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SUPERIOR COURT, STATE OF WASHINGTON
COUNTY OF THURSTON

STATE OF WASHINGTON,)	
DEPARTMENT OF ECOLOGY,)	No. 96-2-02840-9
)	
Plaintiff,)	CONSENT DECREE
)	
v.)	
)	
CASCADE POLE AND LUMBER)	
COMPANY, B. CORRY McFARLAND,)	
GREGORY D. McFARLAND, and)	
LES D. LONNING,)	
)	
Defendants.)	

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1	Exhibit A:	Legal Description of Site
2	Exhibit B:	Site Map--Cascade Pole--Olympia Site
3	Exhibit C:	Letter of Credit
4	Exhibit D:	Escrow Instructions (Draft)
5	Exhibit E:	Notice of Default
6	Exhibit F:	Settlement Agreement--Excerpts Pertaining to Product Recycling
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INTRODUCTION

1
2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and the Cascade Pole and Lumber Company (Cascade), B.
5 Corry McFarland, Gregory D. McFarland, and Les D. Lonning
6 (Affiliates) (hereinafter collectively referred to as Defendants
7 or Cascade and Affiliates) is to ensure Cascade's financial
8 contribution to the cleanup of the Cascade Pole site in Olympia,
9 Washington. A legal description of the site is attached hereto
10 as Exhibit A (the Site). A site map is attached hereto as
11 Exhibit B. The cleanup of the Site will be completed pursuant
12 to a separate Consent Decree between Ecology and the Port of
13 Olympia. The financial contribution made pursuant to this
14 Consent Decree will be applied to the cost of the cleanup of the
15 Site. To accomplish these objectives and to resolve the matter
16 constructively and without litigation, Cascade and Affiliates
17 consent to the actions required by this Decree.

18 B. The Complaint in this action is being filed
19 simultaneously with this Decree. An answer has not been filed,
20 and there has not been a trial on any issue of fact or law in
21 this case. However, the parties wish to resolve the issues
22 associated with the Site and raised by Ecology's Complaint. In
23 addition, the parties agree that settlement of these matters
24 without litigation is reasonable and in the public interest and
25 that entry of this Decree is the most appropriate means of
26 resolving these matters.

1 C. In signing this Decree, Defendants and Ecology agree
2 to its entry and agree to be bound by its terms.

3 D. By entering into this Decree, the parties do not
4 intend to discharge nonsettling parties from any liability they
5 may have with respect to the Site. Except as set forth herein,
6 Defendants and Ecology retain the right to seek reimbursement in
7 whole or in part from any responsible entities for sums they
8 have expended with respect to the Site or pursuant to this
9 Decree.

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

13 I. JURISDICTION AND VENUE

14 A. This Court has jurisdiction over the subject matter
15 and over the parties pursuant to the Model Toxics Control Act
16 (MTCA), which was passed by initiative (Initiative 97) and which
17 took effect on March 1, 1989. The MTCA has been codified as
18 ch. 70.105D RCW. Venue is properly laid in Thurston County
19 pursuant to RCW 70.105D.050(5)(b).

20 B. Authority is conferred upon the Washington State
21 Attorney General by RCW 70.105D.040(4)(a) to agree to a
22 settlement with any potentially liable person if, after public
23 notice and hearing, Ecology finds the proposed settlement would
24 lead to a more expeditious cleanup of hazardous substances in
25 compliance with cleanup standards under RCW 70.105D.030(2)(d).
26

1 RCW 70.105D.040(4)(b) requires that such a settlement be entered
2 as a consent decree issued by a court of competent jurisdiction.

3 C. Ecology has given notice to Defendants as provided in
4 RCW 70.105D.020(15), of Ecology's determination that they are
5 potentially liable persons for the Site and that there has been
6 a release of hazardous substances at the Site.

7 D. Ecology has determined that past activities at the
8 Site have given rise to a release of hazardous substances, which
9 requires remedial action pursuant to ch. 70.105D RCW.

10 E. Ecology has determined that the actions to be taken
11 pursuant to this Decree are necessary to protect the public
12 health, welfare and the environment.

