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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
v.)
)
CASCADE POLE COMPANY, INC.)
and THE PORT OF OLYMPIA)

No. 90-2-01183-3
CONSENT DECREE

Table of Contents

	<u>Page</u>
INTRODUCTION	3
I. JURISDICTION	5
II. PARTIES BOUND	6
III. DEFINITIONS	7
IV. STATEMENT OF FACTS	8
V. WORK TO BE PERFORMED	13
VI. DESIGNATED PROJECT COORDINATORS	13
VII. PERFORMANCE	14
VIII. ACCESS	15
IX. SAMPLING, DATA REPORTING AND AVAILABILITY	16
X. PROGRESS REPORTS	17
XI. RETENTION OF RECORDS	18
XII. TRANSFER OF INTEREST IN PROPERTY	19
XIII. RESOLUTION OF DISPUTES	19
XIV. AMENDMENT OF CONSENT DECREE	23
XV. EXTENSION OF SCHEDULE	24
XVI. ENDANGERMENT	26
XVII. OTHER ACTIONS	28
XVIII. INDEMNIFICATION	29
XIX. COMPLIANCE WITH APPLICABLE LAWS	29
XX. REMEDIAL AND INVESTIGATIVE COSTS	30
XXI. LIABILITY INSURANCE	31
XXII. FINANCIAL ASSURANCES	32
XXIII. IMPLEMENTATION OF REMEDIAL ACTION	33
XXIV. FIVE YEAR REVIEW	34

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XXV.	DEFENDANTS' RESERVATION OF RIGHTS AND DENIAL OF LIABILITY	34
XXVI.	COMMUNITY RELATIONS	36
XXVII.	DURATION OF DECREE	37
XXVIII.	INVESTIGATIVE WASTES	38
XXIX.	GROUNDWATER EXTRACTION AND TREATMENT SYSTEM. .	38
XXX.	EFFECTIVE DATE	40
XXXI.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT . . .	40

- Exhibit A - Site Diagram
- Exhibit B - Remedial Action Plan
- Exhibit C - Schedules
- Exhibit D - Critical Path Charts
- Exhibit E - Area of Influence Diagram

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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, Defendants agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the complaint.

E. This Decree is entered without prejudice to any existing or future claims, or causes of action between the Defendants. 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; provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

F. 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:

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2 I. JURISDICTION

3 A. This Court has jurisdiction over the subject matter
4 and over the parties pursuant to chapter 90.48 RCW and the
5 Model Toxics Control Act (MTCA) which was passed by initiative
6 (Initiative 97) and which took effect on March 1, 1989. The
7 MTCA has been codified as Ch. 70.105D RCW.

8 B. Authority is conferred upon the State of Washington
9 Attorney General by RCW 70.105D.040(4)(a) to agree to a
10 settlement with any potentially liable party if, after public
11 notice and hearing, Ecology finds the proposed settlement would
12 lead to a more expeditious cleanup of hazardous substances in
13 compliance with cleanup standards under RCW 70.105D.030(2)(d).
14 RCW 70.105D.040(4)(b) requires that such a settlement be
15 entered as a consent decree issued by a court of competent
16 jurisdiction.

17 C. Ecology has given notice to Defendants as set forth
18 in RCW 70.105.020(8) of Ecology's determination that each of
19 the Defendants is a potentially liable party for the Site and
20 each Defendant has been given notice of the release of
21 hazardous substances at the Site.

22 D. Ecology has determined that past practices at the
23 Site have given rise to a release of hazardous substances, the
24 release is causing contamination of surface and ground waters,
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2 and the release will continue to cause contamination unless the
3 release is abated or mitigated.

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

7 II. PARTIES BOUND

8 A. This Decree shall apply to and be binding upon the
9 signatories to this Decree (parties), their successors and
10 assigns. The undersigned representative of each party hereby
11 certifies that he or she is fully authorized to enter into this
12 Decree and to execute and legally bind such party to comply
13 with the Decree, subject to the limitations set forth in
14 Paragraph II.B. below. Defendants agree to undertake all
15 actions required by the terms and conditions of this Decree and
16 not to contest state jurisdiction regarding this Decree. No
17 change in ownership or corporate status shall alter the
18 responsibility of the Defendants under this Decree. Defendants
19 shall provide a copy of this Decree to all contractors and sub-
20 contractors retained to perform work required by this Decree
21 and shall insure that all work undertaken by such contractors
22 and subcontractors will be in compliance with this Decree.

23 B. The Port of Olympia is a Washington municipal
24 corporation subject to the requirements of Article 8, Sections
25 6 and 7 of the Washington State Constitution concerning
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2 municipal debt ceilings and lending of credit, which the Port
3 asserts may limit the Port's liability under the MTCA. Ecology
4 and Cascade Pole Company each assert the Port's liability under
5 the MTCA is unchanged by the cited constitutional provisions.
6 The Port, Cascade Pole Company and Ecology reserve all rights,
7 claims, and defenses related to these constitutional issues.

8 **III. DEFINITIONS**

9 A. Site: Refers to the Port of Olympia property
10 formerly operated as a wood treating plant at the northeast tip
11 of the peninsula which divides the East and West Bays of Budd
12 Inlet. The Site, which is more particularly described in
13 Exhibit A to this Decree which is a detailed site diagram,
14 consists of the area formerly leased by Cascade Pole Company,
15 the southwest corner which is generally south of the leased
16 area, and the intertidal sediments which are generally north
17 and east of the leased area. The intertidal sediments are
18 considered a separate operable unit from the remainder of the
19 Site. The Site may be expanded if hazardous substances from
20 activities at the Site are found outside the existing Site
21 boundaries.

22 B. Remedial Action: See definition of same at RCW
23 70.105D.020(11).

24 C. Model Toxics Control Act: Refers to Initiative 97
25 which took effect on March 1, 1989.

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2 D. Days: Refers to calendar days unless specified
3 otherwise.

