

B&L Woodwaste
FS 1203

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IN COUNTY CLERK'S OFFICE

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PIERCE COUNTY CLERK
BY _____ DEPUTY

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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
v.)
)
MURRAY PACIFIC CORPORATION)

No. 89 2 00319 3

CONSENT DECREE

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Exhibit 1: Diagram of Site
Exhibit 2: Work Plan

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INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology ("Ecology") and Murray Pacific Corporation ("Murray Pacific") is to provide for remedial action at a facility where hazardous substances have been deposited, placed, stored, or otherwise disposed of. This Decree requires Murray Pacific to undertake remedial action which includes an accelerated remedial investigation (RI), feasibility study (FS) and remedial action (RA) at the B & L Woodwaste Site. Ecology will provide a portion of the necessary funds so as to expedite and enhance, and achieve greater fairness with respect to, the voluntary cleanup activities.

B. 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 as between themselves 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.

C. In signing this Decree, Ecology and Murray Pacific agree to its entry and agrees to be bound by its terms.

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D. By entering into this Decree, the parties do not intend to discharge nonsettling parties or any potentially liable person or entity known or unknown from any liability they have with respect to matters alleged in the complaint.

E. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter and over the parties pursuant to chapter 90.48 RCW and chapter 70.105B RCW.

B. Under RCW 70.105B.070(1), whenever Ecology has reason to believe that a release or threatened release of a hazardous substance will require remedial action, it shall notify potentially liable persons with respect to the release or threatened release and provide potentially liable persons a reasonable opportunity to propose a settlement agreement providing for remedial action. Pursuant to RCW 70.105B.070(5), where Ecology and a potentially liable person reach such an agreement, the agreement shall be filed with the appropriate superior court as a proposed consent decree, subject to a thirty (30) day public comment period.

C. On the basis of the testing and analysis described in the Statement of Facts, Section V, and Ecology files and

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records, Ecology has determined that past disposal or management practices at the Site, described in Section IV, have given rise to a release of hazardous substances, the release is causing contamination of surface and ground waters, and the release will continue to cause contamination unless the release is abated or mitigated.

D. All persons and entities which are potentially liable parties for the Site pursuant to RCW 70.105B.040, have been given notice of the release of hazardous substances at the Site as required by RCW 70.105B.070(1). Murray Pacific is the sole settling defendant under this Decree.

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

II. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories to this Decree (parties), 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 the Decree. Murray Pacific agrees to undertake all actions required by the terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change in ownership or corporate status shall alter the

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2 responsibility of the Murray Pacific under this Decree. Murray
3 Pacific shall provide a copy of this Decree to each of its
4 agents, including all contractors and subcontractors retained
5 to perform work contemplated by this Decree and shall condition
6 any contract for such work on compliance with this Decree.

7 III. FUTURE LITIGATION

8 Murray Pacific is only one of many liable parties
9 regarding the B & L Woodwaste Site. During or at the
10 conclusion of remedial action at the Site, Murray Pacific
11 intends to commence a cost recovery action against the
12 nonsettling liable parties. Ecology hereby commits to join
13 Murray Pacific as a co-plaintiff in that action and to assist
14 in the prosecution of that action.

15 IV. DEFINITIONS

16 A. Site: means the property described in Exhibit 1 to this
17 Decree. The Site boundaries shall be adjusted if contamination
18 sourced from the Site is discovered beyond the current Site
19 boundaries.

20 B. Days: means calendar days unless specified otherwise.

21 F. Parties: means the Department of Ecology and Murray
22 Pacific Corporation.

23 V. STATEMENT OF FACTS

24 A. The project area in this matter (the "Site") is known
25 as the B & L Woodwaste Fill, and is situated near Milton,

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2 Washington. Location and boundaries of the Site are depicted
3 by the diagram that is Exhibit 1 to this Order.

