

WASHINGTON STATE DEPARTMENT OF ECOLOGY  
NORTHWEST REGIONAL OFFICE

TO: Robert Warren, TCP NWRO Section Manager  
THROUGH: Ching-Pi Wang, TCP NWRO Upland Unit Supervisor *CPW*  
FROM: Maura S O'Brien, PG/HG #869 Professional Geologist and Site Manager *MSO*  
SUBJECT: Proposal for Pace National Site Consent Decree Closure & Delisting Briefing Package  
DATE: November 9, 2015

Ultra Corporation, former Pace National Site, has successfully completed their cleanup actions and groundwater compliance monitoring under its 2012 Consent Decree (CD) and 2008 Agreed Order. The cleanup results show no detection of chemicals of concern throughout the Site. Ecology proposes to close and dismiss the CD and delist this Site from the state Hazardous Sites List. The Site identification is Cleanup Id # 5063, Facility Site Id # 2159, and Consent Decree #12-2-16257-3SEA. The Site is located at 500 7<sup>th</sup> Avenue South, approximately one-half mile south of downtown Kirkland, King County, Washington.

SRMKII, LLC (SRM) was added to the CD in 2013 after it purchased the Site. SRM volunteered to conduct additional cleanup tasks including performing soil testing, where there were pockets of soil with chemical detection below state cleanup level called gray soils, and excavate and remove these gray soils. Post-excavation testing was implemented to confirm all known soils with chemical detection had been removed. These results are reported in the "Post-Excavation Compliance Soil Sampling Results." This report confirms that all known soils with identified chemicals of concern have been removed from this Site including the vinyl chloride soils (PES Environmental, Inc. 3/17/2014).

Ecology required four consecutive groundwater compliance monitoring events after the completion of the gray soil excavation. The groundwater compliance results show no detection for chemicals of concern (PES Environmental Inc. 11/18/2015). The Pace National Site has successfully satisfied all cleanup requirements in the CD and state cleanup regulations, and has gone above and beyond these requirements.

We propose to close and dismiss this CD and remove this Site from the state Hazardous Sites List. This proposal will require public outreach with a 30-day comment period, and full payment and closure of the Ultra Corporation-Ecology Fiscal account #JJ304. This recommendation follows review by Assistant Attorney General Dori Jaffe on November 4, 2015 and conference with Robert Warren, TCP NWRO Section Manager on November 9, 2015.

Respectfully submitted,



Maura S. O'Brien, PG/HG #869 and Site Manager  
Professional Geologist/Hydrogeologist  
Toxics Cleanup Program NWRO



Ching-Pi Wang, Uplands Unit Supervisor  
Toxics Cleanup Program  
Northwest Regional Office

Enclosure – Site Manager Briefing Package

## Pace National Site Background and Cleanup History

Pace National purchased the Site in 1969 and operated a specialty chemical mixing and packaging plant from 1971 to 1990. The plant had 14 underground storage tanks containing alcohols, oils, petroleum and proprietary mixtures. After the business closed in 1990, the Pace consultants conducted two environmental assessments and identified contamination.

Several investigations followed in the 1990s and laboratory analyses included a vast array of chemicals for volatile and semi-volatile organic compounds, metals, petroleum, pesticides and herbicides. Testing identified the chemicals of concern were limited to organic solvents: PCE also called perchloroethane or tetrachloroethane, TCE or trichloroethane, vinyl chloride; and petroleum as Stoddard solvent and diesel in soils and/or groundwater.

Pace conducted interim actions to address and remove contamination including removal of the 14 storage tanks, excavation and Ecology approved off-site treatment and disposal of contaminated soils. Five cleanup actions were conducted primarily excavation and in situ bioremediation to remove contamination in saturated soil and groundwater. After eight years of cleanup actions, soil and groundwater testing showed the only remaining chemical of concern was limited to one substance vinyl chloride (VC) in groundwater. Pace continued in situ treatment and the VC concentration level continued to decrease.

In 2013, SRMKII LLC purchased the Site, and SRM and Ultra volunteered to conduct additional cleanup tasks. SRM consultants, PES Environmental Inc. (PES), performed soil testing where there were pockets of soil with chemical detections below state cleanup levels called gray soils, and volunteered to excavate and remove these gray soils. PES conducted post-excavation testing to confirm all known soils with chemical detection had been removed. These results are reported in the Post-Excavation Compliance Soil Sampling Report. This report confirms that all known soils with identified chemicals of concern including the vinyl chloride soils have been removed from this Site (PES 3/17/2014).

Ecology required four consecutive semi-annual groundwater compliance monitoring events after the completion of the gray soil excavation. The groundwater compliance results show no detection of vinyl chloride. These results confirm that the cleanup actions are complete, and no further action is required at this Site. SRM and Ultra Corporation have successfully satisfied all cleanup requirements in the Consent Decree and state cleanup regulations. They have gone above and beyond the state requirements. This Site is proposed to be removed from the state Hazardous Sites List.

SRM and Ultra Corporation completed all tasks under their Consent Decree No. 12-2-16257-3SEA including the four consecutive groundwater compliance monitoring events. The Site Closure Report and Compliance Groundwater Monitoring Report by PES Environmental Inc dated November 2015 document the successful cleanup of this Site. We recommend closing and dismissing this CD after public outreach and a 30-day public comment period, and after full payment and closure of the Ultra Corporation-Ecology Fiscal account #JJ304. This recommendation follows review by Assistant Attorney General Dori Jaffe on November 4, 2015 and conference with Robert Warren, TCP NWRO Section Manager on November 9, 2015.



# Ecology-Supervised Cleanups

Washington State Department of Ecology  
Toxics Cleanup Program

## STATUS LETTER CHECKLIST

### Instructions for Cleanup Project Manager:

- Complete and sign this form and draft the status letter using the applicable boilerplate. Do not alter the boilerplate without consulting with the AAG assigned to the site.
- Submit the completed form and status letter for signature by your section manager (if an order) or the program manager (if a decree).
- After the status letter is signed and sent to the recipients, ensure that the letter is included in the site file and uploaded into DSARS and that the site status is updated in ISIS.

### Step 1: Identify Site

Cleanup Site Name: Ultra Corporation, former Pace National Site

Cleanup Site Address: 500 7<sup>th</sup> Avenue South, Kirkland, King County, WA

Cleanup Site Number: 5063

Facility/Site Number: 2159

### Step 2: Identify Order or Decree

[Agreed Order / Consent Decree] Number: CD 12-2-16257-3SEA and AO #6221 dated 1/16/2009

Date Effective: CD 5/07/2012

Date Amended (if applicable): 9/27/2013

### Step 3: Complete Checklist

See the instructions on the back side before completing this step.

