

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CASCADE POLE AND LUMBER
COMPANY (f/k/a Cascade Pole
Company), a Washington corporation;
MCFARLAND CASCADE HOLDINGS,
INC., a Washington corporation;
MCFARLAND CASCADE POLE &
LUMBER COMPANY, a Washington
corporation; and TYEE MANAGEMENT
COMPANY, LLC, a Washington limited
liability company,

Defendants.

NO.

CONSENT DECREE

RE: MCFARLAND CASCADE
POLE & LUMBER COMPANY SITE

TABLE OF CONTENTS

20	I.	INTRODUCTION	3
	II.	JURISDICTION	4
21	III.	PARTIES BOUND	5
	IV.	DEFINITIONS	5
22	V.	FINDINGS OF FACTS	6
	VI.	WORK TO BE PERFORMED.....	9
23	VII.	DESIGNATED PROJECT COORDINATORS.....	10
	VIII.	PERFORMANCE.....	11
24	IX.	ACCESS	12
	X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY.....	13
25	XI.	PROGRESS REPORTS	13
	XII.	RETENTION OF RECORDS	14
26	XIII.	TRANSFER OF INTEREST IN PROPERTY	15
	XIV.	RESOLUTION OF DISPUTES	15

1	XV.	AMENDMENT OF DECREE.....	18
	XVI.	EXTENSION OF SCHEDULE.....	18
2	XVII.	ENDANGERMENT.....	20
	XVIII.	COVENANT NOT TO SUE.....	21
3	XIX.	CONTRIBUTION PROTECTION.....	22
	XX.	LAND USE RESTRICTIONS.....	22
4	XXI.	FINANCIAL ASSURANCES.....	22
	XXII.	INDEMNIFICATION.....	23
5	XXIII.	COMPLIANCE WITH APPLICABLE LAWS.....	24
	XXIV.	REMEDIAL ACTION COSTS.....	25
6	XXV.	IMPLEMENTATION OF REMEDIAL ACTION.....	26
	XXVI.	PERIODIC REVIEW.....	26
7	XXVII.	PUBLIC PARTICIPATION.....	27
	XXVIII.	DURATION OF DECREE.....	28
8	XXIX.	CLAIMS AGAINST THE STATE.....	28
	XXX.	EFFECTIVE DATE.....	29
9	XXXI.	WITHDRAWAL OF CONSENT.....	29
10		EXHIBIT A Site Diagram	
		EXHIBIT B Cleanup Action Plan	
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

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

I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Cascade Pole and Lumber Company (f/k/a Cascade Pole Company), McFarland Cascade Holdings, Inc., McFarland Cascade Pole & Lumber Company, and Tye Management Company, LLC (collectively, the Defendants) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendants to cleanup the Site (as defined herein) in accordance with the Cleanup Action Plan (CAP), attached and incorporated in this Decree as Exhibit B, all as described in more detail below.

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

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

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

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

F. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, that Defendants shall not challenge the authority of the Attorney General
2 and Ecology to enforce this Decree.

3 G. The Court is fully advised of the reasons for entry of this Decree, and good
4 cause having been shown:

5 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

6 **II. JURISDICTION**

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

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

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

16 D. Ecology has given notice to all Defendants of Ecology's determination that each
17 Defendant is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

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

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

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

24 H. Defendants have agreed to undertake the actions specified in this Decree and
25 consent to the entry of this Decree under MTCA.
26

1
2
3
4
5
6
7
8
9
10
11

III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendants agree to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter a Defendant's responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

12
13
14
15
16
17
18
19
20
21
22

IV. DEFINITIONS

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

A. Site: The Site is referred to as the McFarland Cascade Pole & Lumber Company Site (the Site) and is generally located at 1640 East Marc Street, Tacoma, Washington (Section 3, Township 20, Range 3). Most of the Site is owned by Tye Management Company, LLC, and includes approximately 43 acres of upland areas. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. The Site includes areas where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology, and Cascade Pole and Lumber Company (f/k/a Cascade Pole Company), McFarland Cascade Holdings, Inc., McFarland Cascade Pole & Lumber Company, and Tye Management Company, LLC.