13 F. By entering into this Decree, Cascade and Affiliates
14 agree not to challenge the jurisdiction of Ecology in any
15 proceeding to enforce this Decree. Cascade and Affiliates have
16 agreed to undertake the actions specified in this Decree and
17 consent to the issuance of this Decree, pursuant to ch. 70.105D
18 RCW.

19 **II. PARTIES BOUND**

20 This Decree shall apply to and be binding upon and shall
21 inure to the benefit of the signatories to this Decree
22 (parties), their successors and assigns. The undersigned
23 representative of each party hereby certifies that he or she is
24 fully authorized to enter into this Decree and to execute and
25 legally bind such party to comply with the Decree. No change in
26

1 Cascade's ownership or corporate status shall alter the
2 responsibility of Cascade under this Decree.

3 **III. DEFINITIONS**

4 Unless otherwise specified, the definitions set forth in
5 the Model Toxics Control Act, ch. 70.105D RCW, and its
6 implementing regulations, ch. 173-340, Washington Administrative
7 Code, shall control the meaning of the terms used in this
8 Consent Decree.

9 **IV. STATEMENT OF FACTS**

10 **A. Site Location and History**

11 The Site is located at 1412 North Washington Street on the
12 northern tip of the Port of Olympia property, north of downtown
13 Olympia. Exhibit B to this Consent Decree depicts the location
14 of the Site. The upland portion of the Site is owned by the
15 Port of Olympia, except for public rights-of-way, and has been
16 used for wood treating since 1937. Cascade began operating the
17 Site in 1957, and ceased operations in 1986. Creosote and
18 Pentachlorophenol have been the primary treating agents used at
19 the Site. Constituents of these chemicals are hazardous
20 substances, and these hazardous substances have been released to
21 the environment, including the waters and sediments of Budd
22 Inlet.

23 **B. Site Discovery, Investigation and Cleanup Measures**

24 Current remediation efforts began in late 1983, when black,
25 oily material was discovered in a ditch south of the Site. A
26 preliminary investigation determined that the material was

1 emanating from the Site and that it resembled creosote in
2 appearance and odor.

3 From 1983 to 1995, a series of investigations and studies
4 were completed. Taken together, these investigations and
5 subsequent reports constitute a remedial investigation and
6 feasibility study, as required by WAC 173-340-350, sufficient to
7 allow Ecology to select a remedy for the Site. Also between
8 1983 and today, a number of interim cleanup measures have been
9 initiated.

10 In the near future, a cleanup action plan or CAP will be
11 issued for the Site, pursuant to WAC 173-340-360. The CAP will
12 describe the final remedy selected for the Site by Ecology. The
13 selected remedy will be implemented by the Port of Olympia
14 ("Port") pursuant to a separate Consent Decree between Ecology
15 and the Port ("the Port Consent Decree"). This Decree is
16 separate from and in no way dependent upon the Port Consent
17 Decree and the Port's performance under the Port Consent Decree.

18 V. WORK TO BE PERFORMED

19 A. Objectives of the Parties

20 The primary objective of the parties in entering into this
21 Consent Decree is to provide for the contribution of funds to
22 the Port to assist in paying for the cleanup of the Site in a
23 manner designed to protect the public health and welfare and the
24 environment from the known release, or threatened releases, of
25 hazardous substances and pollutants at, on, or from the Site in
26 a manner that avoids litigation of disputed issues.

1 The second objective of the parties is to ensure that wood(
2 treating chemicals recovered at the Site are recycled and reused
3 by Cascade to the extent practicable.

4 B. Commitments by the Parties

5 1. Under a Settlement Agreement dated September 15, 1995
6 between Cascade and the Port (the "Settlement Agreement"),
7 Cascade has agreed to pay to the Port the sum of \$3,850,000 for
8 remediation, investigation and other expenses incurred or to be
9 incurred by Ecology and/or the Port at the Site. It is a
10 requirement of this Decree that Cascade make, or cause to be
11 made through the letter of credit described in paragraph B.2,
12 payments into escrow pursuant to the terms of the Settlement
13 Agreement, as follows:

14 (a) \$850,000 before entry of this Decree.