1. Have the remedial actions required under the order or decree been completed?

X  Yes  No

Have you checked with the AAG assigned to the site?

Yes  No

2. Have the remedial action costs incurred by Ecology under the order or decree been recovered?

X  Yes  No

Have you checked with Cost Recovery Coordinator?

X  Yes  No

3. Has the site been removed from the hazardous sites list?

Yes X  No – cleanup not completed  Not listed

4. Do any other programs or government agencies have an interest in the status of the site?

Yes X  No If "yes," then cc: the appropriate program or agency contact.

### Step 4: Signature

To the best of my knowledge, the above information is correct.

Cleanup Project Manager Name: Maura S O'Brien, PG/HG #869

Signature:

Date: November 4, 2015

### Instructions for Step 3:

**Q1. Which remedial actions required under the order or decree must be completed by the PLP(s) to issue a status letter?**

The remedial actions that must be completed depend on which status letter you are issuing.

- To issue a **“satisfaction” letter** (investigation and study phase), all remedial actions required under the order or decree must be completed by the PLP(s).
- To issue a **“clean closure” letter** (cleanup phase), all remedial actions required under the order or decree must be completed by the PLP(s).
- To issue a **“dirty closure” letter** (cleanup phase), only the remedial actions required under the order or decree **through site delisting** must be completed by the PLP(s). The order or decree will remain in effect and the PLP(s) may be required to perform additional remedial actions after the status letter is issued, such as operation and maintenance of engineered controls or long-term monitoring.

**Q2a. Which remedial action costs incurred by Ecology under the order or decree must be recovered from the PLP(s) to issue a status letter?**

The remedial action costs that must be recovered depend on which status letter you are issuing.

- To issue a **“satisfaction” letter** (investigation and study phase), all remedial action costs incurred by Ecology under the order or decree must be recovered from the PLP(s).
- To issue a **“clean closure” letter** (cleanup phase), all remedial action costs incurred by Ecology under the order or decree must be recovered from the PLP(s).
- To issue a **“dirty closure” letter** (cleanup phase), only the remedial action costs incurred by Ecology under the order or decree **through site delisting** must be recovered from the PLP(s). The order or decree will remain in effect and Ecology may incur and recover additional remedial action costs under the order or decree after the status letter is issued, such as operation and maintenance of engineered controls, long term monitoring, or periodic reviews.

**Q2b. How do I determine when all of the remedial action costs identified under Question 2a above have been recovered?**

To determine when all of the remedial action costs identified under Question 2a have been recovered, do the following:

- Identify the last date for charges and notify the Cost Recovery Coordinator (CRC).
- Review and approve the invoice for those charges.
- Confirm with the CRC whether payment for those charges has been received.
- If you are issuing a “clean closure” letter, request the CRC to close the SIC.

**Q3. Before issuing a status letter for the cleanup phase, must the site be delisted?**

Yes. For the cleanup phase, the site must be delisted before the status letter is issued. This is true irrespective of whether you are issuing a “clean closure” or “dirty closure” letter.



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

June 25, 2015

Ms. Andrea Lieberman  
Ultra Corporation  
Seattle, WA 981009

and

Mr. Tomson  
SRMKII, LLC  
520 6<sup>th</sup> Street South  
Kirkland, WA 98033

Subject: Groundwater Compliance Monitoring Report for former Pace National Site  
500 – 7<sup>th</sup> Avenue South, Kirkland, WA - Consent Decree No. 12-2-16257-3SEA

Dear Ms. Lieberman and Mr. Tomson:

PES Environmental, Inc. (PES) prepared the Draft Compliance Groundwater Monitoring – May 2015 for the former Pace National Site (Site) in Kirkland, Washington dated June 4, 2015. This work is to confirm cleanup action compliance at the Site following the Consent Decree.

The PES report documents the groundwater compliance event showing that all wells are in compliance and below cleanup action level for the third consecutive time. The fourth compliance event is scheduled for November 2015. The final step for completing the Consent Decree is to conduct the fourth groundwater compliance event and if these results are below cleanup action level, then to prepare a closure report. The closure process involves a 30-day public comment period for public review of the Site Closure Report and Ecology's proposal to close and dismiss the Site Consent Decree.

Thank you for your consistent and good work at the former Pace Site. I appreciate working together with you and returning this Site to beneficial use in Kirkland and greater King County. If you have questions, please contact me at the Northwest Regional Office in Bellevue at [maura.obrien@ecy.wa.gov](mailto:maura.obrien@ecy.wa.gov) or by telephone at 425-649-7249.

Sincerely,

Maura S. O'Brien, PG/HG #869  
Professional Geologist/Hydrogeologist and Site Manager  
Toxics Cleanup Program

cc John J Houlihan, Jr. Houlihan Law  
Charles R Wolfe, Attorney at Law  
Dan Balbiani, PE, PES Environmental, Inc.



MAURA SALAMAH O'BRIEN

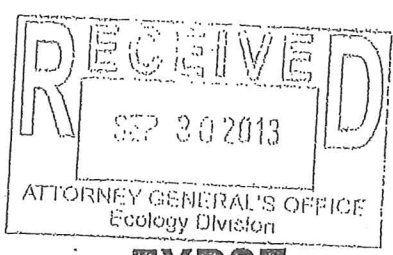




Pace National

SIT 8.3

12-2-16257-3, SEA



EXP07

FILED KING COUNTY, WASHINGTON

SEP 27 2013

SUPERIOR COURT CLERK

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

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
ULTRA CORPORATION, a  
Washington corporation,  
  
Defendant.

NO. 12-2-16257-3 SEA  
  
FIRST AMENDMENT TO CONSENT  
DECREE RE: PACE NATIONAL

This First Amendment to the Consent Decree is issued pursuant to the authority of Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

STATEMENT OF CURRENT CONDITIONS

A. Consent Decree 12-2-16257-3 SEA was signed by this Court and filed on May 7, 2012 (Consent Decree). The Consent Decree represents a negotiated settlement between the Washington State Department of Ecology (Ecology) and the Ultra Corporation (Ultra). Ultra and Ecology are collectively referred to as the Parties.

B. The Consent Decree provides for remedial action based upon the release of hazardous substances and applies to the Pace National Site (as defined in the Consent Decree), which includes real property located generally at 500 7<sup>th</sup> Avenue S., Kirkland, Washington (Ultra Property).





