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KATHY MARTIN  
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STATE OF WASHINGTON  
WALLA WALLA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
CITY OF WALLA WALLA,  
  
Defendant.

NO. **15 2 00536 8**  
CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and the City of Walla Walla (Defendant) under this Decree is to provide for  
4 remedial action at a facility where there has been a release or threatened release of hazardous  
5 substances. This Decree requires Defendant to perform the remedial actions at the Sudbury  
6 Road Landfill Site in Walla Walla, Washington in accordance with the Cleanup Action Plan  
7 attached as Exhibit B to this Decree.

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

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

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

18 E. 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 F. 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.

1 G. 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), RCW 70.105D.

7 B. Authority is conferred upon the Washington State Attorney General by  
8 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
9 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
10 to a 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(26) 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 WAC 173-340.

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 the Sudbury Road Landfill and is generally  
12 located at 414 Landfill Road, Walla Walla, WA 99362, about four miles west of the City of  
13 Walla Walla and one-half mile north of Highway 12. The Site is more particularly depicted  
14 and described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW  
15 70.105D.020(8).

16 B. Parties: Refers to the State of Washington, Department of Ecology and the City  
17 of Walla Walla.

18 C. Defendant: Refers to the City of Walla Walla.

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 V. FINDINGS OF FACTS

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

25 A. The Site is located in Walla Walla, Washington, and consists of approximately  
26 125 acres. The Site is bounded by agricultural fields to the north, west, and south, and by

1 Defendant-owned property generally to the east that is used for managing biosolids from the  
2 Defendant's wastewater treatment plant and for growing crops. A diagram of the Site is  
3 attached as Exhibit A.

4 B. From approximately 1978 until now, the Site has been used by the Defendant  
5 for solid waste handling, including landfilling of municipal solid waste (MSW), medical waste,  
6 and asbestos waste, composting of organic materials such as yard waste, and collection of  
7 household hazardous waste.

8 C. Contamination at the Site is most likely caused by conditions in Areas 1, 2, and  
9 5 of the Sudbury Road Landfill, all used for MSW disposal (see Exhibit A, Figure 2). These  
10 areas are unlined, have no leachate collection system, and no gas control system. The  
11 Defendant used Area 1 from around 1978 to 1980, Area 2 for a brief time in the late 1970s, and  
12 Area 5 from 1978 to 1990. Defendant closed Areas 1, 2, and 5 under applicable landfill  
13 regulations in place at the time.

14 D. The Defendant installed a groundwater monitoring system in 1976, and has  
15 monitored groundwater quality hydraulically upgradient and downgradient of the landfill since  
16 1977, to meet its obligations under landfill regulations. In 2001, the Defendant installed  
17 monitoring well MW-15 on the western boundary of the Site and hydraulically downgradient  
18 from Area 5. Sampling of this well showed levels of volatile organic compounds and  
19 inorganic constituents at levels above background and groundwater protection standards.

20 E. In September 2002, the Defendant began assessment monitoring under  
21 applicable landfill regulations, which continues today. Assessment monitoring increases the  
22 number of constituents tested in groundwater to determine whether additional constituents  
23 need to be added to quarterly groundwater monitoring. Assessment monitoring resulted in one  
24 additional constituent found to be present at concentrations greater than background  
25 concentrations—Freon 12—which was then added to the quarterly monitoring program.

26

1 F. Since 2002, the Defendant has periodically tested water from three private wells  
2 to the west-southwest of the landfill, in the direction of groundwater flow. The Washington  
3 Department of Health (DOH) examined water quality from these private wells in 2012 and  
4 found one chemical in two of the wells that warranted analysis—tetrachloroethene (PCE). In its  
5 Letter Health Consultation dated July 18, 2012, DOH concluded that the PCE level was below  
6 federal and state drinking water standards and, therefore, not at levels expected to harm  
7 people’s health through drinking, showering, bathing, and cooking with this water. A fourth  
8 private well was monitored during the Remedial Investigation performed under Agreed Order  
9 No. 8456 (discussed below) and no contaminants were identified in the well water. G. The  
10 Defendant initiated an independent remedial investigation in 2004, to characterize MW-15  
11 contamination. It prepared a work plan to guide the process and started the work in 2005. The  
12 investigation stalled in 2006, before the Defendant could complete all of the tasks.