4 William Fjetland owns the majority of the Site and
5 operates a business there. The business, B & L Trucking, has
6 used the Site as a fill site for log sort yard woodwaste
7 containing ASARCO slag. The Site also received limited
8 quantities of miscellaneous refuse. The location of the Site
9 is 77th Avenue East and the Puget Power right of way in Milton,
10 Washington.

11 B. The Site, which is about 20 acres in size, is located
12 in a mixed residential and agricultural area. A system of
13 ditches along the Site boundary collects leachate and runoff
14 from the fill and discharges it to Surprise Lake Ditch, which
15 enters Hylebos Creek. Two City of Milton municipal water
16 wells, with approximately 500 gallons/minute pumping capacities
17 each, (#3 and #4), are located approximately 750 feet and 900
18 feet northeast of the Site.

19 C. In the period between 1962 and 1982, B & L Trucking
20 provided log deck maintenance services to several log sorting
21 yards within the Tacoma tideflats. This maintenance involved
22 the scraping of soil and wood waste from the log yard surface
23 and refilling muddy, high traffic areas with ballast (rock
24 and/or gravel) to stabilize the surface.

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2 A number of log sort yards along Hylebos Waterway,
3 including Murray Pacific, used ASARCO slag as ballast between
4 1975 and 1980. ASARCO slag is a material which was produced at
5 the ASARCO Mill located in Ruston, WA. It is known that ASARCO
6 slag contains several heavy metals. One sample of the slag
7 contained approximately 9,000 mg/kg of arsenic, 5,000 mg/kg
8 each of lead and copper and 18,000 mg/kg of zinc. B & L
9 Trucking provided its log deck maintenance services to a number
10 of the log sort yards that used ASARCO slag as ballast. B & L
11 Trucking removed soil and wood waste, along with ASARCO slag,
12 from these log sort yards, and after 1978 deposited this
13 material at the B & L Woodwaste Landfill.

14 D. Additionally, in 1980, shredded upholstery from
15 automobile demolition and approximately 6,000 gallons of a
16 bentonite slurry were disposed of at the Site. The Tacoma
17 Pierce County Health Department (TPCHD) reported the bentonite
18 slurry, produced by Enviro Minerals, was an "inert" material.
19 The Site allegedly received auto fluff from General Metals
20 Corporation and waste rock wool from USG Corporation. Toxicity
21 and other polluting aspects of these wastes have not yet been
22 determined. All operations at the Site ceased in 1984 (TPCHD
23 Memo, October 1984).

24 E. Data on leachate characteristics from the B & L
25 Landfill and water quality in Surprise Lake Ditch (above and
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below the Site) have been compiled by Ecology. These data indicate the source of elevated arsenic levels in Surprise Lake Ditch is the B & L Landfill. In 1983, a leachate sample from the Site contained elevated concentrations of arsenic (26,200 ug/l), lead (115 ug/l), copper (93 ug/l) and zinc (673 ug/l). The level of arsenic in Surprise Lake Ditch was found to be 5,400 ug/l. Water samples from the bottom of the fill were tested by Ecology in 1985 using the EP Toxicity Procedure. The level of arsenic in these samples exceeded the EP Toxicity hazardous waste level. A number of organic pollutants, including 4-methylphenol, phenol, toluene and benzoic acid, were also found in a leachate sample.

F. In 1987, the EPA Field Investigation Team (FIT Team) conducted a site investigation at Ecology's request. The FIT Team investigation included sampling of soil and of groundwater from four wells they installed on or near the Site. Soil analyses yielded elevated levels for arsenic, lead and iron plus a number of organic compounds (acetone, Z-butanone, toluene, ethylbenzene, styrene, xylenes, phenol, 2- and 4-methylphenol, bezoic acid, dimethylphthalate, fluoranthene and dibenz (a,h) athracene). Filtered groundwater sample analyses exceeded drinking water standards for arsenic and lead. The FIT Team results support Ecology's contention that surface waters are being contaminated by site leachate/runoff

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and provide evidence that site groundwater is also contaminated. Contamination of groundwater at production wells #3 and #4 has not been detected; however, the effect of pollutant migration from the landfill toward the wells resulting from water pumpage is not known.