1 C. SRMKII LLC, a Washington limited liability company (SRMKII), has  
 2 purchased the Ultra Property and desires to become a party Defendant for all purposes under  
 3 the Consent Decree, to be bound by all of the terms and conditions of the Consent Decree as  
 4 though an original party to the same, and to solely and exclusively perform all remaining work  
 5 to be performed pursuant to Section VI (Work to Be Performed) and as may otherwise be  
 6 required under the Consent Decree.

7 D. As required by the Consent Decree, Ecology has concluded that the sale of the  
 8 property and the addition of SRMKII as a Defendant to this Consent Decree is in the public  
 9 interest, and will not pose a threat to human health or the environment.

#### 10 FIRST AMENDMENT TO CONSENT DECREE

11 Based on the foregoing, the Parties to the Consent Decree stipulate and agree that the  
 12 Consent Decree, including all Exhibits attached thereto, shall be further amended, pursuant to  
 13 the provisions of Section XV of the Consent Decree as follows:

- 14 1. Section IV, paragraph B, definition of "Parties" is amended to include SRMKII,  
 15 LLC as a party.
- 16 2. Section IV, paragraph C, definition of "Defendant" is amended to include  
 17 SRMKII, LLC.
- 18 3. All references to "Defendant" and "Ultra" in Sections VI through XXX shall be  
 19 amended to say "Defendants." All remaining work to be performed pursuant to  
 20 Section VI (Work to Be Performed) and any other obligations as may otherwise  
 21 be required under the Consent Decree shall be the responsibility of SRMKII,  
 22 LLC.
- 23 4. Section VII (Designated Project Coordinators) is hereby amended to identify the  
 24 following individual as the project coordinator for the Defendants:

25 DAN BALBIANI  
 26 Principal Engineer

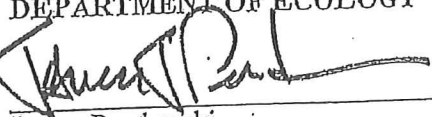


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

PES Environmental, Inc.  
1215 Fourth Avenue, Suite 1350  
Seattle, WA 98161  
(206) 529-3980

5. Except as set forth above, all other provisions of the Consent Decree remain in full force and effect, unchanged by this First Amendment.

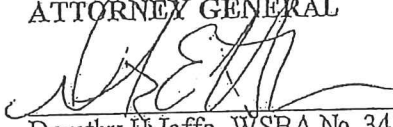
STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



James Pendowski  
Program Manager  
Toxics Cleanup Program  
(360) 407-7177

Date: 9/25/13

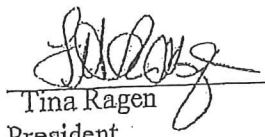
ROBERT W. FERGUSON,  
ATTORNEY GENERAL



Dorothy H. Jaffe, WSBA No. 34148  
Assistant Attorney General  
(360) 586-4637

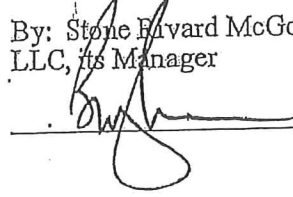
Date: 9/25/13

ULTRA CORPORATION

  
Tina Ragen  
President

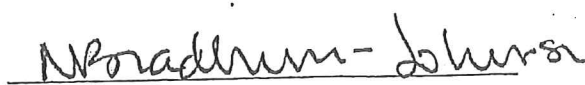
Date: \_\_\_\_\_  
*It is ordered:  
Approved*

SRMKII, LLC

By: Stone Harvard McGonigle Development,  
LLC, its Manager  


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

ENTERED this \_\_\_\_\_ day of 9/27, 2013.

  
JUDGE  
King County Superior Court



Former Pace National Site  
500 7<sup>TH</sup> Avenue South  
Kirkland, Washington  
Site Cleanup ID# 5063  
Facility Site ID# 2159

RECEIVED  
JAN 17 2012  
DEPT OF ECOLOGY  
TCP-NWRO



## Consent Decree



Toxics Cleanup Program  
Northwest Regional Office  
Washington State Department of Ecology  
Bellevue, Washington

January 2012



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

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

NO.

PACE NATIONAL CONSENT  
DECREE

v.

ULTRA CORPORATION, a Washington  
corporation,  
  
Defendant.

TABLE OF CONTENTS

I.	INTRODUCTION .....	3
II.	JURISDICTION .....	4
III.	PARTIES BOUND .....	4
IV.	DEFINITIONS.....	5
V.	FINDINGS OF FACTS .....	5
VI.	WORK TO BE PERFORMED.....	9
VII.	DESIGNATED PROJECT COORDINATORS.....	12
VIII.	PERFORMANCE.....	12
IX.	ACCESS .....	13
X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY.....	14
XI.	PROGRESS REPORTS.....	14
XII.	RETENTION OF RECORDS .....	15
XIII.	TRANSFER OF INTEREST IN PROPERTY .....	16
XIV.	RESOLUTION OF DISPUTES.....	16
XV.	AMENDMENT OF DECREE.....	18
XVI.	EXTENSION OF SCHEDULE.....	18
XVII.	ENDANGERMENT .....	20

1	XVIII.	COVENANT NOT TO SUE .....	21
	XIX.	CONTRIBUTION PROTECTION .....	22
2	XX.	LAND USE RESTRICTIONS.....	22
	XXI.	INDEMNIFICATION .....	22
3	XXII.	COMPLIANCE WITH APPLICABLE LAWS .....	23
	XXIII.	REMEDIAL ACTION COSTS .....	24
4	XXIV.	IMPLEMENTATION OF REMEDIAL ACTION.....	25
	XXV.	PERIODIC REVIEW .....	25
5	XXVI.	PUBLIC PARTICIPATION .....	26
	XXVII.	DURATION OF DECREE.....	27
6	XXVIII.	CLAIMS AGAINST THE STATE.....	27
	XXIX.	EFFECTIVE DATE.....	27
7	XXX.	WITHDRAWAL OF CONSENT .....	28
8		EXHIBIT A. Site Diagram	
		EXHIBIT B. Cleanup Action Plan	
9		EXHIBIT C. Ultra Property Legal Description (to be added)	
		EXHIBIT D. Agreed Order No. 6221	
10		EXHIBIT E. Scope of Work with Schedule	
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			



1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and Ultra Corporation, a Washington corporation, (Defendant) under this Decree is  
4 to provide for remedial action at a facility where there has been a release or threatened release  
5 of hazardous substances. This Decree requires Defendant to undertake the remedy set forth in  
6 the Clean-up Action Plan, which includes the implementation of a Compliance Monitoring  
7 Plan, attached hereto as Exhibit B which requires, in part, monitoring on-going natural  
8 attenuation of groundwater impacts at the Site.