4 E. Parties: Refers to the Washington State Department
5 of Ecology, the Port of Olympia, and the Cascade Pole Company.

6 F. Defendants: Refers to the Port of Olympia and the
7 Cascade Pole Company.

8 G. Consent Decree: Refers to this consent decree and
9 each of the exhibits to the decree. All exhibits, except Ex. D
10 which is a planning tool, are integral and enforceable parts of
11 this consent decree.

12 IV. STATEMENT OF FACTS

13 Ecology makes the following finding of facts without any
14 express or implied admissions by Defendants.

15 A. The project area in this matter (the "Site") is known
16 as the Cascade Pole Company Site and is situated in Olympia,
17 Washington. The location and boundaries of the Site are
18 depicted by the diagram that is Exhibit A to this Decree.

19 B. Cascade Pole Company, one of several companies doing
20 business as McFarland Cascade, formerly leased a portion of the
21 Site from the Port of Olympia. The Port of Olympia is the
22 owner of this property and has been since the 1930's.

23 C. The leased area of the Site has been utilized as a
24 wood treating plant for more than forty (40) years. Various
25 other operators, which are apparently no longer in business,

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2 utilized this Site prior to Cascade Pole Company. Cascade Pole
3 Company began operations at this Site in 1967. Cascade
4 Treating Company, which merged with Cascade Pole in 1967, began
5 operating a wood treatment plant on the Site in 1957. Prior to
6 the early 1960s, creosote was the chemical used for treating
7 wood at the Site. In the early 1960s pentachlorophenol became
8 the primary treating chemical used at the Site, although
9 creosote was also used.

10 D. In December 1982, an environmental complaint was
11 filed with Ecology regarding a discharge of oily material from
12 the storm drain which discharges to Budd Inlet southwest of the
13 Site, and the presence of similar oily material in the soils at
14 the border of the leased area. A preliminary investigation
15 showed contamination of soils and groundwater along the
16 southern boundary of the facility. Cascade Pole performed
17 further investigation to determine the extent of the problem.
18 Several backhoe pits and wells installed by Cascade Pole
19 revealed a layer of oily liquid floating on the groundwater at
20 the Site.

21 E. Between 1983 and May of 1986 Cascade Pole conducted a
22 partial remedial investigation (RI) at the Site. After
23 submittal of the RI report, Ecology staff identified major data
24 gaps in this investigation. On May 30, 1986, because it was
25 concerned that the RI and feasibility study (FS) were not being
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2 completed in a timely manner, Ecology issued an administrative
3 order requiring completion of the RI and FS. Cascade Pole
4 appealed that order. After a two-day hearing in October of
5 1986, the Washington State Pollution Control Hearings Board
6 issued a decision upholding the administrative order in full.
7 The Board's decision was issued in January of 1987.

8 F. In February of 1987, a Consent Order was signed by
9 Ecology and Cascade Pole requiring Cascade Pole to complete the
10 RI at the Site, to fill the identified data gaps, and to
11 complete the FS at the Site.

12 G. The Site and adjacent areas are relatively flat and
13 lie approximately 10 feet above mean sea level. The peninsula
14 is filled land in what was originally a tidal flat. Sources of
15 the fill were the East and West Bays of Budd Inlet, which have
16 been periodically dredged since the 1920s. Additions of
17 dredged fill have enlarged the Cascade Pole Site considerably
18 since it was first used in 1939. Unconsolidated glacial and
19 post-glacial deposits also underlie the Site. There are two
20 aquifers underlying the Site. The upper aquifer, or fill
21 aquifer, flows outward from the central portion of the Site and
22 discharges into Budd Inlet. The upper aquifer is severely
23 contaminated with creosote constituents, pentachlorophenol and
24 polyaromatic hydrocarbons (PAHs). These contaminants migrate
25 through the groundwater and seep into the nearshore
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2 (intertidal) sediments and the waters of Budd Inlet. The lower
3 aquifer appears to be separated from the upper aquifer by an
4 impervious layer or aquatard. However, data gaps still exist
5 regarding the water quality of the lower aquifer. Verification
6 of non-contamination of the lower aquifer has not been
7 accomplished.

8 H. In February and August of 1985, Ecology performed two
9 studies at and in the vicinity of the Site. The specific
10 purpose of these studies was to locate the sources of and
11 gather information regarding the concentration of suspected
12 contamination in the vicinity of the Site. Soil, intertidal
13 sediment, and groundwater analysis data obtained as of the
14 effective date of this Decree reveals that hazardous substances
15 have been and continue to be released from the Cascade Pole
16 Site. For example, soil samples have revealed concentrations
17 of pentachlorophenol at 400 parts per million (ppm) and PAHs at
18 40,000 ppm (4%). Groundwater samples have revealed concentra-
19 tions of pentachlorophenol at 9300 ppm, tetrachlorophenol at
20 740 ppm, and PAHs at 20,000 ppm (2%). These levels are well
21 above concentration levels necessary to render the material an
22 extremely hazardous waste under the state hazardous waste
23 program (ch. 70.105 RCW and ch. 173-303 WAC).

24 I. Land use on adjacent properties consists of
25 recreational (East Bay Marina) and industrial (log storage) to

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2 the south, and industrial and commercial (restaurant, marine
3 products outlet, and a radio station) to the west and
4 northwest. The public is at risk via: surface water
5 contamination, ingestion of contaminated marine fauna, contact
6 with soils at the Site, contact with contaminated seeps
7 emanating from the Site and flowing into Budd Inlet, or contact
8 with wind blown dust or air emissions at the Site.