15 (b) \$500,000 annually, with the first such annual payment
16 being due September 1, 1996, and each successive September 1,
17 through the year 2000.

18 (c) \$100,000 annually, with the first such annual payment
19 being due on September 1, 2001, and each successive September 1,
20 through 2005.

21 2. (a) Cascade shall provide security for its financial
22 contribution in the form of an irrevocable letter of credit
23 substantially in the form and with the terms set forth on
24 Exhibit C, which shall provide for direct payment into an escrow
25 account according to the terms of this paragraph. The letter of
26 credit shall be issued by a federally insured bank or other

1 financial institution which is organized under the laws of the
2 United States or any political subdivision thereof and which has
3 capital, surplus and undivided profits aggregating at least \$100
4 million. The letter of credit shall provide for direct payment
5 to an escrow agent in the amounts and at the times specified
6 above. The escrow agent shall be instructed to distribute each
7 payment to the Port unless Ecology has provided to the escrow
8 agent and the Port a written notice of a duly authorized officer
9 of Ecology that the Port is in material default under the terms
10 of the Port Consent Decree. If Ecology issues such a notice,
11 the escrow agent shall hold the escrowed funds until Ecology
12 withdraws the notice or until distribution is directed by the
13 court having jurisdiction over the Port Consent Decree. A copy
14 of the letter of credit is attached as Exhibit C.

15 (b) In the event the issuer of the letter of credit fails
16 to pay when due under the letter of credit any draft presented
17 by the Port, Cascade shall pay such amount to the escrow agent
18 within fifteen (15) business days of receipt of a written demand
19 by the Port, which demand shall include a copy of the unpaid
20 draft. Any such payment by Cascade shall be subject to the
21 terms of the escrow as described in this section.

22 3. Product Recycling and Reuse - for the past several
23 years wood treating products have been recovered at the Site
24 through the implementation of interim cleanup measures. This
25 product has been recycled and reused at Cascade's wood treating
26 facility located at 121 East Marc Street in Tacoma, Washington.

1 Ecology believes that this is the most appropriate manner of
2 dealing with the recovered product from an environmental
3 perspective and has determined that recovered product managed in
4 accordance with this Decree is not a dangerous waste if it is
5 reused in this manner.

6 4. Section 7 of the Settlement Agreement between Cascade
7 and the Port of Olympia pertains to product recycling and reuse.
8 Section 7 is hereby incorporated by reference, and is an
9 integral and enforceable part of this Decree. A copy of
10 Section 7 is attached as Exhibit F. It is a requirement of this
11 Decree that Cascade comply with Section 7 of the Settlement
12 Agreement. In the event a dispute between Cascade and the Port
13 arises under Section 7, Ecology agrees to abide by the result of
14 the dispute resolution process set forth in Attachment G to the
15 Settlement Agreement, including, if there is one, an
16 arbitrator's decision, unless Ecology determines within 30 days
17 of receiving notice of the result that the result will
18 materially interfere with implementation of the remedy selected
19 for the Site. Increased expense for Cascade, the Port or
20 Ecology resulting from dispute resolution between the Port and
21 Cascade shall not constitute material interference with
22 implementation of the remedy. If Ecology makes such a
23 determination, it may take such action as it deems appropriate
24 to avoid material interference with the selected remedy and to
25 ensure that recovered product is managed consistent with the
26 selected remedy and the purpose and intent of Section 7.

1 Ecology may participate in any arbitration occurring under
2 Section 7 of the Settlement Agreement. Except in emergency
3 situations, Ecology agrees to delay any action brought to
4 enforce this provision until completion of any dispute
5 resolution process under Section 7 of the Settlement Agreement.
6 Any Ecology decision made under this paragraph is subject to
7 dispute resolution under part VII of this Decree.

8 5. To the full extent of each affiliates respective
9 capacity as a director, officer and/or shareholder, each
10 Affiliate shall use his reasonable best efforts to cause Cascade
11 to comply with its obligations under this Decree.

12 VI. RETENTION OF RECORDS

13 Each Defendant shall preserve for ten (10) years from the
14 date of this Decree, all records, reports, documents, and
15 underlying data in its possession relevant to the implementation
16 of this Decree. Upon request of Ecology, each Defendant shall
17 make all non-privileged records available to Ecology and allow
18 access for review.