9 Ecology has determined that these actions are necessary to protect human health and  
10 the environment.

11 B. The Complaint in this action is being filed simultaneously with this Decree. An  
12 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
13 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the  
14 Parties agree that settlement of these matters without litigation is reasonable and in the public  
15 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

16 C. By signing this Decree, the Parties agree to its entry and agree to be bound by  
17 its terms.

18 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
19 parties from any liability they may have with respect to matters alleged in the Complaint. The  
20 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
21 sums expended under this Decree.

22 E. This Decree shall not be construed as proof of liability or responsibility for any  
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
24 provided, however, that Defendant shall not challenge the authority of the Attorney General  
25 and Ecology to enforce this Decree.  
26

1 F. The Court is fully advised of the reasons for entry of this Decree, and good  
2 cause having been shown:

3 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows.

## 4 II. JURISDICTION

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
6 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

7 B. Authority is conferred upon the Washington State Attorney General by RCW  
8 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after  
9 public notice and any required hearing, Ecology finds the proposed settlement would lead to a  
10 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous  
13 substances has occurred at the Site that is the subject of this Decree.

14 D. Ecology has given notice to Defendant of Ecology's determination that  
15 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

16 E. The actions to be taken pursuant to this Decree are necessary to protect public  
17 health and the environment.

18 F. This Decree has been subject to public notice and comment.

19 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
20 hazardous substances at the Site in compliance with the cleanup standards established under  
21 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

22 H. Defendant has agreed to undertake the actions specified in this Decree and  
23 consents to the entry of this Decree under MTCA.

## 24 III. PARTIES BOUND

25 This Decree shall apply to and be binding upon the Parties to this Decree, their  
26 successors and assigns. The undersigned representative of each party hereby certifies that he

1 or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
2 comply with this Decree. Defendant agrees to undertake all actions required by the terms and  
3 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's  
4 responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents,  
5 contractors, and subcontractors retained to perform work required by this Decree, and shall  
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with  
7 this Decree.

#### 8 IV. DEFINITIONS

9 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and  
10 WAC 173-340-200 shall control the meanings of the terms in this Decree.

11 A. Site: The Site is referred to as Pace National and is generally located at 500 7<sup>th</sup>  
12 Avenue S., Kirkland Washington. The Site is specifically identified and described in the Site  
13 Diagram, attached hereto as Exhibit A. The Site constitutes a Facility under RCW  
14 70.105D.020(5).

15 B. Parties: Refers to the State of Washington, Department of Ecology and Ultra  
16 Corporation.

17 C. Defendant: Refers to Ultra Corporation, a Washington corporation, and its  
18 successors and assigns. Ultra Corporation was formerly known as Pace National Corporation.

19 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
20 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
21 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

22 E. Ultra Property: Refers to the real property located generally at 500 7th Avenue  
23 S., Kirkland Washington. A legal description of the Ultra Property is attached as Exhibit C.

#### 24 V. FINDINGS OF FACTS

25 Ecology makes the following findings of fact without any express or implied  
26 admissions of such facts by Defendant.

1           A.     The Pace National Site subject to the Work to be Performed in this Consent  
2 Decree is generally located at 500 7th Avenue South, approximately 0.5 mile south of  
3 downtown Kirkland. The 5-acre Ultra Property is bounded to the north by 7<sup>th</sup> Avenue South,  
4 to the east by Burlington Northern Santa Fe Railway tracks, to the south by the Lakeview  
5 Elementary School, and to the west by residential properties. The Site, as depicted in  
6 Exhibit A, is generally located on the northern portion of the Ultra Property, as described in  
7 Exhibit C, and is consistent with the historical and current area where Hazardous Substances  
8 had come to be located.

9           B.     Based on a Phase I Environmental Site Assessment Update completed by Hart  
10 Crowser (dated November 14, 2003), the Ultra Property was occupied by several residential  
11 dwellings from the early 1900s until the early 1960s when the Property was converted to  
12 commercial/industrial applications. The Seattle Door Company built an office building in the  
13 northeastern corner of the Property in 1963. The Tyee Lumber Company stored wood products  
14 for builders in the northern portion of the Property until PACE National (PACE) purchased the  
15 Property in 1969.

16           C.     PACE operated a specialty chemical mixing and packaging facility on the  
17 northern portion of the Property from 1971 to approximately 1990. In addition to a large  
18 former industrial/warehouse and office building, the PACE facility had 14 underground storage  
19 tanks (USTs) containing regulated and unregulated substances such as alcohols, oils, and  
20 proprietary mixtures used to formulate products. *See* Exhibit B sections 2 and 3 and figure 2  
21 for more details.

22           D.     Between 1990 and 2006 (when the PACE building was demolished) the  
23 Property was used for retail storage. The southern half of the Property has remained largely  
24 undeveloped and consists of trees and dense shrubs. Based on the available information, no  
25 operations occurred on the southern portion of the Ultra Property.

26           E.     PACE changed its name to Ultra Corporation in 1991.

1 F. Numerous environmental investigations and independent remedial actions have  
2 been completed at the Property including extensive soil and groundwater investigation and  
3 sampling, source area soil removal actions and groundwater treatment interim remedial  
4 actions. Some of these actions were undertaken as independent remedial actions and others  
5 were undertaken under the Voluntary Cleanup Program and Agreed Order No. 6221. Agreed  
6 Order No. 6221 is attached hereto as Exhibit D. The actions taken to date include:

7 1. Prior to 2007, investigations showed chemicals of concern in soil, which  
8 included chlorinated volatile organic compounds (perchloroethene, trichloroethene,  
9 dichloroethenes, and vinyl chloride), petroleum substances (gasoline-, diesel- and oil-  
10 range petroleum hydrocarbons), mineral spirits and pesticides. Groundwater testing  
11 prior to 2007 showed the same suite of chemicals plus chloromethane and arsenic.  
12 After interim remedial actions were instituted from the 1990s to 2006, testing showed  
13 that there were no known chemicals of concern in the soil and only one solvent, vinyl  
14 chloride, persisted in groundwater (SES RI/FS 2010).

15 2. Remedial actions included removal of the 14 underground storage tanks  
16 (USTs) in 1990 and tanks were reported in good condition. Impacted soil was  
17 excavated in conjunction with the tank removal and other interim remedial actions.