9 J. Cascade Pole has completed a feasibility study for
10 the Site. The final feasibility study was submitted on
11 August 26, 1988. The feasibility study discusses various
12 alternative remedial actions at the Site, their environmental
13 protectiveness, and the cost of such alternatives. Ecology has
14 not approved the FS on the basis that it is incomplete, omits
15 information requested by Ecology, biases the conclusion and
16 promotes a preferred alternative which fails to protect human
17 health and the environment and is inconsistent with state and
18 federal laws. Ecology has developed its own remedial action
19 proposal for the Site based on the FS and information not
20 included in the FS. The remedial action required by Ecology
21 will be implemented as per the terms of this Decree.

22 K. Based on the above facts, Ecology has determined that
23 the release or threat of release of hazardous substances from
24 the Site requires remedial action to protect the public health,
25 welfare and the environment.

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V. WORK TO BE PERFORMED

This Decree contains a program designed to protect the public health and welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site. This program is set forth in Exhibit B to this Decree, which is the Remedial Action Plan (RAP). Exhibit B sets forth the work to be performed to accomplish required remedial action at the Site during the duration of this Decree. Exhibit C is the schedule for implementing this work. Exhibit B and C are integral and enforceable parts of this Decree. Exhibit D, which is the Critical Path Chart, is to be utilized as a planning tool. The terms "Consent Decree" or "Decree" shall include the RAP and schedule whenever used in this document. Except where performance by another party is expressly provided in the RAP, the Defendants hereby commit to implement the requirements of the RAP.

VI. DESIGNATED PROJECT COORDINATORS

On or before the entry of this Decree, Ecology and Defendants 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 the Defendants and all documents, including reports, approvals,

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2 and other correspondence concerning the activities performed
3 pursuant to the terms and conditions of this Decree, shall be
4 directed through the project coordinators. The project
5 coordinators may designate, in writing, working level staff
6 contacts for all or portions of the implementation of the
7 remedial work required by this Decree.

8 Any party may change its respective project coordinator.
9 Written notification shall be given to the other parties, in
10 writing, at least ten (10) calendar days prior to the change.

11 The project coordinator for Ecology is:

12 Phillip Hertzog
13 7272 Cleanwater Lane
14 Mail Stop LU-11
15 Olympia, WA 98504-6811

16 The project coordinator for Cascade Pole Company is:

17 Les D. Lonning
18 Cascade Pole Company
19 P.O. Box 1496
20 Tacoma, WA 98401-1496

21 The project coordinator for the Port of Olympia is:

22 Douglas Edison
23 Port of Olympia
24 P.O. Box 827
25 Olympia, WA 98507-0827

26 **VII. PERFORMANCE**

All work performed pursuant to this Decree shall be under
the direction and supervision, as necessary, of a professional

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2 engineer or certified hydrogeologist, or equivalent, with
3 experience and expertise in hazardous waste site investigation
4 and cleanup. Defendants shall notify Ecology in writing as to
5 the identity of such engineer(s) or hydrogeologist(s), or
6 others and of any contractors and subcontractors to be used in
7 carrying out the terms of this Decree, in advance of their
8 involvement at the Site.

9 Defendants shall be jointly and severally responsible for
10 the performance and completion of the tasks required by this
11 Decree, subject to Section II. B.

12 VIII. ACCESS

13 Ecology or any Ecology authorized representatives who are
14 properly trained shall have the authority to enter and freely
15 move about all property at the Site at all reasonable times for
16 the purposes of, inter alia: inspecting records, operation
17 logs, and contracts related to the work being performed
18 pursuant to this Decree; reviewing the progress in carrying out
19 the terms of this Decree; conducting such tests or collecting
20 samples as Ecology may deem necessary; using a camera, sound
21 recording, or other documentary type equipment to record work
22 done pursuant to this Decree; and verifying the data submitted
23 to Ecology by the Defendants. Upon request, Ecology shall
24 split any samples taken during an inspection unless the
25 Defendants fail to make available a representative for the

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2 purpose of splitting samples. All parties with access to the
3 Site pursuant to this paragraph shall comply with approved
4 health and safety plans. Ecology's project coordinator shall
5 be given keys allowing access to the Site and to the locked
6 well covers on the Site. Except in emergency situations,
7 Ecology personnel and representatives shall sign in at the Port
8 of Olympia's office prior to entering the Site.

9 IX. SAMPLING, DATA REPORTING AND AVAILABILITY

10 With respect to the implementation of this Decree,
11 Defendants shall make the results of all sampling, laboratory
12 reports, and/or test results generated by them, or on their
13 behalf available to Ecology and shall submit these results in
14 monthly progress reports submitted in accordance with Exhibits
15 B and C.

16 If requested by Ecology, Defendants shall allow split or
17 duplicate samples to be taken by Ecology and/or its authorized
18 representatives of any samples collected by Defendants pursuant
19 to the implementation of this Decree. Defendants shall notify
20 Ecology five (5) working days in advance of any sample
21 collection or work activity at the Site. Ecology shall, upon
22 request, allow split or duplicate samples to be taken by
23 Defendants or their authorized representatives of any samples
24 collected by Ecology pursuant to the implementation of this
25 Decree. Without limitation on Ecology's rights under Section

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2 VIII, Ecology shall endeavor to notify Defendants prior to any
3 sample collection activity.