G. Human health and the environment may be put at risk through various routes of exposure (i.e., surface water contact and surface water and groundwater ingestion) to the above-referenced substances.

H. Based on the above facts, Ecology has determined the release and threat of release of hazardous substances from the Site requires action to protect the public health and welfare and the environment. Ecology has also determined in order to protect public health, welfare and the environment, it is necessary that remedial measures and action be taken to abate the release or threat of release of hazardous substances from the Site into the environment.

VI. WORK TO BE PERFORMED

This Consent Decree contains a program designed to protect the public health and welfare and the environment from the known release, or threatened releases, of contaminants and pollutants at, on, or from the Site. The work to be performed is set forth in Exhibit 2, which is made an integral and enforceable part of the Consent Decree. The term "Consent

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Decree" shall include Exhibit 2 (Work Plan) whenever used in this document. Except where performance by another party is expressly provided in the Exhibit 2, Murray Pacific commits to implement the requirements of this section and the Work Plan. The Work Plan specifies several deliverable items:

1. Remedial Investigation (RI) Report
2. Risk Assessment Report
3. Feasibility Study (FS) Report
4. Conceptual Design Report (describing remedial action)
5. Final Plans and Specifications (describing remedial action)
6. Remedial Action (RA) Implementation

Items 1 through 5 are to be delivered (2 copies) to the Ecology project coordinator according to the Project Schedule contained in the Work Plan. Ecology will provide written response to each document within one month of receipt. Any disputes regarding Ecology comments/requirements will be handled via the Resolution of Disputes section of this Decree (Section XIII).

Item 6 (Remedial Action (RA) Implementation) will be carried out in accordance with Items 4 and 5 along with Ecology comments/requirements. A projected date for RA Implementation will be developed under Item 4, and, once established, the date may be revised only by written Ecology consent.

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VII. DESIGNATED PROJECT COORDINATORS

On or before the entry of this Decree, Ecology and Murray Pacific shall each designate a project coordinator. Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and Murray Pacific and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate working level staff contacts for all or portions of the implementation of the remedial work required by this Decree.

Any party may change its respective project coordinator. To the extent possible, written notification shall be given to the other party, in writing, at least ten (10) calendar days prior to the change.

The project coordinator for Ecology is:

Dom Reale
Commencement Bay Project Engineer
Washington State Department of Ecology
Olympia, WA 98504-6811
Telephone: (206) 753-6949

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The project coordinator for Murray Pacific is:

Nathan A. Graves, CHMM
Manager, Industrial Services
Kennedy/Jenks/Cilton
33301 Ninth Avenue South, Suite 100
Federal Way, WA 98003
(206) 927-8688

VIII. PERFORMANCE

All response work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or certified hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Murray Pacific shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site. Selection of such person or contractor shall be subject to Ecology approval.

IX. ACCESS

Acting pursuant to their statutory authority, Ecology and Murray Pacific shall cooperate to obtain access to the Site and off-site locations so as to carry out the RI/FS/RA.

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts

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related to the work being performed pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the Murray Pacific. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans.

Off-site access locations necessary for remedial activities must be identified in the draft and final Work Plan(s). Fully executed access agreements between off-site property owners and Murray Pacific or necessary Court Orders, to allow necessary Site and off-site remedial activities, shall be obtained by Ecology and appended to the final Work Plan(s).

X. SAMPLING, DATA REPORTING AND AVAILABILITY

With respect to the implementation of this Decree, Murray Pacific shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology and shall submit these results in progress reports submitted in accordance with Section XI herein.

At the request of Ecology, Murray Pacific shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Murray

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2 Pacific pursuant to the implementation of this Decree. Murray
3 Pacific shall notify Ecology five (5) working days in advance
4 of any sample collection activity. Ecology shall allow split
5 or duplicate samples to be taken by Murray Pacific or its
6 authorized representatives of any samples collected by Ecology
7 pursuant to the implementation of this Decree. To the extent
8 practicable, and without limitation on Ecology's rights under
9 Section IX, Ecology shall notify Murray Pacific five (5)
10 working days in advance of any sample collection activity,
11 unless there exists an imminent threat to human health and the
12 environment.