18 3. Removal of oil/water separator, one above ground storage tank, and  
19 1,000 gallon flow-through Ecology tank in 1999 by PSCI Environmental (PSCI). Five  
20 soil samples were submitted for chemical analyses and results showed several  
21 pesticides (including chlorodane, pentachlorophenol, heptachlor, 4,4-DDD, 4,4-DDE,  
22 and delta BHC) were detected in at least one of the tank excavation soil samples.  
23 Subsequently, Galloway Environmental, Inc (GEI) directed the excavation and  
24 treatment of impacted soil.

25 4. In May 2000 GEI also excavated and removed 45 tons of petroleum-  
26 impacted soil from the Railroad Unloading Area (RUA) located at the northeast corner

1 of the Property. GEI noted that concentrations of target compounds in the final  
2 excavation sidewall and bottom samples did not exceed MTCA method A residential  
3 cleanup levels.

4 5. In December 2000 GEI installed a hand auger boring adjacent to the  
5 former Railroad Unloading Area and found diesel- and oil-range petroleum  
6 hydrocarbons in a grab groundwater sample.

7 6. In 2003 Hart Crowser conducted an environmental assessment under  
8 Ecology's Voluntary Cleanup Program and removed an additional 105 tons of  
9 petroleum- and chlorinated solvent-impacted soils and backfilled with clean soil. Prior  
10 to backfilling, a cleanup treatment method using Hydrogen Reducing Compound  
11 (HRC) was added to the excavation to enhance in situ biological degradation of the  
12 residual chlorinated solvents present in shallow groundwater.

13 7. In 2006 Hart Crowser conducted more excavation at five areas and  
14 removed contaminated soil offsite for treatment and/or disposal. Post excavation  
15 sampling showed no detections above MTCA method A residential cleanup levels with  
16 the exception of one common solvent, vinyl chloride in groundwater. *See* Exhibit D for  
17 more details.

18 A. In accordance and compliance with the December 19, 2008 Agreed Order No.  
19 6221, Ultra performed a Remedial Investigation and Feasibility Study (RI/FS), and prepared a  
20 draft RI/FS report, and draft Cleanup Action Plan (CAP) for the Site.

21 1. The draft RI/FS identified vinyl chloride in groundwater as the only  
22 chemical of concern at the Site remaining above MTCA method A cleanup level and it  
23 is found solely in groundwater. All other chemicals of concern at the Site are below the  
24 MTCA cleanup levels in soil and groundwater for unrestricted use (i.e. MTCA Method  
25 A).

26 2. Sound Environmental Strategies (now known as SoundEarth Strategies

1 or SES) also conducted a Supplemental Remedial Investigation at the Site to address  
2 data gaps identified by Ecology including soil and groundwater investigation of the  
3 adjacent 7th Avenue South right of way and the Moss Bay Vista Condominium  
4 property located at 431 7th Avenue South, Kirkland, WA, King County Parcel No.  
5 5678300000, (the "MBV Property") which is adjacent to the west property boundary of  
6 the Site. Initial soil and groundwater sampling on the MBV Property documented no  
7 contaminants of concern above MTCA method A cleanup levels for unrestricted land  
8 use except for one occurrence of diesel range petroleum hydrocarbons. The diesel  
9 range petroleum hydrocarbons are not associated with the Site.

10 3. As part of the Agreed Order, SES conducted two remedial technology  
11 pilot tests to evaluate two cleanup methods. One method used in situ treatment of the  
12 groundwater at the Site using EHC<sup>®</sup> reactive zero valent iron barrier wall and the  
13 second method used bioaugmentation. The pilot test results showed that neither  
14 alternative method was viable to treat residual vinyl chloride groundwater  
15 concentrations at this Site.

16 4. The draft RI/FS identified Monitored Natural Attenuation of vinyl  
17 chloride in groundwater concentrations as the preferred remedy for the Site.

18 5. Ecology approved the draft RI/FS Report on December 1, 2010, and the  
19 document went out for public comment on January 27, 2012. The thirty (30) day public  
20 comment period terminated on February 27, 2012.

21 B. On April 13, 2011, in accordance and compliance with Agreed Order No. 6221,  
22 Ultra prepared and submitted to Ecology a draft CAP to implement the preferred remedy of  
23 Monitored Natural Attenuation of vinyl chloride in groundwater at the Site.

## 24 VI. WORK TO BE PERFORMED

25 This Decree contains a program designed to protect human health and the environment  
26

1 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
2 or from the Site.

3 A. Defendant shall perform the work specified in detail in the CAP (Exhibit B) and  
4 the Scope of Work and Schedule (Exhibit E). The work to be performed generally includes the  
5 following:

6 1. The CAP requires Monitored Natural Attenuation of the groundwater  
7 containing residual vinyl chloride above the current MTCA Method A cleanup level  
8 concentration.

9 2. Compliance monitoring will be conducted as specified in the  
10 Compliance Monitoring Plan (Exhibit B) and under WAC 173-340-410.

11 3. Semi-annual Progress Reports are required for Monitored Natural  
12 Attenuation remedial action with groundwater compliance monitoring in accordance  
13 with Section XI. (Progress Reports).

14 4. After four semi-annual sampling events, Ecology will evaluate the  
15 progress of the Monitored Natural Attenuation remedial action.

16 a. If the vinyl chloride concentration continues to decline, then  
17 Ecology will require Ultra to revise the Groundwater Compliance Monitoring  
18 Plan to decrease the number of wells monitored and/or change to annual  
19 monitoring until four consecutive monitoring events demonstrate that the vinyl  
20 chloride concentration is at or below MTCA Method A cleanup level for  
21 unrestricted land use at all points of compliance.

22 b. If the vinyl chloride concentration remains constant, Defendant  
23 may submit a request for final closure and delisting of the Site conditioned upon  
24 recordation of appropriate restrictive covenants for the Site addressing  
25 groundwater usage and construction worker protection (the "Restrictive  
26 Covenant Closure"). In such circumstance, no further monitoring of the



1 groundwater would be required except in accordance with Periodic Review  
2 pursuant to Section XXIV of this Decree. Any such restrictive covenant shall  
3 be recorded with the office of the King County Auditor against title to that  
4 portion of the Ultra Property then constituting the Site.

5 c. If the vinyl chloride concentration stays constant or increases,  
6 then Ecology may require additional monitoring, additional data evaluation,  
7 and/or the institution of a contingency plan.