13 G. In 2012 and 2013, the Defendant, through Schwyn Environmental Services,  
14 conducted a Remedial Investigation and Feasibility Study in accordance with Agreed Order  
15 No. 8456 entered into with Ecology on May 26, 2011. The Defendant installed several new  
16 groundwater and landfill gas monitoring wells, sampled well water from four private wells to  
17 the west/southwest of the landfill, sampled soils beneath buried waste, examined the  
18 effectiveness of stormwater controls and covers over landfill areas, examined landfill gas  
19 composition and production, and assessed existing gas control systems at the Site. The  
20 methods and findings of these investigations are detailed in the Remedial Investigation and  
21 Feasibility Study Report that Ecology approved in February 2015.

22 H. The contaminants and medium of concern at the Site that exceed applicable  
23 MTCA cleanup levels are tetrachloroethene (PCE) and vinyl chloride in groundwater.

24 I. Ecology selected a remedy based on information in the Remedial Investigation  
25 Feasibility Study Report, and prepared a draft Cleanup Action Plan (CAP), which was  
26 finalized after public comment. As documented in the CAP (Exhibit B), the cleanup action to

1 be implemented at the Site includes installation of a landfill gas extraction system in Areas 1,  
2 2, and 5; improvements to cover and grading of Areas 2 and 5; improvements to stormwater  
3 controls north and south of Area 5; monitoring of groundwater, gas, landfill cover, and  
4 stormwater control systems; and recordation of an Environmental (Restrictive) Covenant to  
5 prevent future land uses that may damage such systems.

## 6 VI. WORK TO BE PERFORMED

7 This Decree contains a program designed to protect human health and the environment  
8 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
9 or from the Site.

10 A. Defendant shall perform all tasks set forth in the CAP (Exhibit B) in accordance  
11 with the Scope of Work and Schedule in Exhibit C. Work includes, but is not limited to, the  
12 following:

13 1. A landfill gas (LFG) extraction and treatment system will be installed in  
14 Areas 1, 2, and 5. Two extraction wells will be installed in Area 1, one extraction well  
15 in Area 2, and seven in Area 5. Figure 4 of the CAP shows the approximate locations  
16 of the landfill gas extraction wells. The extraction wells will be tied into the existing  
17 LFG extraction and treatment system in place for Area 6. The existing passive LFG  
18 vent in Area 5 will be decommissioned and filled from bottom to top with concrete.

19 2. A cover system consisting of a 4.8-foot-thick layer of compacted native  
20 soils will be constructed over Area 2 and Area 5. The top foot of the cover will be  
21 augmented with materials that promote plant growth, and dryland vegetation will be  
22 established on the cover. To promote drainage of precipitation and stormwater off  
23 Areas 2 and 5, grading will be improved, and an approximately 1,500-foot, sloped,  
24 erosion control berm will be constructed along the south and west sides of Area 5 to  
25 convey stormwater off-Site.  
26



1           3.     A cast-in-place concrete channel, underlain with geomembrane, will be  
2 constructed along the north side of Area 5. The channel will slope to the west,  
3 connecting to an existing culvert to carry stormwater off-Site. The channel will be  
4 designed to allow a compact rubber-tired skid steer to be driven in it. To accommodate  
5 runoff from the north side of Area 5, a strip of geomembrane and erosion control mat  
6 will be attached along the southern edge of the concrete channel.

7           4.     The area between the Site's compost facility and Area 5 will be regraded  
8 to prevent stormwater run-on into Area 5. This will include construction of an elevated  
9 soil berm, regrading a valley east of the compost facility, raising the grade of the  
10 compost facility access road and reconstructing the road, removal of an existing culvert,  
11 and addition of a new culvert that will direct stormwater onto the compost pad, and  
12 ultimately into the compost facility lagoon.