23
24
25
26

1 C. Defendant or Defendants: Refers to Cascade Pole and Lumber Company (f/k/a
2 Cascade Pole Company), McFarland Cascade Holdings, Inc., McFarland Cascade Pole &
3 Lumber Company, and Tyee Management Company, LLC.

4 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
5 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
6 The terms “Consent Decree” or “Decree” shall include all exhibits to this Consent Decree.

7 **V. FINDINGS OF FACTS**

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

10 A. The Site is generally located at 1640 East Marc Street, in Tacoma, Washington,
11 and consists of approximately 43 acres. A diagram of the Site is attached as Exhibit A. The
12 site is bordered on one side by the Puyallup River and is in an industrial area of the Tacoma
13 tideflats. The Site is listed on the Department of Ecology’s Hazardous Sites List as
14 “McFarland Cascade Pole & Lumber Co” with the Facility Site ID No. 1222.

15 B. Most of the Site is owned by Tyee Management Company, LLC (Tyee) and
16 includes approximately 43 acres of upland areas. Part of the Site is owned by the Port of
17 Tacoma. McFarland Cascade Pole and Lumber Company (CPLC) currently operates a wood
18 treating and preserving facility on the portion of the Site owned by Tyee and has been in
19 operation since 1975.

20 C. At the Site, CPLC produces wood products including pressure-treated utility
21 poles, lumber, and plywood. CPLC has pressure treated logs and timbers with
22 pentachlorophenol (PCP) and copper-chrome arsenate (CCA). Creosote and PCP have been
23 used for pole butt dipping. Treated wood is stored on-site for drying prior to sale.

24 D. Contamination at the Site is related to the manufacture and processing of treated
25 wood products. Chemicals used in the wood treating process and their associated compounds
26

1 and breakdown products were identified as chemicals of interest for the Site, including the
2 following:

- 3 1. Total and dissolved arsenic, copper, and chromium (including both
4 trivalent chromium (CrIII) and hexavalent chromium (CrVI)).
- 5 2. Polycyclic aromatic hydrocarbons (PAHs).
- 6 3. PCP.
- 7 4. Semi-volatile organic compounds (SVOCs).
- 8 5. In addition, the following chemicals of interest were identified in
9 association with the PCP carrier oil in use at the site:
 - 10 a. Benzene, toluene, ethylbenzene, and xylenes (BTEX); and
 - 11 b. Total petroleum hydrocarbon-gasoline range organics.

12 CPLC records indicate that four known spills have occurred at the facility.

- 13 1. In August of 1985, an overflow of process water from the cooling tower
14 resulted in a release of approximately 100 gallons of water.
- 15 2. In March of 1986, a cooling tower overflow resulted in the spill of
16 approximately 100 gallons of process water.
- 17 3. In May of 1986, a storage tank overflow resulted in the spill of
18 approximately 260 gallons of CCA.
- 19 4. In May 2014, a wood treatment process work tank overflow resulted in
20 the spill of approximately 300 gallons of copper azole type C (CA-C). The spill
21 migrated into a dry roadside ditch on the adjacent Port of Tacoma property. A project-
22 specific cleanup goal of 146 milligrams per kilogram (mg/kg) for copper in soil was
23 developed in coordination with Ecology and the Tacoma-Pierce County Health
24 Department. All soil with copper concentrations above the project-specific cleanup
25 goal was excavated from the ditch (40 cubic yards in total). Ecology approved the spill
26 response and cleanup.

1 E. In December 1989, Ecology issued Agreed Order (AO) number DE89-S214 to
2 CPLC to correct certain operational and reporting practices found by Ecology to be
3 inconsistent with their dangerous waste regulations (WAC 173-303). Section 4 of the AO
4 required a site investigation. In 1991, CPLC conducted a site investigation to assess the
5 magnitude and extent of possible soil and groundwater contamination from past releases. In
6 accordance with the AO, the site investigation focused on three areas: (1) the treated lumber
7 storage area, (2) the retort and transfer table area, and (3) the butt vat. The 1991 site
8 investigation determined that past operational practices had resulted in contamination of soils
9 and/or groundwater in portions of the property. The results of the site investigations were
10 reported to Ecology.