8 5. A site closure report will be prepared and submitted to Ecology after  
9 completing four consecutive compliance monitoring events where monitoring results  
10 show vinyl chloride concentration below MTCA Method A cleanup level at all points  
11 of compliance, as outlined in the CAP, see Exhibit B. If the Restrictive Covenant  
12 Closure is implemented, then a site closure report will be prepared and submitted to  
13 Ecology prior to recordation of the restrictive covenant

14 6. If there is an inconsistency between the Decree, the CAP (Exhibit B)  
15 and the Scope of Work and Schedule (Exhibit E), the terms and conditions of the CAP  
16 (Exhibit B) shall apply.

17  
18 B. In order to implement the CAP, Defendant will prepare and submit for  
19 Ecology's review and approval all documents necessary to conduct the final clean up action.  
20 All deliverables identified in the CAP (Exhibit B) and Scope of Work and Schedule (Exhibit  
21 E), once approved by Ecology, are hereby incorporated by reference and become an integral  
22 and enforceable part of this Decree.

23 C. Defendant agrees not to perform any remedial actions outside the scope of this  
24 Decree unless the Parties agree to modify the Scope of Work with Schedule (Exhibit E) to  
25 cover these actions. All work conducted by Defendant under this Decree shall be done in  
26 accordance with Chapter 173-340 WAC unless otherwise provided herein.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Maura S. O'Brien, PG/HG #869  
4 Professional Geologist/Hydrogeologist  
5 Toxics Cleanup Program - NWRO  
6 Department of Ecology  
7 3190 - 160th Avenue SE  
8 Bellevue, WA 98008-5452  
9 Phone: 425-649-7249

7 The project coordinator for Defendant is:

8 Thomas Cammarata  
9 SoundEarth Strategies, Inc.  
10 (dba Sound Environmental Strategies)  
11 2811 Fairview Ave East, Suite 2000  
12 Seattle, Washington 98102  
13 Main: 206-306-1900  
14 Direct: 206-436-5940  
15 Mobile: 206-261-8046

13 Each project coordinator shall be responsible for overseeing the implementation of this  
14 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
15 To the maximum extent possible, communications between Ecology and Defendant and all  
16 documents, including reports, approvals, and other correspondence concerning the activities  
17 performed pursuant to the terms and conditions of this Decree shall be directed through the  
18 project coordinators. The project coordinators may designate, in writing, working level staff  
19 contacts for all or portions of the implementation of the work to be performed required by this  
20 Decree.

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

23 **VIII. PERFORMANCE**

24 All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
25 the supervision and direction of a geologist licensed in the State of Washington or under the  
26 direct supervision of an engineer registered in the State of Washington, except as otherwise

1 provided for by Chapters 18.220 and 18.43 RCW.

2 All engineering work performed pursuant to this Decree shall be under the direct  
3 supervision of a professional engineer registered in the State of Washington, except as  
4 otherwise provided for by RCW 18.43.130.

5 All construction work performed pursuant to this Decree shall be under the direct  
6 supervision of a professional engineer or a qualified technician under the direct supervision of  
7 a professional engineer. The professional engineer must be registered in the State of  
8 Washington, except as otherwise provided for by RCW 18.43.130.

9 Any documents submitted containing geologic, hydrologic or engineering work shall be  
10 under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or  
11 RCW 18.43.130.

12 Defendant shall notify Ecology in writing of the identity of any engineer(s) and  
13 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
14 of this Decree, in advance of their involvement at the Site.

#### 14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have full authority to enter and  
16 freely move about all property at the Site that Defendant either owns, controls, or has access  
17 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation  
18 logs, and contracts related to the work being performed pursuant to this Decree; reviewing  
19 Defendant's progress in carrying out the terms of this Decree; conducting such tests or  
20 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or  
21 other documentary type equipment to record work done pursuant to this Decree; and verifying  
22 the data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to  
23 secure access rights for those properties within the Site not owned or controlled by Defendant  
24 where remedial activities or investigations will be performed pursuant to this Decree. Ecology  
25 or any Ecology authorized representative shall give reasonable notice before entering any Site  
26 property owned or controlled by Defendant unless an emergency prevents such notice. All

1 Parties who access the Site pursuant to this Section shall comply with any applicable Health  
2 and Safety Plan(s). Ecology employees and their representatives shall not be required to sign  
3 any liability release or waiver as a condition of Site access.

#### 4 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

5 With respect to the implementation of this Decree, Defendant shall make the results of  
6 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
7 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology  
8 in both printed and electronic formats in accordance with Section XI. (Progress Reports),  
9 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any  
10 subsequent procedures specified by Ecology for data submittal.

11 If requested by Ecology, Defendant shall allow Ecology and/or its authorized  
12 representative to take split or duplicate samples of any samples collected by Defendant  
13 pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days  
14 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,  
15 allow Defendant and/or its authorized representative to take split or duplicate samples of any  
16 samples collected by Ecology pursuant to the implementation of this Decree, provided that  
17 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights  
18 under Section IX. (Access), Ecology shall notify Defendant prior to any sample collection  
19 activity unless an emergency prevents such notice.

20 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be  
21 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to  
22 be conducted, unless otherwise approved by Ecology.

#### 23 XI. PROGRESS REPORTS

24 Defendant shall submit to Ecology written Progress Reports describing the actions  
25 taken during the previous reporting period to implement the requirements of this Decree on the  
26 frequency as specified in the CAP (Exhibit B) and the Scope of Work and

1 Schedule (Exhibit E). The Progress Reports shall include the following:

2 A. A list of on-site activities that have taken place during the reporting period;

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

5 C. Description of all deviations from the Scope of Work with Schedule (Exhibit E)  
6 during the current reporting period and any planned deviations in the upcoming reporting  
7 period;

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

10 E. All raw data (including laboratory analyses) received by Defendant during the  
11 past reporting period will be entered into Ecology's EIM data system with required  
12 identification of the source of the sample; and

13 F. A list of deliverables for the upcoming reporting period if different from the  
14 schedule.

15 All Progress Reports shall be submitted by the tenth (10<sup>th</sup>) day of the month in  
16 which they are due after the effective date of this Decree and 45 days after laboratory results  
17 are available. Unless otherwise specified, Progress Reports and any other documents  
18 submitted pursuant to this Decree shall send two hard copies by US mail and one electronic  
19 copy to Ecology's project coordinator.

## 20 XII. RETENTION OF RECORDS

21 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
22 no longer in effect as provided in Section XXVII. (Duration of Decree), Defendant shall  
23 preserve all records, reports, documents, and underlying data in its possession relevant to the  
24 implementation of this Decree and shall insert a similar record retention requirement into all  
25 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant  
26

1 shall make all records available to Ecology and allow access for review within a reasonable  
2 time.