13          5.     Monitoring of landfill gas, groundwater, cover, and stormwater systems  
14 will be conducted. This shall include:

- 15         • Landfill gas monitoring will consist of measuring methane levels in gas wells in  
16 Areas 1 (GW-11) and 5 (GW-5, GW-6), and perimeter wells (GW-7S, GW-7D,  
17 GW-8, GW-9, GW-10, and GW-12). LFG monitoring will occur for a period of  
18 five years after completing the work described in above items A1 through A4  
19 and for at least two years after achieving groundwater cleanup levels.
- 20         • Groundwater wells to be monitored will include MW-11, MW-12b, MW-14b,  
21 MW-15, MW-19, and MW-20. Samples will be collected quarterly for a period  
22 of five years after completing the work described in above items A1 through A4  
23 and for at least two years after achieving groundwater cleanup levels.
- 24         • Annual landfill cover inspection including the appearance and condition of  
25 vegetation; vegetation stress or death due to landfill gas; deposition of eroded  
26 soil at the toe of steep slopes; soil erosion; rills or cracks in the cover; changes

1 in the surface slope and settlement of waste; intrusion by humans or animals;  
2 holes of any kind; wildlife trails created on the cover; and damage by vehicles  
3 or maintenance machines. Maintenance and repairs will be done as needed.

- 4 • Annual inspection of stormwater controls for signs of erosion, settlement,  
5 ponded stormwater, or blockage of flow. Maintenance and repairs will be done  
6 as needed.

7 6. Institutional controls in the form of an Environmental (Restrictive)  
8 Covenant shall be recorded on the Site. The covenant shall be recorded for Walla  
9 Walla County Assessor's Parcel Numbers 350714310002, 350715440004,  
10 350722110001, and 350723110005 for the property described in Exhibit A. The  
11 covenant will restrict activities that may threaten the integrity of the cover, waste  
12 containment, stormwater control, gas collection and treatment, leachate control, public  
13 access control, and environmental monitoring systems; may interfere with the operation  
14 and maintenance, monitoring, or other measures necessary to ensure the integrity of the  
15 landfill and continued protection of human health and the environment; and may result  
16 in the release of solid waste constituents or otherwise exacerbate exposure to solid  
17 waste constituents.

18 B. Defendant agrees not to perform any remedial actions outside the scope of this  
19 Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit C) to  
20 cover these actions. All work conducted by Defendant under this Decree shall be done in  
21 accordance with WAC 173-340 unless otherwise provided herein.

22 C. All plans or other deliverables submitted by the Defendant for Ecology's review  
23 and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's  
24 approval, become integral and enforceable parts of this Decree.

1 **VII. DESIGNATED PROJECT COORDINATORS**

2 The project coordinator for Ecology is:

3 Marni Solheim  
4 Department of Ecology  
4601 N. Monroe, Spokane, WA 99205  
5 509-329-3564  
marni.solheim@ecy.wa.gov

6 The project coordinator for Defendant is:

7 Frank Nicholson  
8 City of Walla Walla  
55 Moore Street, Walla Walla, WA 99362  
9 509-524-4510  
fnicholson@wallawallawa.gov

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

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

20 **VIII. PERFORMANCE**

21 All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
22 the supervision and direction of a geologist or hydrogeologist licensed by the State of  
23 Washington or under the direct supervision of an engineer registered by the State of  
24 Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

8 Any documents submitted containing geologic, hydrologic, or engineering work shall  
9 be under the seal of an appropriately licensed professional as required by RCW 18.43  
10 and 18.220.

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

#### 14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have access to enter and freely  
16 move about all property at the Site that Defendant either owns, controls, or has access rights to  
17 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
18 contracts related to the work being performed pursuant to this Decree; reviewing Defendant's  
19 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
20 samples as Ecology may deem necessary; using a camera, sound recording, or other  
21 documentary type equipment to record work done pursuant to this Decree; and verifying the  
22 data submitted to Ecology by Defendant. Defendant shall make all reasonable efforts to secure  
23 access rights for those properties within the Site not owned or controlled by Defendant where  
24 remedial activities or investigations will be performed pursuant to this Decree. Ecology or any  
25 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 and  
2 safety plan(s). Ecology employees and their representatives shall not be required to sign any  
3 liability release or waiver as a condition of Site property 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 WAC 173-50 for the specific analyses to be  
22 conducted, unless otherwise approved by Ecology.