11 F. The results of the 1991 site investigation combined with the facility
12 improvements planned by CPLC prompted the need for an interim action to be conducted at
13 the Site. On June 7, 1993, Ecology, McFarland Cascade Holdings, Inc., and Cascade Pole
14 Company entered into AO number DE 92HS-S146. Under AO DE 92HS-S146, McFarland
15 Cascade Holdings and Cascade Pole Company agreed to conduct the interim action and
16 Remedial Investigation/Feasibility Study (RI/FS) for the Site. CPLC initiated interim action
17 activities prior to signing the new AO. The interim action areas identified by CPLC and
18 Ecology were: (1) the location of the proposed Resource Conservation and Recovery Act
19 (RCRA) Subpart W drip pads; (2) the transfer table area; and (3) wood storage areas which
20 CPLC planned to pave. Although not explicitly listed, the AO allowed for groundwater
21 interim actions as necessary.

22 G. On or about November 30, 2012, CPLC transferred title of its property at the
23 Site to Tyee, which is the current owner. Since November 30, 2012, McFarland Cascade
24 Holdings, Inc., has leased the property from Tyee.

25 H. An April 29, 2014, the final RI/FS for the Site documented the nature and extent
26 of hazardous substances in various media including soil and groundwater. Based upon the

1 results of the RI, the FS evaluated the cleanup action alternatives for the Site against the
2 MTCA requirements, and identified a preferred cleanup action alternative for each media.
3 Compounds identified in the RI/FS as exceeding published MTCA cleanup levels in soil and
4 groundwater include: arsenic, copper, chromium, PAHs, PCP, SVOCs, and BTEX at various
5 locations in the eastern portion of the Site (*see* Final RI/FS, figs.5.1 & 5.2).

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. Defendants shall perform all tasks set forth in the CAP (Exhibit B) in
11 accordance with the schedule set forth therein. The CAP requires:

12 1. The cleanup action for the contaminated soil on the Site incorporates the
13 interim actions performed to date (including installation and operation of the horizontal
14 well groundwater extraction and reuse system), institutional controls, and groundwater
15 compliance monitoring.

16 2. The remedy includes a Site Management Plan (included as Appendix B
17 to the CAP) requiring maintenance of the protective cap in the Restricted Area and soil
18 management in the event soil is excavated or disturbed below the cap. The Site
19 Management Plan includes the ongoing operation and maintenance of the horizontal
20 recovery well and associated recovery sump and pump that were installed as an interim
21 action.

22 3. Groundwater contamination will be addressed through monitored natural
23 attenuation. The monitoring program will rely on sentry wells, and action levels will be
24 developed for use at the sentry wells. Existing on-site wells and proposed new wells
25 will be used as sentry wells for the monitoring. Action levels will be established to
26 ensure that cleanup levels (CULs) are not exceeded at the downgradient conditional

1 point of compliance (CPOC). Monitoring will be performed to verify that impacts on
2 the upgradient property boundary are contained by the natural hydraulic gradient and
3 the horizontal recovery well. This remedy will also include a compliance monitoring
4 program, as well as contingency measures to be implemented should concentrations in
5 sentry wells increase or continue to exceed applicable action levels.

6 4. Monitoring and institutional controls are required for groundwater until
7 the Site meets MTCA requirements for demonstrating that remediation is complete.
8 Institutional controls and ongoing maintenance of the protective cap will be required in
9 perpetuity in order to maintain compliance with cleanup levels in soil.