4 X. PROGRESS REPORTS

5 Defendants shall submit to Ecology written monthly
6 progress reports which describe the actions they have taken
7 during the previous month to implement the requirements of this
8 Decree. The progress reports shall include the following:

9 A. A list of on-site activities that have taken place
10 during the month;

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

14 C. Description of all deviations from the schedule
15 (Exhibit C) and critical path (Exhibit D) during the current
16 month and any planned deviations in the upcoming month;

17 D. For any deviations in schedule, a plan for recovering
18 lost time and maintaining the critical path;

19 E. All raw data (including laboratory analysis) received
20 by the defendants during the past month and an identification
21 of the source of the sample;

22 F. A list of deliverables for the upcoming month if
23 different from the schedule; and

24 G. Documentation of amount or volume of contaminants and
25 product collected from recovery systems.

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All progress reports shall be submitted by the tenth day of the month in which they are due after the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

XI. RETENTION OF RECORDS

Defendants shall preserve, during the pendency of this Decree and for ten (10) years from the date of issuance of the Notice of Completion (Section XXVIII) all records, reports, documents, and underlying data in their possession relevant to the implementation of this Decree and shall insert in contracts with project contractors a similar record retention requirement. In addition, a data management/information system shall be developed, implemented and updated on a monthly basis. This information shall be provided to Ecology in a monthly progress report. Once a year the Defendants shall provide an index of all documents, data and other information contained in the system. Upon request of Ecology, Defendants 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.

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XII. TRANSFER OF INTEREST IN PROPERTY

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

Prior to transfer of any legal or equitable interest in all or any portion of the property, and during the effective period of this Decree, Defendants shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said contemplated transfer.

XIII. RESOLUTION OF DISPUTES

A. In the event a dispute arises as to an approval, disapproval, proposed modification or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision, the Defendants have fourteen (14) days within which to notify Ecology's project coordinator of their objection to the decision.

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

(3) Defendants may then request Ecology management review of the decision. This request shall be submitted in writing to the Hazardous Waste Investigation & Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) Ecology's Program Manager shall conduct a review of the dispute including, if requested, a meeting with the Defendants. Ecology's Program Manager shall issue a written decision regarding the dispute within thirty (30) days of the Defendants' request for review.

B. If Ecology's final written decision is unacceptable to Defendants, Defendants have the right to submit the dispute to the Court for resolution. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event Defendants present an issue to the Court for review, the Court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and

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2 capricious and render a decision based on such standard of
3 review.

4 C. On technical issues only, the Defendants may request
5 nonbinding arbitration prior to judicial review. Any request
6 for arbitration shall be in writing and filed with Ecology
7 within seven (7) days of Ecology's final decision. If Ecology
8 agrees the issue is appropriate for arbitration, the
9 arbitration process set forth below shall be utilized:

10 (1) The Defendants jointly and Ecology shall each
11 designate one arbitrator within fourteen (14) days of Ecology's
12 approval of the arbitration process. The two arbitrators shall
13 be skilled and knowledgeable regarding the issue in dispute.

14 (2) The arbitrators are to serve as a panel of experts
15 and shall be given such written information as any party
16 desires on the issue to be heard. The decision to permit or
17 require additional evidence, either written or oral, or to
18 permit argument shall be up to the discretion of the
19 arbitrators. The initial written materials shall be submitted
20 within fourteen (14) days after notice of the selection of the
21 arbitrators and any response to such information shall be filed
22 within seven (7) days. Oral argument, if requested by the
23 panel, shall occur within seven (7) days of the submittal of
24 written materials.
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(3) If the arbitrators do not reach a unanimous decision, Ecology's decision will constitute the final decision on the dispute. If the panel reaches a unanimous decision it shall be reduced to writing and submitted to Ecology. Notice of the panel's decision or failure to reach agreement must be submitted to Ecology and the Defendants within fourteen (14) days of the later of either the final submittal of written materials or oral argument before the panel.

(4) The panel's decision, if unanimous, shall be nonbinding and shall be treated as a recommended decision. Ecology may accept or reject the panel's decision in making its final decision.

D. Ecology and Defendants agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

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

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XIV. AMENDMENT OF CONSENT DECREE

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

Defendants 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 Defendants of their obligation to obtain formal approval as may be required by this Decree. No verbal communication by Ecology shall relieve Defendants of the obligation specified herein.

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

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the schedule for all affected critical path items shall be extended accordingly.

C. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to, the following:

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

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

(3) Endangerment as described in Section XVI.

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

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

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2 (1) Delays in the issuance of a necessary permit which
3 was timely applied for; or

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

6 (3) Other circumstances deemed exceptional or
7 extraordinary by Ecology; or

8 (4) Endangerment as described in Section XVI.

9 Ecology shall give Defendants written notice in a timely
10 fashion of any extensions granted pursuant to the Decree.

11 XVI. ENDANGERMENT

12 In the event Ecology determines that activities
13 implementing or in noncompliance with this Decree, or any other
14 circumstances or activities, are creating or have the potential
15 to create a danger to the health or welfare of the people on
16 the Site or in the surrounding area or to the environment,
17 Ecology may order Defendants to stop further implementation of
18 this Decree for such period of time as needed to abate the
19 danger or may petition the Court for an order as appropriate.
20 During any stoppage of work under this section, the obligations
21 of Defendants with respect to the work under this Decree which
22 is ordered to be stopped shall be suspended and the time
23 periods for performance of that work, as well as the time
24 period for any other work dependent upon the work which is
25 stopped, shall be extended, pursuant to Section XV of this

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2 Decree, for such period of time as Ecology determines is
3 reasonable under the circumstances.

4 In the event Defendants determine that activities
5 undertaken in furtherance of this Decree or any other
6 circumstances or activities are creating an endangerment to the
7 people on the Site or in the surrounding area or to the
8 environment, Defendants may stop implementation of this Decree
9 for such periods of time necessary for Ecology to evaluate the
10 situation and determine whether Defendants should proceed with
11 implementation of the Decree or whether the work stoppage
12 should be continued until the danger is abated. Defendants
13 shall notify Ecology's project coordinator as soon as is
14 possible, but no later than twenty-four (24) hours after such
15 stoppage of work, and thereafter provide Ecology with
16 documentation of the basis for the work stoppage. If Ecology
17 disagrees with Defendants' determination, it may order
18 Defendants to resume implementation of this Decree. If Ecology
19 concurs in the work stoppage, Defendants' obligations shall be
20 suspended and the time period for performance of that work, as
21 well as the time period for any other work dependent upon the
22 work which was stopped, shall be extended, pursuant to
23 Section XV of this Decree, for such period of time as Ecology
24 determines is reasonable under the circumstances. Any
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2 disagreements pursuant to this clause shall be resolved through
3 the dispute resolution procedures in Section XIII.