23 **XI. PROGRESS REPORTS**

24 Defendant shall submit to Ecology, in accordance with the Schedule in Exhibit C,  
25 written Progress Reports that describe the actions taken to implement the requirements of this  
26 Decree. The Progress Reports shall include the following:

- 1 A. A list of on-site activities that have taken place during the reporting period;
- 2 B. Detailed description of any deviations from required tasks not otherwise  
3 documented in project plans or amendment requests;
- 4 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)  
5 during the reporting period and any planned deviations in the upcoming period;
- 6 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
7 compliance with the schedule;
- 8 E. All raw data (including laboratory analyses) received by Defendant during the  
9 past reporting period and an identification of the source of the sample; and
- 10 F. A list of deliverables for the upcoming period if different from the schedule.

11 All Progress Reports shall be prepared in accordance with the following schedule  
12 (detailed in Exhibit C): For tasks leading up to Implementation of the Cleanup Action  
13 (Construction/Field Work), on a quarterly basis; during Construction/Field Work, on a monthly  
14 basis, the last of which shall be submitted after completing Construction/Field Work. Progress  
15 Reports shall be submitted by the tenth (10th) day of the month in which they are due after the  
16 effective date of this Decree. Unless otherwise specified, Progress Reports and any other  
17 documents submitted pursuant to this Decree shall be sent by certified mail, return receipt  
18 requested, to Ecology's project coordinator.

## 19 XII. RETENTION OF RECORDS

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

1 Nothing in this Decree is intended by Defendant to waive any right it may have under  
2 applicable law to limit disclosure of documents protected by the attorney work-product  
3 privilege and/or the attorney-client privilege. If Defendant withholds any requested records  
4 based on an assertion of privilege, Defendant shall provide Ecology with a privilege log  
5 specifying the records withheld and the applicable privilege. No Site-related data collected  
6 pursuant to this Decree shall be considered privileged.

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

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

12 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during  
13 the effective period of this Decree, Defendant shall provide a copy of this Decree to any  
14 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
15 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.  
16 Upon transfer of any interest, Defendant shall notify all transferees of the restrictions on the  
17 activities and uses of the property under this Decree and incorporate any such use restrictions  
18 into the transfer documents.

### 19 **XIV. RESOLUTION OF DISPUTES**

20 A. In the event that Defendant elects to invoke dispute resolution, Defendant must  
21 utilize the procedure set forth below.

22 1. Upon the triggering event (receipt of Ecology's project coordinator's  
23 written decision or an itemized billing statement), Defendant has fourteen (14) calendar  
24 days within which to notify Ecology's project coordinator in writing of its dispute  
25 ("Informal Dispute Notice").  
26

1           2.       The Parties' project coordinators shall then confer in an effort to resolve  
2 the dispute informally. The parties shall informally confer for up to fourteen (14)  
3 calendar days from receipt of the Informal Dispute Notice. If the project coordinators  
4 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar  
5 days Ecology's project coordinator shall issue a written decision ("Informal Dispute  
6 Decision") stating: the nature of the dispute; the Defendant's position with regards to  
7 the dispute; Ecology's position with regards to the dispute; and the extent of resolution  
8 reached by informal discussion.

9           3.       Defendant may then request regional management review of the dispute.  
10 This request ("Formal Dispute Notice") must be submitted in writing to the Eastern  
11 Region Waste 2 Resources Section Manager within seven (7) calendar days of receipt  
12 of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a  
13 written statement of dispute setting forth: the nature of the dispute; the disputing  
14 Party's position with respect to the dispute; and the information relied upon to support  
15 its position.

16           4.       The Section Manager shall conduct a review of the dispute and shall  
17 issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30)  
18 calendar days of receipt of the Formal Dispute Notice.