10 B. Except where necessary to abate an emergency event or where required by law,
11 Defendants agree not to perform any remedial actions outside the scope of this Decree unless
12 the Parties agree to modify the CAP (Exhibit B) to cover these actions. All work conducted by
13 Defendants under this Decree shall be done in accordance with WAC chapter 173-340 unless
14 otherwise provided herein. If Defendants conduct a remedial action outside the scope of this
15 Decree to abate an emergency event or where it is required by law, Defendants must notify
16 Ecology of the event and responsive actions taken as soon as practical but no later than within
17 24 hours of the discovery of the event.

18 C. All plans or other deliverables submitted by Defendants for Ecology's review
19 and approval under the CAP (Exhibit B) shall, upon Ecology's approval, become integral and
20 enforceable parts of this Decree.

21 **VII. DESIGNATED PROJECT COORDINATORS**

22 The project coordinator for Ecology is:

23 Mr. Greg Caron
24 15 West Yakima Avenue, Suite 200
25 Yakima, WA 98902-3452
26 (509) 454-7893

1 The project coordinator for Cascade Pole and Lumber Company, McFarland Cascade
2 Holdings, Inc., and McFarland Cascade Pole & Lumber Company is:

3 Mr. Ted Smith
4 1640 East Marc Street
5 Tacoma, WA 98421
6 (253) 572-3033

7 The project coordinator for Tye Management Company, LLC, is:

8 Mr. Gregory D. McFarland
9 Tye Management Company, LLC
10 5501 Pacific Highway East, Suite 2
11 Fife, WA 98424
12 (253) 922-4902

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 Defendants 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 or hydrogeologist licensed by the State of
26 Washington or under the direct supervision of an engineer registered by the State of
Washington, except as otherwise provided for by RCW chapters 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 chapters 18.43
10 and 18.220.

11 Defendants 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 a Defendant either owns, controls or has access rights
17 to 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 Defendants’
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 Defendants. Defendants shall make all reasonable efforts to
23 secure access rights for those properties within the Site not owned or controlled by a 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 a 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, Defendants 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, Defendants shall allow Ecology and/or its authorized
12 representative to take split or duplicate samples of any samples collected by Defendants
13 pursuant to the implementation of this Decree. Defendants 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 Defendants 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 Defendants 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 chapter 173-50 for the specific analyses to
22 be conducted, unless otherwise approved by Ecology.

23 **XI. PROGRESS REPORTS**

24 Defendants shall submit to Ecology written Progress Reports as set forth in section 7 of
25 Appendix A to the CAP (Exhibit B). The Progress Reports shall include the following:
26

1 A. A list of on-site activities that have taken place during the reporting period(s)
2 set forth in Appendix A to the CAP;

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 CAP (Exhibit B) during the reporting
6 period(s) set forth in Appendix A to the CAP and any planned deviations in the upcoming
7 reporting 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 Defendants during the
11 past reporting period and an identification of the source of the sample; and

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

14 All Progress Reports shall be submitted as set forth in section 7 of Appendix A to the
15 CAP (Exhibit B). Unless otherwise specified, Progress Reports and any other documents
16 submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to
17 Ecology's project coordinator.

18 **XII. RETENTION OF RECORDS**

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

1 Nothing in this Decree is intended by any Defendant to waive any right it may have
2 under applicable law to limit disclosure of documents protected by the attorney work-product
3 privilege and/or the attorney-client privilege. If a Defendant withholds any requested records
4 based on an assertion of privilege, that 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 a 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 a Defendant's transfer of any interest in all or any portion of the Site, and
13 during the effective period of this Decree, that Defendant shall provide a copy of this Decree to
14 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,
15 at least thirty (30) days prior to any transfer, that Defendant shall notify Ecology of said
16 transfer. Upon transfer of any interest, the transferring Defendant shall notify all transferees of
17 the restrictions on the activities and uses of the property under this Decree and incorporate any
18 such use restrictions into the transfer documents.

19 **XIV. RESOLUTION OF DISPUTES**

20 A. In the event that a Defendant elects to invoke dispute resolution, the
21 Defendant(s) must 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), a Defendant has fourteen (14) days
24 within which to notify Ecology's project coordinator in writing of its dispute (Informal
25 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; a Defendant's position with regards to the
7 dispute; Ecology's position with regards to the dispute; and the extent of resolution
8 reached by informal discussion.