### 3 **XIII. TRANSFER OF INTEREST IN PROPERTY**

4 No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
5 interest in any portion of the Site shall be consummated by Defendant without provision for  
6 continued operation and maintenance of any containment system, treatment system, and/or  
7 monitoring system installed or implemented pursuant to this Decree.

8 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during  
9 the effective period of this Decree, Defendant shall provide a copy of this Decree to any  
10 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
11 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.  
12 Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent  
13 with this Consent Decree and notify all transferees of the restrictions on the use of the  
14 property.

### 15 **XIV. RESOLUTION OF DISPUTES**

16 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
17 other decision or action by Ecology's project coordinator, or an itemized billing statement  
18 under Section XXIII. (Remedial Action Costs); the Parties shall utilize the dispute resolution  
19 procedure set forth below.

20 1. Upon receipt of Ecology's project coordinator's written decision, or the  
21 itemized billing statement, Defendant has fourteen (14) days within which to notify  
22 Ecology's project coordinator in writing of its objection to the decision or itemized  
23 statement.

24 2. The Parties' project coordinators shall then confer in an effort to resolve  
25 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)  
26 days, Ecology's project coordinator shall issue a written decision.

1           3. Defendant may then request regional management review of the  
2 decision. This request shall be submitted in writing to the Northwest Region Toxics  
3 Cleanup Program Section Manager within seven (7) days of receipt of Ecology's  
4 project coordinator's written decision.

5           4. Ecology's Regional Section Manager shall conduct a review of the  
6 dispute and shall endeavor to issue a written decision regarding the dispute within thirty  
7 (30) days of Defendant's request for review.

8           5. If Defendant finds Ecology's Regional Section Manager's decision  
9 unacceptable, Defendant may then request final management review of the decision.  
10 This request shall be submitted in writing to the Toxics Cleanup Program Manager  
11 within seven (7) days of receipt of the Regional Section Manager's decision.

12           6. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
13 the dispute and shall endeavor to issue a written decision regarding the dispute within  
14 thirty (30) days of Defendant's request for review of the Regional Section Manager's  
15 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final  
16 decision on the disputed matter.

17           B. If Ecology's final written decision is unacceptable to Defendant, Defendant has  
18 the right to submit the dispute to the Court for resolution. The Parties agree that one judge  
19 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising  
20 under this Decree. In the event Defendant presents an issue to the Court for review, the Court  
21 shall review the action or decision of Ecology on the basis of whether such action or decision  
22 was arbitrary and capricious and render a decision based on such standard of review.

23           C. The Parties agree to only utilize the dispute resolution process in good faith and  
24 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
25 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
26 the other party may seek sanctions.

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

#### 4 XV. AMENDMENT OF DECREE

5 The project coordinators may agree to minor changes to the work to be performed  
6 without formally amending this Decree. Minor changes will be documented in writing by  
7 Ecology.

8 Substantial changes to the work to be performed shall require formal amendment of this  
9 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
10 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
11 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
12 by any party.

13 Defendant shall submit a written request for amendment to Ecology for approval.  
14 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
15 written request for amendment is received. If the amendment to the Decree is a substantial  
16 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
17 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
18 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
19 resolution procedures described in Section XIV. (Resolution of Disputes).

#### 20 XVI. EXTENSION OF SCHEDULE

21 A. An extension of schedule shall be granted only when a request for an extension  
22 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
23 deadline for which the extension is requested, and good cause exists for granting the extension.  
24 All extensions shall be requested in writing. The request shall specify:

- 25 1. The deadline that is sought to be extended;
- 26 2. The length of the extension sought;



1           3.     The reason(s) for the extension; and

2           4.     Any related deadline or schedule that would be affected if the extension  
3     were granted.

4           B.     The burden shall be on Defendant to demonstrate to the satisfaction of Ecology  
5     that the request for such extension has been submitted in a timely fashion and that good cause  
6     exists for granting the extension. Good cause may include, but may not be limited to:

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

11          2.     Acts of God, including fire, flood, blizzard, extreme temperatures,  
12    storm, or other unavoidable casualty; or

13          3.     Endangerment as described in Section XVII. (Endangerment).

14                 However, neither increased costs of performance of the terms of this  
15    Decree nor changed economic circumstances shall be considered circumstances beyond  
16    the reasonable control of Defendant.

17          C.     Ecology shall act upon any written request for extension in a timely fashion.  
18    Ecology shall give Defendant written notification of any extensions granted pursuant to this  
19    Decree. A requested extension shall not be effective until approved by Ecology or, if required,  
20    by the Court. Unless the extension is a substantial change, it shall not be necessary to amend  
21    this Decree pursuant to Section XV. (Amendment of Decree) when a schedule extension is  
22    granted.

23          D.     An extension shall only be granted for such period of time as Ecology  
24    determines is reasonable under the circumstances. Ecology may grant schedule extensions  
25    exceeding ninety (90) days only as a result of:  
26



1 **XVIII. COVENANT NOT TO SUE**

2 A. Covenant Not to Sue: In consideration of Defendant's compliance with the  
3 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
4 actions against Defendant, including its officers and directors, regarding the release or  
5 threatened release of hazardous substances covered by this Decree.

6 This Decree covers only the Site specifically identified in the Site Diagram  
7 (Exhibit A), and those hazardous substances that Ecology knows are located at the Site as of  
8 the date of entry of this Decree. This Decree does not cover any other hazardous substance or  
9 area. Ecology retains all of its authority relative to any substance or area not covered by this  
10 Decree.

11 This Covenant Not to Sue shall have no applicability whatsoever to:

- 12 1. Criminal liability;
- 13 2. Liability for damages to natural resources; and
- 14 3. Any Ecology action, including cost recovery, against PLPs not a party to  
15 this Decree.

16 If factors not known at the time of entry of the settlement agreement are discovered and  
17 present a previously unknown threat to human health or the environment, the Court shall  
18 amend this Covenant Not to Sue.

19 B. Reopeners: Ecology specifically reserves the right to institute legal or  
20 administrative action against Defendant to require it to perform additional remedial actions at  
21 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the  
22 following circumstances:

- 23 1. Upon Defendant's failure to meet the requirements of this Decree,  
24 including, but not limited to, failure of the remedial action to meet the cleanup  
25 standards identified in the CAP (Exhibit B);
- 26



1 injuries to persons or for loss or damage to property to the extent arising from or on account of  
2 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into  
3 and implementing this Decree. However, Defendant shall not indemnify the State of  
4 Washington nor save nor hold its employees and agents harmless from any claims or causes of  
5 action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
6 the employees or agents of the State, in entering into or implementing this Decree.