13 XI. PROGRESS REPORTS

14 Murray Pacific shall submit to Ecology written monthly
15 progress reports which describe the actions it has taken during
16 the previous month to implement the requirements of this
17 Decree. Progress reports shall also describe the activities
18 scheduled to be taken during the next month. All progress
19 reports shall be submitted by the tenth day of the month in
20 which they are due after the effective date of this Decree.
21 The progress reports shall include a detailed statement of the
22 manner and extent to which the requirements and time schedules
23 set out in the Decree are being met. Unless otherwise specif-
24 ied, progress reports and any other documents submitted

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pursuant to this Decree shall be sent by certified mail, return-receipt requested, to Ecology's project coordinator.

XII. RETENTION OF RECORDS

Murray Pacific shall preserve, during the pendency of this Decree and for ten (10) years from the date of issuance of the Certificate of Completion (Section XXVIII) all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors a similar record retention requirements. Upon request of Ecology, Murray Pacific shall make all non-archived records available to Ecology and allow access for review. All archived records shall be made available to Ecology within a reasonable period of time.

XIII. RESOLUTION OF DISPUTES

If Murray Pacific objects to any Ecology disapproval, proposed modification, or decision made pursuant to this Decree, it shall notify Ecology in writing of its objections within fourteen (14) calendar days of receipt of such notice. Thereafter, the parties shall confer in an effort to resolve the dispute. If agreement cannot be reached on the dispute within fourteen (14) calendar days after receipt by Ecology of such objections, Ecology shall promptly provide a written statement of its decision to Murray Pacific.

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2 If Ecology's final written decision is unacceptable to
3 Murray Pacific, Murray Pacific has the right to submit the
4 dispute to the Court for resolution. The parties agree that
5 one judge should retain jurisdiction over this case and shall,
6 as necessary, resolve any dispute arising under this Decree.
7 In the event Murray Pacific presents an issue to the Court for
8 review, the Court shall review the action or decision of
9 Ecology on the basis of whether such action or decision was
10 arbitrary and capricious and render a decision based on such
11 standard of review. Ecology and Murray Pacific agree to only
12 utilize the dispute resolution process in good faith and agree
13 to expedite, to the extent possible, the dispute resolution
14 process whenever it is used. Where either party utilizes the
15 dispute resolution in bad faith or for purposes of delay, the
16 other party may seek sanctions.

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

21 XIV. AMENDMENT OF CONSENT DECREE

22 This Decree may only be amended by a written stipulation
23 among all the parties to this Decree that is entered by the
24 Court. Such amendment shall become effective upon entry by the
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Court. Agreement to amend shall not be unreasonably withheld by any party to the Decree.

Murray Pacific shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XIII of this Decree.

No guidance, suggestions, or comments by Ecology will be construed as relieving Murray Pacific of its obligation to obtain formal approval as may be required by this Decree. No oral communication by Ecology shall relieve Murray Pacific of the obligation specified herein.

Ecology shall notify Murray Pacific in writing of any Ecology proposed amendment and the basis for such proposal. Murray Pacific shall thereafter comply with such modifications, or if it does not agree with those modifications, the disagreement shall be addressed through the dispute resolution procedures described in Section XIII of this Decree.

If Ecology adopts regulations applicable to this Decree that would require public participation in the amendment

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2 process, such regulations shall be followed in amending this
3 Decree.

4 XV. EXTENSION OF SCHEDULE

5 A. An extension of schedule shall be granted only when a
6 request for an extension is submitted in a timely fashion and
7 good cause exists for granting the extension. All extensions
8 shall be requested in writing. The request shall specify the
9 reason(s) the extension is needed. An extension shall only be
10 granted for such period of time as Ecology determines is
11 reasonable under the circumstances. A requested extension
12 shall not be effective until approved by Ecology. Ecology
13 shall act upon any written request for extension in a timely
14 fashion. It shall not be necessary to formally amend this
15 Decree pursuant to Section XIV when a schedule extension is
16 granted.