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

16 4. Ecology's Regional Section Manager shall conduct a review of the
17 dispute and issue a written decision regarding the dispute (Decision on Dispute) within
18 thirty (30) days of the Formal Dispute Notice.

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

1 6. Ecology's Hazardous Waste and Toxics Reduction Program Manager
2 shall conduct a review of the dispute and shall issue a written decision regarding the
3 dispute (Final Decision on Dispute) within thirty (30) days of receipt of the Final
4 Review Request. The Hazardous Waste and Toxics Reduction Program Manager's
5 decision shall be Ecology's final decision on the disputed matter.

6 B. If Ecology's Final Decision on Dispute is unacceptable to the Defendant(s), the
7 Defendant(s) has the right to submit the dispute to the Court for resolution. The Parties agree
8 that one judge should retain jurisdiction over this case and shall, as necessary, resolve any
9 dispute arising under this Decree. In the event a Defendant presents an issue to the Court for
10 review, the Court shall review the action or decision of Ecology on the basis of whether such
11 action or decision was arbitrary and capricious and render a decision based on such standard of
12 review.

13 C. The Parties agree to only utilize the dispute resolution process in good faith and
14 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
15 Where a party utilizes the dispute resolution process in bad faith or for purposes of delay, the
16 other party may seek sanctions.

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

20 E. In case of a dispute, failure to either proceed with the work required by this
21 Decree or timely invoke dispute resolution may result in Ecology's determination that
22 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
23 undertaking the work under Section XXV (Implementation of Remedial Action).
24
25
26

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

XV. AMENDMENT OF DECREE

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

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

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

XVI. EXTENSION OF SCHEDULE

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

All extensions shall be requested in writing. The request shall specify:

1. The deadline that is sought to be extended;
2. The length of the extension sought;
3. The reason(s) for the extension; and
4. Any related deadline or schedule that would be affected if the extension

were granted.

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

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

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

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

12 However, neither increased costs of performance of the terms of this Decree nor
13 changed economic circumstances shall be considered circumstances beyond the reasonable
14 control of Defendants.

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

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

24 1. Delays in the issuance of a necessary permit which was applied for in a
25 timely manner;
26

1 **XVIII. COVENANT NOT TO SUE**

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

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

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

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

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

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

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

1 contractors in entering into and implementing this Decree. However, no Defendant shall
2 indemnify the State of Washington nor save nor hold the State's employees and agents
3 harmless from any claims or causes of action to the extent arising out of the negligent acts or
4 omissions of the State of Washington, or the employees or agents of the State, in entering into
5 or implementing this Decree.

6 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

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

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

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

1 believe are applicable to the remedial action. Ecology shall make the final determination on
2 the additional substantive requirements that must be met by Defendants and on how
3 Defendants must meet those requirements. Ecology shall inform Defendants in writing of
4 these requirements. Once established by Ecology, the additional requirements shall be
5 enforceable requirements of this Decree. Defendants shall not begin or continue the remedial
6 action potentially subject to the additional requirements until Ecology makes its final
7 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
10 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
11 necessary for the state to administer any federal law, the exemption shall not apply and
12 Defendants shall comply with both the procedural and substantive requirements of the laws
13 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

14 **XXIV. REMEDIAL ACTION COSTS**

15 Defendants 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 RCW chapter 70.105D, 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
21 WAC 173-340-550(2). The Defendants shall pay the required amount within thirty (30) days
22 of receiving from Ecology an itemized statement of costs that includes a summary of costs
23 incurred, an identification of involved staff, and the amount of time spent by involved staff
24 members on the project. A general statement of work performed will be provided by Ecology
25 upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-
26 550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized

1 statement of costs will result in interest charges at the rate of twelve percent (12%) per annum,
2 compounded monthly.