4 XVII. OTHER ACTIONS

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

10 (1) Where Defendants fail to comply with any requirement
11 of this Decree, and after written notice of default, fail to
12 come into compliance;

13 (2) In the event or upon the discovery of a release or
14 threatened release not addressed by this Decree;

15 (3) Upon Ecology's determination that action beyond the
16 terms of this Decree is necessary to abate an emergency
17 situation which threatens the public health or welfare or the
18 environment; or

19 (4) Upon the occurrence or discovery of a situation
20 beyond the scope of this Decree as to which Ecology would be
21 empowered to perform any remedial action or to issue an order
22 and/or penalty, or to take any other enforcement action. This
23 Decree is limited in scope to the geographic Site described in
24 Exhibit A and to those contaminants which Ecology knows to be
25 at the Site when this Decree is entered.

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2 Ecology reserves the right to take any enforcement action
3 whatsoever, including a cost recovery action, against
4 additional potentially liable parties, including additional
5 McFarland Cascade related corporate entities, corporate
6 officials, and shareholders.

7 XVIII. INDEMNIFICATION

8 Defendants agree to indemnify and save and hold the State
9 of Washington, its employees, and agents harmless from any and
10 all claims or causes of action for death or injuries to persons
11 or for loss or damage to property arising from or on account of
12 acts or omissions of Defendants, their officers, employees,
13 agents, or contractors in entering into and implementing this
14 Decree. However, the Defendants shall not indemnify the State
15 of Washington nor save nor hold its employees and agents
16 harmless from any claims or causes of action arising out of the
17 acts or omissions of the State of Washington, or the employees
18 or agents of the State, in implementing the activities pursuant
19 to this Decree.

20 XIX. COMPLIANCE WITH APPLICABLE LAWS

21 All actions carried out by Defendants pursuant to this
22 Decree shall be done in accordance with all applicable federal,
23 state, and local requirements. All parties reserve the right
24 to take the position that permits are not required for remedial
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2 action undertaken pursuant to an order or consent decree issued
3 under the MTCA.

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

12 **XX. REMEDIAL AND INVESTIGATIVE COSTS**

13 Defendants agree to reimburse the appropriate account of
14 the Treasury of the State of Washington, as identified by
15 Ecology, for Ecology's reasonable and appropriate remedial and
16 investigative costs associated with Ecology's activities at the
17 Site conducted during the implementation of this Decree,
18 including costs accrued in overseeing the Defendants'
19 performance of tasks required by this Decree. Remedial and
20 investigative costs incurred by Ecology to be paid under this
21 Consent Decree shall consist of 164% of direct labor salary
22 costs, consultant fees (if any) and laboratory costs, all of
23 which must be directly related to implementation of the tasks
24 required by this Consent Decree. However, the defendants only
25 agree to pay consultant costs incurred by Ecology if they have

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2 given prior approval to Ecology's utilization of such
3 consultant (excluding contract laboratory expenses).

4 Within ninety (90) days of the end of each fiscal quarter,
5 Ecology will submit to Defendants a summary statement of
6 Ecology's expenses for the previous quarter. The summary
7 statement shall include a description of the activities
8 undertaken, the time spent on such activity(s) and the person
9 or persons conducting such activity(s). Following receipt of
10 the statement, Defendants shall pay, within ninety (90) days,
11 into the appropriate account of the Treasury of the State of
12 Washington, as identified by Ecology, the required sum. The
13 costs paid by the Defendants shall not exceed the lesser of
14 Ecology's actual costs or two hundred thousand dollars
15 (\$200,000) annually. This annual cap on recoverable costs
16 shall not apply to any Ecology action which is beyond the scope
17 of this Decree, nor to any Ecology action taken pursuant to
18 Paragraphs XVI or XVII. The parties agree that Ecology's
19 stormwater investigation is beyond the scope of this Decree.

20 XXI. LIABILITY INSURANCE

21 Within thirty (30) days of the entry of this Decree and
22 for the duration of the remedial action required by this
23 Decree, Defendants shall provide Ecology with current
24 certificates of insurance certifying coverage for general
25 liability which may arise in carrying out this Decree with
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2 minimum limits of one million dollars (\$1,000,000) per
3 occurrence and an annual aggregate of at least two million
4 dollars (\$2,000,000), exclusive of legal defense costs, for
5 bodily injury and property damage liability combined.
6 Defendants shall provide thirty (30) day written notice prior
7 to cancelling such insurance.

8 These insurance limits are not to be construed as maximum
9 limits. Defendants are solely responsible for determining the
10 appropriate amount of insurance they should carry for injuries
11 or damages that may result from the implementation of this
12 Decree.

13 XXII. FINANCIAL ASSURANCES

14 Cascade Pole Company shall establish a performance bond in
15 the amount of five hundred thousand dollars (\$500,000) for one
16 year from the effective date of this Decree and thereafter in
17 the amount of twenty-five (25) percent (readjusted quarterly)
18 of the estimated expenses for the following twelve months.
19 This bond shall be maintained for the duration of this Consent
20 Decree, or until twenty-five (25) percent of the estimated
21 twelve month budget is less than \$50,000, whichever occurs
22 first. The Port of Olympia shall have direct access to this
23 performance bond. The parties agree that the Department of
24 Ecology is a third party beneficiary of the performance bond.
25 As such, Ecology may access the bond upon an order of this

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2 Court. The parties agree that the Court may order Ecology's
3 access to the bond in the event the defendants default in the
4 performance of remedial activities required by this Consent
5 Decree. Neither of the defendants shall enter into any
6 contractual arrangement which conflicts with this paragraph.
7 The performance bond required by this paragraph shall be
8 terminated upon defendant's receipt of the written Notice of
9 Completion issued by Ecology pursuant to paragraph XXVII of
10 this Consent Decree, or when twenty-five (25) percent of the
11 twelve month budget is less than \$50,000, whichever occurs
12 first.