19           5.       If Defendant finds Ecology's Regional Section Manager's decision  
20 unacceptable, Defendant may then request final management review of the decision.  
21 This request ("Final Review Request") shall be submitted in writing to the Waste 2  
22 Resources Program Manager within seven (7) calendar days of Defendant's receipt of  
23 the Decision on Dispute. The Final Review Request shall include a written statement  
24 of dispute setting forth: the nature of the dispute; the disputing Party's position with  
25 respect to the dispute; and the information relied upon to support its position.  
26





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

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

#### 13 **XVI. EXTENSION OF SCHEDULE**

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

- 18 1. The deadline that is sought to be extended;
- 19 2. The length of the extension sought;
- 20 3. The reason(s) for the extension; and
- 21 4. Any related deadline or schedule that would be affected if the extension  
22 were granted.

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

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

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

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

8       However, neither increased costs of performance of the terms of this Decree nor  
9 changed economic circumstances shall be considered circumstances beyond the reasonable  
10 control of Defendant.

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

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

20           1.       Delays in the issuance of a necessary permit which was applied for in a  
21 timely manner;

22           2.       Other circumstances deemed exceptional or extraordinary by  
23 Ecology; or

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

1 **XVII. ENDANGERMENT**

2 In the event Ecology determines that any activity being performed at the Site under this  
3 Decree is creating or has the potential to create a danger to human health or the environment,  
4 Ecology may direct Defendant to cease such activities for such period of time as it deems  
5 necessary to abate the danger. Defendant shall immediately comply with such direction.

6 In the event Defendant determines that any activity being performed at the Site under  
7 this Decree is creating or has the potential to create a danger to human health or the  
8 environment, Defendant may cease such activities. Defendant shall notify Ecology's project  
9 coordinator as soon as possible, but no later than twenty-four (24) hours after making such  
10 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide  
11 Ecology with documentation of the basis for the determination or cessation of such activities.  
12 If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to  
13 resume such activities.

14 If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant's  
15 obligations with respect to the ceased activities shall be suspended until Ecology determines  
16 the danger is abated, and the time for performance of such activities, as well as the time for any  
17 other work dependent upon such activities, shall be extended, in accordance with Section XVI  
18 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the  
19 circumstances.

20 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or  
21 contractors to take or require appropriate action in the event of an emergency.

22 **XVIII. COVENANT NOT TO SUE**

23 A. Covenant Not to Sue: In consideration of Defendant's compliance with the  
24 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
25 actions against Defendant regarding the release or threatened release of hazardous substances  
26 covered by this Decree.

1 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
2 and those hazardous substances that Ecology knows are located at the Site as of the date of  
3 entry of this Decree. This Decree does not cover any other hazardous substance or area, nor  
4 does it cover any further actual or threatened releases from the landfill of the hazardous  
5 substances addressed in this Decree. Ecology retains all of its authority relative to any  
6 substance or area not covered by this Decree.

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

- 8 1. Criminal liability;
- 9 2. Liability for damages to natural resources; and
- 10 3. Any Ecology action, including cost recovery, against PLPs not a party to  
11 this Decree.

12 If factors not known at the time of entry of this Decree are discovered and present a  
13 previously unknown threat to human health or the environment, the Court shall amend this  
14 Covenant Not to Sue.

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

- 19 1. Upon Defendant's failure to meet the requirements of this Decree;
- 20 2. Failure of the remedial action to meet the cleanup standards identified in  
21 the Cleanup Action Plan (CAP) (Exhibit C);
- 22 3. Upon Ecology's determination that remedial action beyond the terms of  
23 this Decree is necessary to abate an imminent and substantial endangerment to human  
24 health or the environment;
- 25 4. Upon the availability of new information regarding factors previously  
26 unknown to Ecology, including the nature or quantity of hazardous substances at the

1 Site, and Ecology's determination, in light of this information, that further remedial  
2 action is necessary at the Site to protect human health or the environment; or

3 5. Upon Ecology's determination that additional remedial actions are  
4 necessary to achieve cleanup standards within the reasonable restoration time frame set  
5 forth in the CAP.