17 B. The burden shall be on Murray Pacific to demonstrate
18 to the satisfaction of Ecology that the request for such
19 extension has been submitted in a timely fashion and that good
20 cause exists for granting the extension. Good cause includes,
21 but is not limited to, the following:

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

4 (2) Acts of God, including fire, flood, blizzard, extreme
5 temperatures, storm, wave or water conditions, or other
6 unavoidable casualty; or

7 (3) Endangerment as described in Section XVII.

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

12 C. Ecology may extend the schedule for a period not to
13 exceed ninety (90) days, except where an extension is needed as
14 a result of:

15 (1) Delays in the issuance of a necessary permit which
16 was timely applied for or, if necessary, to comply with permit
17 conditions; or

18 (2) Judicial review of the issuance, non-issuance, or
19 reissuance of a necessary permit; or

20 (3) Other circumstances deemed exceptional or
21 extraordinary by Ecology; or

22 (4) Endangerment as described in Section XVII; or

23 (5) The need to protect the environment or public
24 interest.

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2 Ecology shall give Murray Pacific written notice in a
3 timely fashion of any extensions granted pursuant to the
4 Decree.

5 XVI. STIPULATED PENALTIES

6 A. If Murray Pacific fails to make a submittal to
7 Ecology in accordance with this Decree or comply with any time
8 schedules contained in this Decree or any other time schedule
9 approved in writing by Ecology pursuant to this Decree, or
10 otherwise fails to comply with this Decree, Murray Pacific
11 agrees that it shall be obligated to pay, at Ecology's
12 discretion, a civil penalty, in an amount of up to five hundred
13 dollars per day during the first thirty (30) days; up to one
14 thousand dollars per day during the next thirty (30) days; and
15 up to two thousand dollars per day thereafter.

16 B. Murray Pacific shall not be liable for payment under
17 this section if it has submitted a timely request to Ecology
18 for an extension of schedule under Section XV of this Decree
19 and such request has been granted by Ecology or the Court prior
20 to or after the deadline at issue.

21 C. Upon determination by Ecology that Murray Pacific has
22 failed to make a submittal referenced herein or has otherwise
23 failed to comply with this Decree, Ecology shall immediately
24 give written notice to Murray Pacific of the failure, specify-
25 ing the provision of the Decree which has not been complied

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2 with and specifying the amount of the civil penalty due pur-
3 suant to Section XVI.A. Murray Pacific shall pay the civil
4 penalty within thirty (30) days of receipt of notification from
5 Ecology or as may be required after the completion of any
6 dispute resolution under Section XIII.

7 D. Any disagreement over the factual basis for issuance
8 of a penalty under this section shall be resolved through the
9 dispute resolution clause. Any penalty issued pursuant to this
10 section shall not be appealable to the Pollution Control
11 Hearings Board. Nothing in this Consent Decree shall waive or
12 foreclose the right of Murray Pacific to a review of the facts
13 giving rise to penalties by a court of competent jurisdiction.

14 XVII. ENDANGERMENT

15 In the event Ecology determines or concurs in a
16 determination by another local, state, or federal agency that
17 activities implementing or in noncompliance with this Decree,
18 or any other circumstances or activities, are creating or have
19 the potential to create a danger to the health or welfare of
20 the people on the Site or in the surrounding area or to the
21 environment, Ecology may order Murray Pacific to stop further
22 implementation of this Decree for such period of time as needed
23 to abate the danger or may petition the Court for an order as
24 appropriate. During any stoppage of work under this section,
25 the obligations of Murray Pacific with respect to the work