19 VII. RESOLUTION OF DISPUTES

20 If Cascade objects to any Ecology disapproval, proposed
21 modification, or other decision made pursuant to this Decree, it
22 shall notify Ecology in writing of its objections within
23 fourteen (14) calendar days of receipt of notice. Thereafter,
24 the parties shall confer in an effort to resolve the dispute.
25 If agreement cannot be reached on the dispute within fourteen
26 (14) calendar days after receipt by Ecology of such objections,

1 Ecology shall promptly provide a written statement of its
2 decision to Cascade.

3 If Ecology's final written decision is unacceptable to
4 Cascade, Cascade has the right to submit the dispute within
5 twenty (20) days to the Court for resolution. The parties agree
6 that one judge should retain jurisdiction over this case and
7 shall, as necessary, resolve any dispute arising under this
8 Decree. In the event Cascade presents an issue to the Court for
9 review, the Court shall review the action or decision of Ecology
10 on the basis of whether such action or decision was arbitrary
11 and capricious and render a decision based on such standard of
12 review. Ecology and Cascade agree to only utilize the dispute
13 resolution process in good faith and agree to expedite, to the
14 extent possible, the dispute resolution process whenever it is
15 used. Where either party utilizes the dispute resolution in bad
16 faith or for purposes of delay, the other party may seek
17 sanctions. Implementation of these dispute resolution
18 procedures shall not provide a basis for delay of any activities
19 required in this Decree, unless Ecology agrees in writing to a
20 schedule extension or the Court so orders.

21 **VIII. AMENDMENT OF CONSENT DECREE**

22 This Decree may only be amended by a written stipulation
23 between the parties, entered by the Court, or by court order.
24 Such amendment shall become effective upon entry by the Court.
25 Agreement to amend shall not be unreasonably withheld by any
26 party to the Decree. Defendants shall submit any request for an

1 amendment to Ecology for approval. Ecology shall indicate its
2 approval or disapproval within fifteen (15) working days after
3 the request for amendment is received. Reasons for the
4 disapproval shall be stated in writing. If Ecology does not
5 agree to any proposed amendment, the disagreement may be
6 addressed through the dispute resolution procedures described in
7 Section VII of this Decree. No guidance, suggestions, or
8 comments by Ecology will be construed as relieving Cascade of
9 its obligation to obtain formal approval as may be required by
10 this Decree. No verbal communication by Ecology shall relieve
11 Defendants of the obligations specified herein. Ecology shall
12 notify Defendants of any Ecology requested amendment and, within
13 fifteen (15) working days of receipt of such a request,
14 Defendants shall, in writing, indicate their agreement or
15 disagreement and, if they disagree, the rationale. If
16 Defendants do not agree with any Ecology proposed amendment, the
17 disagreement may be addressed through the dispute resolution
18 procedures described in Section VII of this Decree.

19 **IX. CONTRIBUTION PROTECTION**

20 With regard to claims for contribution against any
21 Defendant for matters addressed in this Consent Decree, the
22 parties hereto agree that each Defendant is entitled to such
23 protection from contribution actions or claims as is provided by
24 MTCA, RCW 70.105D.040, or as otherwise provided by law. For the
25 purposes of this section, "matters addressed" shall mean all
26

1 aspects of the investigation and remediation, past and future,
2 of the Site.

3 X. COVENANT NOT TO SUE

4 In consideration of Defendants' compliance with the terms
5 and conditions of this Decree, Ecology agrees that compliance
6 with this Decree shall stand in lieu of any and all
7 administrative, legal, and equitable remedies and enforcement
8 actions available to the State against each Defendant for the
9 release or threatened release of hazardous substances covered by
10 the terms of this Decree.

11 This covenant not to sue is strictly limited in its
12 application to the Site specifically defined in Exhibit A and to
13 those hazardous substances which Ecology knows to be located at
14 the Site as of the entry of this Decree. This covenant is not
15 applicable to any other hazardous substance or area, and the
16 state retains all of its authority relative to such substances
17 and areas.