6 C. Except in the case of an emergency, prior to instituting legal or administrative  
7 action against Defendant pursuant to this section, Ecology shall provide Defendant with  
8 fifteen (15) calendar days' notice of such action.

9 **XIX. CONTRIBUTION PROTECTION**

10 With regard to claims for contribution against Defendant, the Parties agree that  
11 Defendant is entitled to protection against claims for contribution for matters addressed in this  
12 Decree as provided by RCW 70.105D.040(4)(d).

13 **XX. LAND USE RESTRICTIONS**

14 In consultation with Defendant, Ecology will prepare the Environmental (Restrictive)  
15 Covenant consistent with WAC 173-340-440 and RCW 64.70. Defendant shall record the  
16 Environmental (Restrictive) Covenant with the office of the Walla Walla County Auditor  
17 within ten (10) days of Ecology's approval of the Final Cleanup Action Report (detailed in  
18 Exhibit C). The Environmental (Restrictive) Covenant shall restrict future activities and uses  
19 of the Site as agreed to by Ecology and Defendant. Defendant shall provide Ecology with the  
20 original recorded Environmental Covenant within thirty (30) days of the recording date.

21 **XXI. FINANCIAL ASSURANCES**

22 Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and adequate  
23 financial assurance mechanisms to cover all costs associated with the operation and  
24 maintenance of the remedial action at the Site, including institutional controls, compliance  
25 monitoring, and corrective measures.

1 Within sixty (60) days of the effective date of this Decree, Defendant shall submit to  
2 Ecology for review and approval an estimate of the costs that it will incur in carrying out the  
3 terms of this Decree, including operation and maintenance, and compliance monitoring.  
4 Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendant  
5 shall provide proof of financial assurances sufficient to cover all such costs in a form  
6 acceptable to Ecology.

7 Defendant shall adjust the financial assurance coverage and provide Ecology's project  
8 coordinator with documentation of the updated financial assurance for:

9 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of  
10 this Decree; or if applicable, the modified anniversary date established in accordance with this  
11 section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the  
12 financial test or corporate guarantee is used.

13 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's  
14 approval of a modification or revision to the CAP that result in increases to the cost or  
15 expected duration of remedial actions. Any adjustments for inflation since the most recent  
16 preceding anniversary date shall be made concurrent with adjustments for changes in cost  
17 estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the  
18 anniversary date established under this section to become the date of issuance of such revised  
19 or modified CAP.

## 20 **XXII. INDEMNIFICATION**

21 Defendant agrees to indemnify and save and hold the State of Washington, its  
22 employees, and agents harmless from any and all claims or causes of action (1) for death or  
23 injuries to persons, or (2) for loss or damage to property to the extent arising from or on  
24 account of acts or omissions of Defendant, its officers, employees, agents, or contractors in  
25 entering into and implementing this Decree. However, Defendant shall not indemnify the State  
26 of Washington nor save nor hold its employees and agents harmless from any claims or causes

1 of action to the extent arising out of the negligent acts or omissions of the State of Washington,  
2 or the employees or agents of the State, in entering into or implementing this Decree.

3 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

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

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

15 Defendant has a continuing obligation to determine whether additional permits or  
16 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
17 action under this Decree. In the event either Ecology or Defendant determines that additional  
18 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
19 remedial action under this Decree, it shall promptly notify the other party of this determination.  
20 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
21 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly  
22 consult with the appropriate state and/or local agencies and provide Ecology with written  
23 documentation from those agencies of the substantive requirements those agencies believe are  
24 applicable to the remedial action. Ecology shall make the final determination on the additional  
25 substantive requirements that must be met by Defendant and on how Defendant must meet  
26 those requirements. Ecology shall inform Defendant in writing of these requirements. Once



1 established by Ecology, the additional requirements shall be enforceable requirements of this  
2 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
3 additional requirements until Ecology makes its final determination.