13 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

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

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2 XXIV. FIVE YEAR REVIEW

3 As remedial action, including groundwater monitoring,
4 continues at the Site, the parties agree to review the progress
5 of remedial action at the Site, and to review the data
6 accumulated as a result of site monitoring as often as is
7 necessary and appropriate under the circumstances. At least
8 every five years the parties shall meet to discuss the status
9 of the Site and the need, if any, of further remedial action at
10 the Site. Ecology reserves the right to require further
11 remedial action at the Site under appropriate circumstances.

12 XXV. DEFENDANTS' RESERVATION OF RIGHTS
 AND DENIAL OF LIABILITY

13 Nothing in this Consent Decree shall constitute a release
14 of any claim, cause of action, or demand in law or equity which
15 the Defendants, jointly or singly, may have against any person,
16 entity, governmental agency, firm, partnership, or corporation
17 ("person") for any liability arising out of or relating in any
18 way to the generation, storage, treatment, handling, trans-
19 portation, release, or disposal of any hazardous substance,
20 pollutant, or contaminant, or any hazardous solid waste, found
21 at, taken to, or taken from the Site or to the ownership and/or
22 operation of the Site.

23 The Defendants jointly and singly deny any and all legal
24 or equitable liability under any federal or state statute,
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2 regulation, ordinance, or common law for any costs or damages
3 caused by or arising out of conditions at or arising from the
4 Site. However, Defendants agree to comply with this Consent
5 Decree, subject to Article II(B).

6 Defendants expressly reserve any and all rights of
7 contribution and indemnity that they have jointly or singly
8 against any person or entity. Defendants reserve the right of
9 contribution and indemnity from any or all liable persons for
10 all costs incurred by Defendants in performing the work and
11 complying with the requirements of this Consent Decree.

12 Nothing in this Consent Decree shall be construed as limiting
13 Defendants' rights jointly or singly to seek contribution and
14 indemnity from any or all liable persons.

15 Notwithstanding the granting of consent under Section I
16 (Jurisdiction), the entering into of this Consent Decree, and
17 the taking of any action under the Decree, Defendants do not
18 admit any allegations contained herein, nor do Defendants admit
19 liability for any purpose or admit any issues of law or fact or
20 any responsibility for the alleged release or threat of release
21 of any hazardous substance into the environment.

22 Nothing herein is intended by any of the parties to create
23 any private causes of action in favor of any person not a
24 Defendant or to release any person not a Defendant from any
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2 liability, duty, or responsibility which they might have at law
3 or equity.

4 XXVI. COMMUNITY RELATIONS

5 Ecology shall maintain the responsibility for community
6 relations at the Site. However, Defendants shall cooperate
7 with Ecology and shall:

8 A. Prepare drafts of public notices and fact sheets at
9 important stages of the remedial action, such as the submission
10 of work plans and the completion of engineering design.

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

14 B. Notify Ecology's project coordinator prior to the
15 issuance of all press releases and fact sheets, and before
16 major meetings with the interested public and local
17 governments. Likewise, Ecology shall notify Defendants prior
18 to the issuance of all press releases and fact sheets, and
19 before major meetings with the interested public and local
20 governments;

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

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2 D. In cooperation with Ecology, arrange and/or continue
3 information repositories to be located at the Timberland
4 Regional Library, 8th and Franklin, Olympia and Ecology's
5 Southwest Regional Office in Tumwater. At a minimum, copies of
6 all public notices, fact sheets, and press releases, all
7 quality assured groundwater, surface water, soil sediment, and
8 air monitoring data, remedial action plans, supplemental
9 remedial planning documents, and all other similar documents
10 relating to performance of the remedial action required by this
11 Decree shall be promptly placed in these repositories.

12 XXVII. DURATION OF DECREE

13 This Decree shall remain in effect and the remedial
14 program described in this Decree shall be maintained and
15 continued until Defendants receive a written Notice of
16 Completion from Ecology that the remedial action plan has been
17 satisfactorily completed, or until twelve (12) months after the
18 final scheduled delivery date set forth in Exhibit C as
19 amended by Ecology in accordance with Section XV, whichever is
20 earlier, which date is the "final termination date" for this
21 Decree. If this Decree is terminated without agreement to a
22 new or amended Consent Decree, the covenant not to sue in
23 paragraph XXIX is of no force or effect whatsoever, and the
24 Defendants shall allow Ecology access to the site to continue
25 operating and maintaining the groundwater extraction and

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2 treatment system and to allow Ecology access for any other
3 remedial activity at the site that Ecology determines
4 necessary.

5 **XXVIII. INVESTIGATIVE WASTES**

6 Investigative wastes, which may include soils from
7 trenching, well drilling, borings, and wastewater from well
8 installation or well purging, will be produced during the
9 implementation of this Decree. The Defendants shall develop an
10 appropriate sampling and analysis program in the overall
11 Sampling and Analysis Plan (Task 5.3, RAP) to determine whether
12 investigative wastes constitute hazardous waste. Investigative
13 wastes which constitute hazardous waste may be stored on-site,
14 if such storage is in compliance with applicable substantive
15 provisions of Ch. 70.105 RCW and Ch. 173-303 WAC. However, no
16 hazardous waste permit will be required by Ecology for such
17 storage. All investigative wastes, whether hazardous waste or
18 not, shall be managed in an environmentally sound manner.