18 A. Reopeners: In the following circumstances the State
19 of Washington may exercise its full legal authority to address
20 releases of hazardous substances at the Site, notwithstanding
21 the Covenant Not to Sue set forth above:

- 22 1. In the event a Defendant fails to comply with the
23 terms and conditions of this Consent Decree, including
24 all exhibits, and, after written notice of
25 noncompliance, fails to come into compliance within a
26

1 reasonable time provided by Ecology in the notice of
2 noncompliance;

3 2. In the event new information becomes available
4 regarding factors previously unknown to Ecology,
5 including the nature or quantity of hazardous
6 substances at the Site, and Ecology determines, in
7 light of this information, that remedial action is
8 necessary to address a previously unknown threat to
9 human health or the environment at the Site, and
10 Defendants, after notice, fail to take the necessary
11 action within a reasonable time provided by Ecology in
12 the notice.

13 B. Applicability: The Covenant Not to Sue set forth
14 above shall have no applicability whatsoever to:

- 15 1. Criminal liability;
16 2. Liability for damages to natural resources;
17 3. Any Ecology action against potentially liable parties
18 not a party to this Decree.

19 **XI. CLAIM AGAINST THE STATE**

20 Defendants hereby agree that they will not seek to recover
21 any costs accrued in implementing this Decree from the State or
22 any of its agencies and, further, that Defendants will make no
23 claim against the state toxics control account or any local
24 toxics control account for any costs incurred in implementing
25 this Decree, except that Defendants shall be entitled to any
26 relief the Court may award pursuant to Section VII.

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XII. RESERVATION OF RIGHTS

By agreeing to the entry of this Decree, Defendants and Ecology agree to abide by its terms. The execution and performance of the Decree is not an admission by any Defendant of any fact or liability for any purpose other than as a foundation for the entry of this Decree. Cascade and Affiliates' performance under the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of any unilateral modification of this Consent Decree initiated by Ecology pursuant to Section VIII or further administrative proceedings or litigation not associated with, or related to, this Decree.

XIII. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XIV. DURATION OF DECREE AND RETENTION OF JURISDICTION

This Decree shall remain in effect and this Court shall retain jurisdiction over both the subject matter of this Consent Decree and the parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling either party to apply to the Court at any time, as provided for in this Consent Decree, for such further order, direction, and relief as may be necessary or appropriate to ensure that obligations of the parties have been satisfied.

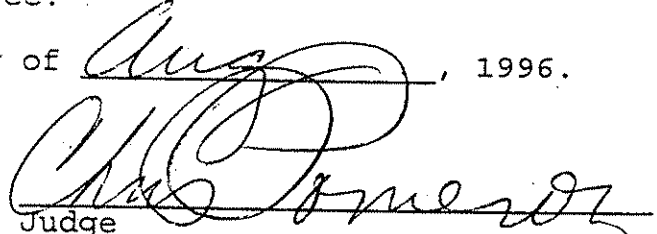
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XV. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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, this Decree shall be null and void at the option of any party, and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

So ordered this 7 day of Aug, 1996.



Judge
Thurston County Superior Court

1 The undersigned parties enter into this Consent Decree on
2 the dates specified below.

3
4 **CASCADE POLE AND LUMBER
COMPANY**

DEPARTMENT OF ECOLOGY

5
6 By B. Corry McFarland
B. CORRY MCFARLAND
President

By Mary E. Burg
MARY BURG, Manager
Toxics Cleanup Program

7 Date: July 24, 1996

Date: 7 August 1996

8 **B. CORRY MCFARLAND**

9
10 By B. Corry McFarland
B. CORRY MCFARLAND

11 Date: July 24, 1996

12 **GREGORY D. MCFARLAND**

13
14 By Gregory D. McFarland
GREGORY D. MCFARLAND

15 Date: July 25, 1996

16 **LES D. LONNING**

17
18 By Les D. Lonning
LES D. LONNING

19 Date: July 26th, 1996

20 and

21
22 **ATTORNEY GENERAL'S OFFICE**

23
24 By Jay J. Manning
JAY J. MANNING, WSBA #13579
Senior Assistant Attorney General

25 Date: 7/23/96

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