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

#### 10 **XXIV. REMEDIAL ACTION COSTS**

11 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
12 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
13 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and  
14 Decree preparation, negotiation, oversight, and administration. These costs shall include work  
15 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
16 include costs of direct activities and support costs of direct activities as defined in  
17 WAC 173-340-550(2). Costs through March 31, 2015, have been paid by Defendant. For all  
18 costs incurred subsequent to April 1, 2015, Defendant shall pay the required amount within  
19 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a  
20 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
21 involved staff members on the project. A general statement of work performed will be  
22 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC  
23 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the  
24 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)  
25 per annum, compounded monthly.

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

4 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

5 If Ecology determines that the Defendant has failed to make sufficient progress or  
6 failed to implement the remedial action, in whole or in part, Ecology may, after notice to  
7 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow  
8 the Defendant opportunity to correct. The Defendant shall reimburse Ecology for the costs of  
9 doing such work in accordance with Section XXIV (Remedial Action Costs).

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

14 **XXVI. PERIODIC REVIEW**

15 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
16 agree to review the progress of remedial action at the Site, and to review the data accumulated  
17 as a result of monitoring the Site as often as is necessary and appropriate under the  
18 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
19 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial  
20 action at the Site. At least ninety (90) days prior to each periodic review, Defendant shall  
21 submit a report to Ecology that documents whether human health and the environment are  
22 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII  
23 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site  
24 under appropriate circumstances. This provision shall remain in effect for the duration of this  
25 Decree.

1 **XXVII. PUBLIC PARTICIPATION**

2 A Public Participation Plan is required for this Site. Ecology shall review any existing  
3 Public Participation Plan to determine its continued appropriateness and whether it requires  
4 amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in  
5 conjunction with Defendant.

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 lists, 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  
14 releases and fact sheets, and before major meetings with the interested public and local  
15 governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press  
16 releases and fact sheets, and before major meetings with the interested public and local  
17 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
18 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to its  
19 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored  
20 or endorsed by 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                   1.     Walla Walla Public Library  
                    238 E. Alder, Walla Walla, WA 99362
- 2
- 3                   2.     Ecology's Eastern Regional Office  
                    4601 N. Monroe, Spokane, WA 99205

4 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
5 comment periods shall be promptly placed in these repositories. A copy of all documents  
6 related to this Site shall be maintained in the repository at Ecology's Eastern Regional Office  
7 in Spokane, Washington.

8   **XXVIII.         DURATION OF DECREE**

9                   The remedial program required pursuant to this Decree shall be maintained and  
10 continued until Defendant has received written notification from Ecology that the requirements  
11 of this Decree have been satisfactorily completed. This Decree shall remain in effect until  
12 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and  
13 Section XIX (Contribution Protection) shall survive.

14   **XXIX. CLAIMS AGAINST THE STATE**

15                   Defendant hereby agrees that it will not seek to recover any costs accrued in  
16 implementing the remedial action required by this Decree from the State of Washington or any  
17 of its agencies; and further, that Defendant will make no claim against the State Toxics Control  
18 Account or any local Toxics Control Account for any costs incurred in implementing this  
19 Decree. Except as provided above, however, Defendant expressly reserves its right to seek to  
20 recover any costs incurred in implementing this Decree from any other PLP. This section does  
21 not limit or address funding that may be provided under WAC 173-322.

22   **XXX. EFFECTIVE DATE**

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

24    ///  
25    ///  
26    ///

**XXXI. WITHDRAWAL OF CONSENT**

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



LAURIE DAVIES  
Program Manager  
Waste 2 Resources Program  
360-407-6103

Date: 8/13/15

ROBERT W. FERGUSON  
Attorney General



ALLYSON C. BAZAN, WSBA #44221  
Assistant Attorney General  
(360) 586-3589

Date: 8/18/2015

CITY OF WALLA WALLA



NABIEL SHAWA  
City Manager  
City of Walla Walla  
509-527-4522

Date: 8/16/15

CITY OF WALLA WALLA



TIMOTHY J. DONALDSON, WSBA #17128  
City Attorney  
City of Walla Walla  
509-522-2843

Date: 8/10/2015

ENTERED this 19<sup>th</sup> day of August 2015.



M. SCOTT WOLFRAM  
JUDGE  
Walla Walla County Superior Court