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ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XV of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Murray Pacific determines that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an imminent and substantial endangerment to the people on the Site or in the surrounding area or to the environment, Murray Pacific may stop implementation of this Decree for such periods of time necessary for Ecology to evaluate the situation and determine whether Murray Pacific should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Murray Pacific shall notify either Ecology field personnel on-site or the project coordinator as soon as is possible, but no later than twenty-four (24) hours after such stoppage of work, and provide Ecology with documentation of its analysis in reaching this determination. If Ecology disagrees with Murray Pacific's determination, it may order Murray Pacific to resume implementation of this Decree. If Ecology concurs in the work stoppage, Murray Pacific's obligations shall be suspended and the time period for performance of that

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work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Section XV of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to this clause shall be resolved through the dispute resolution procedures in Section XIII.

XVIII. OTHER ACTIONS

Ecology reserves its rights to institute remedial action(s) at the Site and subsequently pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties pursuant to available statutory authority under the following circumstances:

1. Where Murray Pacific fails to adhere to any requirement of this Decree;

2. In the event or upon the discovery of a release or threatened release not addressed by this Decree;

3. Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to the public health or welfare or the environment; or

4. Upon the occurrence or discovery of a situation beyond the scope of this Decree as to which Ecology would be empowered to perform any remedial action or to issue an order and/or penalty. This Decree is limited in scope to the precise

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2 geographic site described in Exhibit A and to those
3 contaminants which Ecology knows to be at the Site when this
4 Decree is entered.

5 XIX. INDEMNIFICATION

6 Murray Pacific agrees to indemnify and save and hold the
7 State of Washington, its employees, and agents harmless from
8 any and all claims or causes of action for death or injuries to
9 persons or for loss or damage to property arising from or on
10 account of acts or omissions of Murray Pacific, its officers,
11 employees, agents, or contractors in entering into and
12 implementing this Decree; provided, however, that Murray
13 Pacific shall not indemnify the State of Washington nor save
14 nor hold its employees and agents harmless from any claims or
15 causes of action brought by third parties arising out of the
16 negligent acts or omissions of the State of Washington, or the
17 employees or agents of the State, in implementing the
18 activities pursuant to this Decree. Further, Murray Pacific
19 shall indemnify the State of Washington against claims or
20 causes of action arising out of or based on the failure of or
21 defect in the Work Plan described in Section VI of this Decree
22 or the implementation of the Work Plan.

23 XX. COMPLIANCE WITH APPLICABLE LAWS

24 All actions carried out by Murray Pacific pursuant to this
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2 Decree shall be done in accordance with all applicable federal,
3 state, and local requirements, including requirements to obtain
4 necessary permits not otherwise exempt under RCW 70.105B.250.

5 All facilities used by Murray Pacific for the off-site
6 treatment, storage, or disposal of hazardous substances removed
7 from the Site must be in compliance with the applicable
8 requirements of the Resource Conservation and Recovery Act, as
9 amended in November 1984, 42 U.S.C. 6901, et seq.; and ch.
10 70.105 RCW. Murray Pacific must designate in a report to
11 Ecology any facilities that Murray Pacific proposes to use for
12 such off-site storage, treatment, or disposal, and Ecology must
13 give prior approval for the use of such facilities.

14 XXI. REQUEST FOR MIXED FUNDING; COOPERATION

15 Murray Pacific has requested financial assistance in the
16 form of "mixed funding" from Ecology with regard to this Site.
17 Specifically, Murray Pacific has requested that Ecology pay 30%
18 of the cost of the RI/FS/RA. Ecology is now considering this
19 request and will make a final decision on this request in the
20 near future.

21 Murray Pacific shall complete the RI/FS for this Site
22 regardless of Ecology's response to its request for mixed
23 funding. Further, if Murray Pacific's request for mixed
24 funding is granted, Murray Pacific agrees that it shall
25 complete implementation of remedial action at the Site. If,

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2 however, Murray Pacific's request for mixed funding is denied,
3 Murray Pacific may withdraw from this Consent Decree after
4 completion of the RI/FS.