## 7 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

8 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
9 accordance with all applicable federal, state, and local requirements, including requirements to  
10 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
11 federal, state or local requirements that the agency has determined are applicable and that are  
12 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

13 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural  
14 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws  
15 requiring or authorizing local government permits or approvals. However, Defendant shall  
16 comply with the substantive requirements of such permits or approvals. The exempt permits or  
17 approvals and the applicable substantive requirements of those permits or approvals, as they  
18 are known at the time of entry of this Decree, have been identified in the CAP (Exhibit B).

19 Defendant has a continuing obligation to determine whether additional permits  
20 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
21 action under this Decree. In the event either Ecology or Defendant determines that additional  
22 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
23 remedial action under this Decree, it shall promptly notify the other party of this determination.  
24 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
25 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly  
26 consult with the appropriate state and/or local agencies and provide Ecology with written

1 documentation from those agencies of the substantive requirements those agencies believe are  
2 applicable to the remedial action. Ecology shall make the final determination on the additional  
3 substantive requirements that must be met by Defendant and on how Defendant must meet  
4 those requirements. Ecology shall inform Defendant in writing of these requirements. Once  
5 established by Ecology, the additional requirements shall be enforceable requirements of this  
6 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
7 additional requirements until Ecology makes its final determination.

8 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
9 exemption from complying with the procedural requirements of the laws referenced in RCW  
10 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for  
11 the State to administer any federal law, the exemption shall not apply and Defendant shall  
12 comply with both the procedural and substantive requirements of the laws referenced in RCW  
13 70.105D.090(1), including any requirements to obtain permits.

### 14 **XXIII. REMEDIAL ACTION COSTS**

15 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
16 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
17 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions  
18 and Decree preparation, negotiation, oversight and administration. These costs shall include  
19 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
20 include costs of direct activities and support costs of direct activities as defined in WAC  
21 173-340-550(2). Ecology has accumulated \$3,141.42 in remedial action costs related to this  
22 facility as of October 31, 2011. Payment for this amount shall be submitted within thirty (30)  
23 days of the effective date of this Decree. For all costs incurred subsequent to October 31,  
24 2011, Defendant shall pay the required amount within thirty (30) days of receiving from  
25 Ecology an itemized statement of costs that includes a summary of costs incurred, an  
26 identification of involved staff, and the amount of time spent by involved staff members on the

1 project. A general statement of work performed will be provided upon request. Itemized  
2 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay  
3 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result  
4 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

5 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
6 authority to recover unreimbursed remedial action costs by filing a lien against real property  
7 subject to the remedial actions.

#### 8 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that Defendant has failed without good cause to implement the  
10 remedial action, in whole or in part, Ecology may, after notice to Defendant, perform any or all  
11 portions of the remedial action that remain incomplete. If Ecology performs all or portions of  
12 the remedial action because of Defendant's failure to comply with its obligations under this  
13 Decree, Defendant shall reimburse Ecology for the costs of doing such work in accordance  
14 with Section XXIII. (Remedial Action Costs), provided that Defendant is not obligated under  
15 this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
16 scope of this Decree.

17 Except where necessary to abate an emergency situation, Defendant shall not perform  
18 any remedial actions at the Site outside those remedial actions required by this Decree, unless  
19 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV.  
20 (Amendment of Decree).

#### 21 **XXV. PERIODIC REVIEW**

22 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
23 agree to review the progress of remedial action at the Site, and to review the data accumulated  
24 as a result of monitoring the Site as often as is necessary and appropriate under the  
25 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
26 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial

1 action at the Site. Ecology reserves the right to require further remedial action at the Site under  
2 appropriate circumstances. This provision shall remain in effect for the duration of this  
3 Decree.

#### 4 **XXVI. PUBLIC PARTICIPATION**

5 Ecology developed a Public Participation Plan in conjunction with Ultra for this Site.  
6 Ecology shall maintain the responsibility for public participation at the Site. However,  
7 Defendant shall cooperate with Ecology, and shall:

8 A. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of  
9 public notices and fact sheets at important stages of the remedial action, such as the submission  
10 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and  
11 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
12 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

13 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
14 and fact sheets, and before major meetings with the interested public and local governments.  
15 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact  
16 sheets, and before major meetings with the interested public and local governments. For all  
17 press releases, fact sheets, meetings, and other outreach efforts by Defendant that do not  
18 receive prior Ecology approval, Defendant shall clearly indicate to its audience that the press  
19 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by  
20 Ecology.

21 C. When requested by Ecology, participate in public presentations on the progress  
22 of the remedial action at the Site. Participation may be through attendance at public meetings  
23 to assist in answering questions, or as a presenter.

24 D. When requested by Ecology, arrange and/or continue information repositories at  
25 the following locations:  
26





1 **XXX. WITHDRAWAL OF CONSENT**

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

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA  
Attorney General

8 \_\_\_\_\_  
9 JAMES J. PENDOWSKI  
10 Program Manager  
11 Toxics Cleanup Program  
12 360-407-7177

\_\_\_\_\_   
DOROTHY JAFFE, WSBA #34148  
Assistant Attorney General  
360-586-4637

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

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

12 ULTRA Corporation

13 \_\_\_\_\_  
14 HELEN GURVICH  
15 President  
16 206-432-9432

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

18 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2011

19 \_\_\_\_\_  
20 JUDGE  
21 King County Superior Court  
22  
23  
24  
25  
26

1 XXX. WITHDRAWAL OF CONSENT

2 If the Court withholds or withdraws its consent to this Decree, it sha  
3 at the option of any party and the accompanying Complaint shall be dismi  
4 and without prejudice. In such an event, no party shall be bound by the re  
5 Decree.

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA  
Attorney General

8  
9 JAMES J. PENDOWSKI  
Program Manager  
10 Toxics Cleanup Program  
360-407-7177

DOROTHY JAFFE, WSBA  
Assistant Attorney General  
360-586-4637

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

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

12 ULTRA Corporation

13  
14 *Helen Gurvich*  
15 HELEN GURVICH  
President  
206-432-9432

16 Date: *1/30/12*  
17 \_\_\_\_\_

18 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2011

19  
20  
21 \_\_\_\_\_  
JUDGE  
King County Superior Court