19 **XXIX. GROUNDWATER EXTRACTION AND TREATMENT TECHNOLOGY**

20 A. "Floating and dissolved groundwater contamination"
21 shall refer to the floating, non-aqueous phase liquid and any
22 dissolved contaminants in the shallow saline upper aquifer in
23 the area of influence, but does not include dense non-aqueous
24 phase liquids. The "area of influence" shall refer to that
25 area in which the groundwater extraction and treatment
26 system causes gradient reversal as finally designed and

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2 implemented pursuant to this Decree. Exhibit E to this Decree
3 depicts the predicted area of influence. Exhibit shall be
4 revised upon design of the groundwater extraction and treatment
5 system and finalized after operation of the system and
6 associated monitoring more accurately determine the area of
7 influence.

8 B. Ecology has determined that a groundwater extraction
9 and treatment system is the appropriate final technology for
10 the remediation of the floating and dissolved groundwater
11 contamination for the area of influence and the Defendants have
12 agreed to design, construct and operate the extraction and
13 treatment system set forth in this Decree. Therefore, for the
14 area of influence as described in Exhibit E, Ecology hereby
15 covenants not to sue, not to execute judgment, nor take
16 administrative, civil, or judicial action against Defendants
17 for remediation of the floating and dissolved contamination in
18 the area of influence, except under the following
19 circumstances:

- 20 1) In the event Defendants fail to comply with the terms
21 of this Consent Decree; or
22 2) In the event of an emergency; or
23 3) In the event new contaminants or pollutants are found
24 within the area of influence and the Defendants
25 cannot demonstrate that the groundwater extraction
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and treatment system will adequately address the newly discovered contaminants; or

- 4) In the event Ecology determines in writing that the groundwater extraction and treatment system will not result in the attainment of cleanup standards set pursuant to RCW 70.105D.030(2)(d) at an appropriate point of compliance as determined by Ecology.

This covenant not to sue shall have no effect on Ecology's ability to seek to recover damages to natural resources caused by releases of hazardous substances at this site.

XXX. EFFECTIVE DATE

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

XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more expeditious cleanup of hazardous substances at the site, in compliance with applicable cleanup standards.

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

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

For State of Washington,
Department of Ecology

For State of Washington,
Attorney General's Office

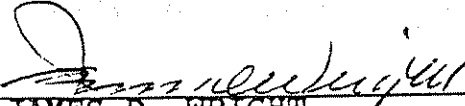
Carol L. Fleskes 5/11/90
CAROL FLESKES Date
Program Manager
Hazardous Waste Investigation
and Cleanup

Jay J. Manning 5/28/90
JAY J. MANNING Date
Assistant Attorney General


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For Port of Olympia


JAMES D. WRIGHT 5-11-90
President Date


ALEXANDER MACKIE 5/16/90 Date
Attorney for Port of Olympia


O. RAY DINSMORE 5-17-90
Vice President Date


SAM BRADLEY, Ph. D. 5-18-90
Secretary Date

CONSENT DECREE

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For Cascade Pole Company, Inc.

B. Corry McFarland
B. CORRY MCFARLAND Date
President 05/15/90

Lynda J. Brothers 5/15/90
LYNDA BROTHERS Date
Attorney for Cascade Pole

Environmental Investigations

DRAFT

Cascade Pole Pre-Proposal

This pre-proposal responses to a verbal request received by Toxics Investigations/Groundwater Monitoring (TI/GMS) on 1/4/90 from the Hazardous Waste Investigations & Cleanup Program (HWICP).

Overall Project Goal: To provide information which will allow parties to the Consent Decree to rationally evaluate the following proposition:

Stormwater runoff and/or infiltration do/do not contribute to the off-site migration of contaminants from the Cascade Pole site.

As currently conceived, the project will consist of 2 parts: the Runoff Project and the Infiltration Project. These efforts will be undertaken while attempting to balance the need to mobilize before the end of the rainy season; and the need to do carefully designed work that is both legally and scientifically defensible.

Runoff Project:

Primary Objectives:

- 1) To determine if contaminants are present in stormwater standing on, flowing across, and /or leaving the site.

Secondary (possible) Objectives:

- 2) To quantify or estimate contaminant loads leaving the site.
- 3) To distinguish between dissolved and particulate concentrations of contaminants in samples collected.
- 4) To associate contamination detected in runoff samples with general areas on-site that may have contributed to the contamination.
- 5) To estimate or quantify the biological implications/impact of the runoff (bioassays).
- 6) To estimate potential impacts on the receiving environment by comparing the results of runoff whole water and suspended sediments samples with Water Quality Standards and AETs. (Collection of receiving environment samples to actually measure these impacts would increase costs.)

Potential Problems:

- 1) The site is flat, runoff is generally not channalized, and much of the precipitation that falls on the site appears to infiltrate. This means that opportunities for collecting samples are reduced.
- 2) Because of the above, it is likely that most of any contaminant transport occurs in the subsurface.

Possible Equipment Needs:

Portable flumes
Small on-site weather station
Field filter and/or centrifuge equipment
Personal protection and safety equipment

Timeline:

Reconnaissance, begin drafting project plan: 1/5/90
Draft project proposal and sampling plan complete: 1/26/90
Circulate proposal for review and comments: 2/2/90
Incorporate review comments and submit lab request: 2/5/90
Sampling events: unknown
Analyses complete: 1-2 months
QA/QC review: 2 weeks
Initial (2-3 pp.) highlight memo to client: 1 week
Draft report: 1.5 months
Report peer and client review and comment: 1 week
Modify and finalize report 1-2 weeks.