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

6 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

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

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

19 **XXVI. PERIODIC REVIEW**

20 As remedial action, including groundwater monitoring, continues at the Site, the Parties
21 agree to review the progress of remedial action at the Site, and to review the data accumulated
22 as a result of monitoring the Site as often as is necessary and appropriate under the
23 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
24 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
25 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall
26 submit a report to Ecology that documents whether human health and the environment are

1 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the
2 right to require further remedial action at the Site under appropriate circumstances as described
3 in paragraph XVIII.B of this Decree. This provision shall remain in effect for the duration of
4 this Decree.

5 **XXVII. PUBLIC PARTICIPATION**

6 A Public Participation Plan is required for this Site. Ecology shall review any existing
7 Public Participation Plan to determine its continued appropriateness and whether it requires
8 amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in
9 conjunction with Defendants.

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

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

17 B. Notify Ecology's project coordinator prior to the preparation of all press
18 releases and fact sheets, and before major meetings with the interested public and local
19 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press
20 releases and fact sheets, and before major meetings with the interested public and local
21 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
22 Defendants that do not receive prior Ecology approval, such Defendants shall clearly indicate
23 to its audience that the press release, fact sheet, meeting, or other outreach effort was not
24 sponsored or endorsed by Ecology.
25
26

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

4 D. When requested by Ecology, arrange and/or continue information repositories at
5 the following locations:

- 6 1. Tacoma Public Library
7 1102 Tacoma Avenue South
8 Tacoma, WA 98402
- 9 2. Department of Ecology
10 Southwest Regional Office
11 300 Desmond Drive SE
12 Olympia, WA 98504-7600

13 At a minimum, copies of all public notices, fact sheets, and documents relating to public
14 comment periods shall be promptly placed in these repositories. A copy of all documents
15 related to this Site shall be maintained in the repository at Ecology's Southwest Regional
16 Office in Lacey, Washington.

17 **XXVIII. DURATION OF DECREE**

18 The remedial program required pursuant to this Decree shall be maintained and
19 continued until Defendants have received written notification from Ecology that the
20 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
21 effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue)
22 and Section XIX (Contribution Protection) shall survive.

23 **XXIX. CLAIMS AGAINST THE STATE**

24 Each Defendant hereby agrees that it will not seek to recover any costs accrued in
25 implementing the remedial action required by this Decree from the State of Washington or any
26 of its agencies; and further, that it will make no claim against the State Toxics Control Account
or any local Toxics Control Account for any costs incurred in implementing this Decree.
Except as provided above, however, each Defendant each expressly reserves its right to seek to

1 recover any costs incurred in implementing this Decree from any other PLP. This section does
2 not limit or address funding that may be provided under WAC chapter 173-322.

3 **XXX. EFFECTIVE DATE**

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

5 **XXXI. WITHDRAWAL OF CONSENT**

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

10
11 STATE OF WASHINGTON
12 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

13 _____
14 DARIN RICE
15 Program Manager
16 Hazardous Waste and Toxics Reduction
17 Program
18 (360) 407-6702

JOHN A. LEVEL, WSBA #20439
Assistant Attorney General
(360) 586-6753

19 Date: _____

Date: _____

20
21 CASCADE POLE AND LUMBER
22 COMPANY

MCFARLAND CASCADE HOLDINGS,
INC.

23 _____
24 IAN JONES
25 Sr. Vice President
26 (253) 572-3033

IAN JONES
Sr. Vice President
(253) 572-3033

Date: _____

Date: _____

//

//

//

//

1 MCFARLAND CASCADE POLE &
2 LUMBER COMPANY

TYEE MANAGEMENT COMPANY, LLC

3 _____
4 IAN JONES
5 Sr. Vice President
6 (253) 572-3033

GREGORY D. MCFARLAND
President
(253) 922-4902

7 Date: _____

Date: _____

8 ENTERED this _____ day of _____ 2016.

9
10 _____
11 JUDGE
12 Pierce County Superior Court
13
14
15
16
17
18
19
20
21
22
23
24
25
26