5 If mixed funding is granted, Ecology and Murray Pacific
6 shall cooperate and together endeavor to recover their
7 respective shares of all such remedial action costs from any
8 potentially liable person, including prosecution of any
9 required litigation.

10 XXII. LIABILITY INSURANCE

11 Within thirty (30) days of the entry of this Decree and
12 for the duration of the remedial action required by this
13 Decree, Murray Pacific shall provide Ecology with current
14 certificates of insurance certifying coverage for general
15 liability which may arise in carrying out this Decree with
16 minimum limits of one million dollars (\$1,000,000) per
17 occurrence and an annual aggregate of at least two million
18 dollars (\$2,000,000), exclusive of legal defense costs, for
19 bodily injury and property damage liability combined, and
20 containing the provision that the insurance shall not be
21 cancelled for any reason prior to the completion of the
22 remedial action required by this Decree except upon thirty (30)
23 days written notice to Murray Pacific and Ecology.

24 These insurance limits are not to be construed as maximum
25 limits. Murray Pacific is solely responsible for determining

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2 the appropriate amount of insurance it should carry for
3 injuries or damages that may result from the implementation of
4 this Decree.

5 XXIII. CLAIMS AGAINST THE STATE

6 Murray Pacific hereby agrees that it will not seek to
7 recover any costs accrued in implementing the remedial action
8 plan required by this Decree against the State of Washington or
9 any of its agencies pursuant to any state or federal statute or
10 other law or equity, except as provided in Section XXI
11 concerning Mixed Funding.

12 XXIV. IMPLEMENTATION OF REMEDIAL ACTION

13 If Ecology determines that Murray Pacific has failed
14 without good cause to implement the remedial action, Ecology
15 may, after notice to Murray Pacific, perform any or all
16 portions of the remedial action that remain incomplete. If
17 Ecology performs all or portions of the remedial action because
18 of Murray Pacific's failure to comply with its obligations
19 under this Decree, Murray Pacific shall reimburse Ecology for
20 the costs of doing such work within thirty (30) days of receipt
21 of demand for payment of such costs, provided that Murray
22 Pacific is not obligated under this section to reimburse
23 Ecology for costs incurred for work inconsistent with or beyond
24 the scope of the Remedial Action.

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XXV. COMMUNITY RELATIONS

Ecology shall maintain the responsibility for community relations at the Site. However, Murray Pacific shall cooperate with Ecology and shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of Work Plans and the completion of engineering design.

Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

B. Notify and coordinate with Ecology's project coordinator prior to all press releases and fact sheet preparation, and before major meetings with the interested public and local government;

C. Participate in public presentations on the progress of Remedial Action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter;

D. In cooperation with Ecology, arrange and/or continue information repositories located at the Tacoma Public Library, Ecology's Southwest Regional Office and such other locations as the parties deem appropriate. At a minimum, copies of all public notices, fact sheets, and press releases, all quality assured groundwater, surface water, soil sediment, and air

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monitoring data, remedial action plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

XXVI. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in this Decree shall be maintained and continued until Murray Pacific receives a written Certificate of Completion from Ecology that the remedial action plan has been satisfactorily completed. The Certificate of Completion shall be issued according to the terms of RCW 70.105.090.

XXVII. EFFECTIVE DATE

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

XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree will be subject to public notice and comment under RCW 70.105B.070(5). Ecology reserves the right to withdraw or withhold its consent to the proposed final order if the comments received by Ecology disclose facts or considerations which indicate that the proposed Decree is inappropriate, improper, or inadequate.

If the Court withholds or withdraws its consent, this Decree shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and

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without prejudice. In such an event, no party shall be bound
by the requirements of this Decree.

A. T. Murray
Murray Pacific Corporation

Dennis Harlowe
DENNIS HARLOWE
Attorney for Murray Pacific

Clark Haberman
CLARK HABERMAN
Regional Manager
Southwest Regional Office

Jay J. Manning
JAY J. MANNING
Assistant Attorney General
representing the
Department of Ecology