Estimated resource requirements:

Staff time -

Development of project plan:	.03	FTE
Field work including preparation and cleanup:	.08-.12	FTE
Data review and interpretation:	.06	FTE
Writing and editing report:	.10	FTE
Providing follow-up services (expert witness, consultations, presentations of results)	.05-.10	FTE
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	.32-.41	FTE

Laboratory Analyses

Estimating costs: Costs vary depending on type of analysis (PNA, PCB, dioxin, bioassay, TOC, etc.), detection limits required, number of sample sites, frequency of sampling, required turnaround times, number and frequency of QA/QC samples, etc. For these reasons it is possible only to give a ball park estimate of lab costs.

For a modestly scoped runoff project, lab costs may be in the \$10,000 to \$15,000 range.

QA/QC Review:

If done independently, this cost may run 10% of lab costs.

Equipment and other needs:

See discussion under Infiltration Project;

Infiltration Project:

Primary Objectives:

- 1) To review relevant scientific information and the results of previous site characterization work, in order to develop an approach:
- 2) To evaluate whether or not precipitation that infiltrates into soils on-site contributes to the immediate or long-term migration of contaminants off-site.

Secondary (possible) Objectives:

- 3) To supplement/improve the information available on soils contamination and soils characteristics on-site.
- 4) To determine if, under standard conditions (i.e., a standardized leaching test), contaminants are mobilized.
- 5) To quantify short-term the response of ground water elevation (head) to precipitation events.
- 6) To evaluate the biological implications/impacts of contaminants in soils or leachate.
- 7) To provide information & analysis that will improve understanding of the on-site water balance (i.e. what portion of precipitation evaporates, how much infiltrates, how much runs off?).

Potential Problems:

- 1) The identification of certain chlorinated dibenzofurans and dibenzodioxins in site soils may lead to difficulties in shipping samples and excavating on-site.
- 2) Because the potential mechanism for off-site migration of contamination by way of ground water is relatively complex, there will be gaps in any attempt to prove and/or quantify the details of this mechanism. Results are more likely to show the magnitude of a potential for contamination.

Possible Equipment Needs:

On-site precipitation/evaporation recorder
Personal protection and safety equipment
Lysimeters
Infiltrometer
Well points/data loggers (including corrosion resistant sensors).

Possible Personal Service Contractual Needs:

Well or lysimeter installation
Soil boring

Timeline:

Reconnaissance, begin site and literature review: 1/5/90
Complete initial review, begin to draft overall project proposal and study plan: 2/9/90
Draft preliminary soil leaching work plan: 2/9/90
Circulate prelim. proposal for review and comments: 2/16/90

Complete preliminary proposal, submit lab request: 2/23/90
 Begin prelim. soil leaching work, circulate overall
 project proposal for review: 3/9/90
 Incorporate review comments into overall project proposal
 begin initial soil sampling: 3/19/90
 Begin infiltration project: 3/26/90
 Initial soil sample results complete: 4/30/90
 QA/QC review of soil sample results: 5/15/90
 Draft technical memorandum on soil leaching results:
 6/1/90
 Soil leaching report, peer and client review: 6/8/90
 Infiltration project proceeding: unknown
 Analyses complete: 1-2 months
 QA/QC review: 2 weeks
 Draft report: 2 months
 Report peer and client review and comment: 2 weeks
 Modify and finalize report: 2 weeks

Estimated resource requirements:

Staff time -		
Site and literature review:	.10	FTE
Develop soils leaching proposal:	.03	FTE
Data review and interpretation:	.03	FTE
Writing and editing technical memorandum:	.05	FTE
Develop overall infiltration study plan:	.06	FTE
Carry out study plan, write report:	.15-.25	FTE
Provide follow-up services (expert witness, consultation, presentation of results)	.07-.15	FTE
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	.49-.67	FTE

Laboratory Analyses

Estimating costs: Costs vary depending on type of analysis
 (PNA, PCP, dioxin, bioassay, TOC, etc.), detection limits
 required, number of sample sites, frequency of sampling,
 required turnaround times, number and frequency of QA/QC
 samples, etc. For these reasons it is possible only to
 give a ball park estimate of lab costs.

For the preliminary soils leaching subpart costs may be in the \$15000-\$20000 range.

For the rest of the project, laboratory costs should not exceed an additional \$25000.

QA/QC Review:

If done independently, this cost may run 10% of lab costs.

Personal services contracts:

Although difficult to quantify at this point, there is a
 significant possibility that resources may be required for
 activities like lysimeter and/or well installation. An
 additional \$10,000 should cover these options.

Equipment and other needs:

There may be some specialized equipment needed for these projects; including a portable flume, personal protection gear, well points, a simple on-site weather station, lysimeters etc. Additionally, office equipment will be needed for the project employee (calculated at 1/2 start-up costs).

Given these needs, it would probably be wise to set aside \$5000-\$7000, for equipment, travel, goods and services, etc. in addition to the standard \$7525 for 1/2 start-up costs.

Estimated overall resource needs and suggested source:

Category	EILS Contribution	HWICP Contribution	Total
Personnel (E3 level)	.25 FTE	.56-.83 FTE	.81 - 1.08 FTE
<i>jects A</i> <i>B</i> {	Salary	\$8000	\$18000-\$26500
	Benefits (24%)	\$1900	\$4300- \$6400
	Overhead (48%)	\$3800	\$8600-\$12700
Total Personnel Costs	\$13700	\$30900-\$45600	\$44700-\$59400
<i>ject T</i> {	Laboratory Costs	\$26450	\$23550-\$33550
	QA/QC Review		\$5000- \$6000
<i>ject E+</i> <i>G, J.</i> {	Equipment Costs (including 1/2 start-up)	\$1000	\$11500-\$13500
	Personal Services		\$10000
<i>ject C</i> {	Contracts		\$10000
Total	\$41150	\$70950-\$98650	\$112100-\$139800