility:
- 21 (a) The owner or operator of the facility;
 - 22 (b) Any person who owned or operated the facility at the
time of disposal or release of the hazardous substance;
 - 23 (c) Any person who owned or possessed a hazardous
24 substance and who by contract, agreement, or otherwise
25 arranged for disposal or treatment of the hazardous
26 substance at the facility, or arranged with a transporter
for transport for disposal or treatment of the hazardous
substance at the facility, or otherwise generated
hazardous waste disposed of or treated at the facility;

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(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, may recover all costs and damages from persons liable for them.

18. RCW 70.105D.030 provides in pertinent part:

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release.

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances.

19. RCW 70.105D.020(3) defines "facility" as:

(3) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

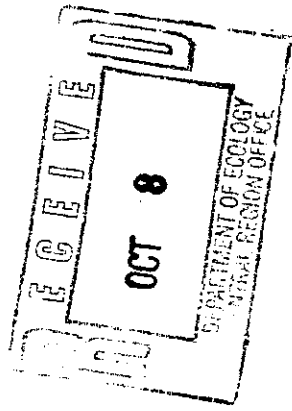
20. RCW 70.105D.020(5) defines hazardous substances to include:

(1) Any hazardous or extremely hazardous waste as defined in RCW 70.105.010(5) and (6), or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;

(2) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(3) Any substance that, on October 16, 1987, is a hazardous substance under section 101(14) of CERCLA.

21. RCW 70.105D.020(10) defines a release as:



OCT 07 1996

YAKIMA COUNTY CLERK

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

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

PAXTON SALES, CORP.,

Defendant(s).

No. 96 2 02448 1

AFFIDAVIT OF
RICHARD ROEDER

STATE OF WASHINGTON)
COUNTY OF YAKIMA) ss.

I, Richard Roeder, being duly sworn on 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 a Site Manager for the Department of Ecology, Central Regional Office Toxics Cleanup Program. I have been involved in the negotiation of the Consent Decree that is being presented to the court for entry. I am the person to whom written comments on the Consent Decree were to be sent, and I attended the public hearing at which oral comments on the Consent Decree were to be accepted.

3. The notice of public comment is attached to this Affidavit for the Court's review. Ecology received one written comment on the Consent Decree during the comment

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period. That comment and Ecology's response are attached to this affidavit.

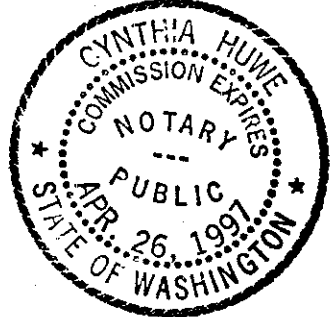
I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

DATED this 24 day of September, 1996.

Richard Roeder
RICHARD ROEDER

Signed or attested before me, *Cindy Huwe*, by
Richard Roeder, 1996.

DATED this 24 day of *September*, 1996.



Cynthia Huwe
NOTARY PUBLIC, in and for the
State of Washington.
My commission expires on:
4/26/97

FA Paxton/trick Aff