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STATE OF WASHINGTON  
FRANKLIN COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

TIDEWATER TERMINAL COMPANY,  
INC.,

Defendant.

NO. 16 250951 11

CONSENT DECREE

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1 **I. INTRODUCTION**

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

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

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

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

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

21 F. This Decree shall not be construed as proof of liability or responsibility for any  
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
23 provided, however, that Tidewater shall not challenge the authority of the Attorney General  
24 and Ecology to enforce this Decree.

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

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

2 **II. JURISDICTION**

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

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

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

12 D. Ecology has given notice to Tidewater of Ecology's determination that  
13 Tidewater is a PLP for the Site, as required by RCW 70.105D.020(26) and WAC  
14 173-340-500.

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

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

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

21 H. Tidewater has agreed to undertake the actions specified in this Decree and  
22 consents to the entry of this Decree under MTCA.

23 **III. PARTIES BOUND**

24 This Decree shall apply to and be binding upon the Parties to this Decree, their  
25 successors and assigns. The undersigned representative of each party hereby certifies that he or  
26 she is fully authorized to enter into this Decree and to execute and legally bind such party to

1 comply with this Decree. Tidewater agrees to undertake all actions required by the terms and  
2 conditions of this Decree. No change in ownership or corporate status shall alter Tidewater's  
3 responsibility under this Decree. Tidewater shall provide a copy of this Decree to all agents,  
4 contractors, and subcontractors retained to perform work required by this Decree, and shall  
5 ensure that all work undertaken by such agents, contractors, and subcontractors complies with  
6 this Decree.

#### 7 **IV. DEFINITIONS**

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

10 A. Site: The Site is referred to as the Tidewater Fuel Line Leak Site, and is  
11 contained within an easement on the former Chevron Pipe Line Company Pasco Bulk Terminal  
12 (Pasco Bulk Fuel Terminal) and is generally located at 2900 Sacajawea Park Road, Pasco,  
13 Washington 99301. The Pasco Bulk Fuel Terminal is owned and operated by Tesoro Logistics  
14 Operations LLC, and includes approximately three acres. Tidewater owns and operates  
15 pipelines located on an easement that crosses the Pasco Bulk Fuel Terminal site. The Site is  
16 defined by the extent of contamination caused by the release of hazardous substances at the  
17 Site and is not limited by property boundaries. The Site includes areas where hazardous  
18 substances have been deposited, stored, disposed of, placed, or otherwise come to be located.  
19 The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a  
20 Facility under RCW 70.105D.020(8).

21 B. Parties: Refers to the State of Washington, Department of Ecology and  
22 Tidewater Terminal Company, Inc.

23 C. Consent Decree or Decree: Refers to this Consent Decree and each of the  
24 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
25 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.  
26



1 Ecology believed that a release of hazardous substances had occurred at the Pasco Bulk Fuel  
2 Terminal and that Ecology intended to add the Tidewater property to its database of suspected  
3 hazardous waste sites.

4 E. Tidewater conducted various remedial activities to remove petroleum  
5 hydrocarbons from the groundwater and vadose zone from 2000 to 2003. These remedial  
6 activities included free product pumping, vapor enhanced free product pumping, vadose zone  
7 vapor extraction, and air sparge/enhanced bioremediation skimming in groundwater. These  
8 activities were conducted under the Voluntary Cleanup Program under the Toxics Cleanup  
9 Program. The active remedial activities were discontinued after free product was no longer  
10 observed, soil vapor extraction discharge levels were asymptotic, and monitoring indicated  
11 plume stabilization and contraction (reduction in plume extent and concentration in  
12 groundwater).

13 F. Tidewater has performed groundwater monitoring at the Pasco Terminal since  
14 2000. Groundwater monitoring reports were submitted quarterly through 2003, with additional  
15 monitoring conducted in 2006 and 2010. Post remediation sampling has shown removal of free  
16 product and reductions in lateral extent and concentration of petroleum hydrocarbons in  
17 groundwater.

18 G. Since the discoveries of the separate releases, there have been investigations and  
19 independent interim remedial measures conducted in association with the fuel terminal and  
20 pipeline leak as described in subsections D and E above.

21 H. On December 4, 2009, Ecology, CPL, and Tidewater entered into Agreed Order  
22 No. 7294 that required CPL and Tidewater to conduct a terminal-wide remedial investigation/  
23 feasibility study (RI/FS) at the Pasco Bulk Fuel Terminal.

24 I. As part of the RI/FS, CPL and Tidewater conducted further sampling of  
25 monitoring wells at the terminal. One sampling event took place in June 2010 using existing  
26

1 CPL and Tidewater monitoring wells and a second site-wide sampling event took place in  
2 December 2010.

3 J. In September 2011, CPL and Tidewater finalized the draft RI/FS report for the  
4 Pasco Bulk Fuel Terminal. The FS presented an evaluation of the chemicals identified in the  
5 RI, evaluated cleanup action alternatives, and recommended a preferred remedial alternative.  
6 The RI/FS's findings are as follows:

- 7 • Liquid-phase petroleum hydrocarbons have been sufficiently removed and  
8 addressed at the Site based on observations and analytical data from the June 2010  
9 and December 2010 sampling events.
- 10 • Residual dissolved-phase petroleum hydrocarbons still remain on-site within  
11 localized areas. The lateral extent of the dissolved-phase plume has continued to  
12 decrease since active remedial actions were discontinued.

13 K. The RI/FS report was finalized in March 2012 after a 30-day public comment  
14 period. Ecology prepared a responsiveness summary to address the three comments received  
15 during the 30-day public review of the RI/FS report.

16 L. On June 19, 2013, CPL transferred ownership of its property at the Pasco Bulk  
17 Fuel Terminal to Tesoro Logistics Operations LLC.

18 M. Routine groundwater sampling, which continued after the RI/FS report was  
19 finalized, demonstrated that historic releases and contaminated groundwater associated with  
20 the Tidewater portion of the terminal were separate, distinct, and not comingled with those  
21 associated with the portions of the Pasco Bulk Fuel Terminal property formerly owned by  
22 CPL.

23 N. In order to best facilitate site cleanup, in July 2015 Ecology separated the  
24 terminal into two distinct and unique sites: the Tidewater Fuel Line Leak Site and the former  
25 Chevron Pipe Line Company Pasco Bulk Terminal Site. The Tidewater Fuel Line Leak Site is  
26 the area associated with the Tidewater fuel line release and related groundwater plume. The

1 former Chevron Pipe Line Company Pasco Bulk Terminal Site is the area associated with the  
2 former Chevron releases and related groundwater plumes.

### 3 VI. WORK TO BE PERFORMED

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

7 A. Tidewater shall perform all tasks set forth in the Cleanup Action Plan (CAP)  
8 (Exhibit B) and implement the CAP in accordance with the CAP's schedule, including, but not  
9 limited to the following activities:

10 1. The Site groundwater will be monitored to assess the on-going natural  
11 attenuation.

12 2. A compliance monitoring plan will be developed that identifies the  
13 wells, parameters, and monitoring frequency.

14 3. Provide for and maintain institutional controls in the form of restrictive  
15 covenants, fences, and signs.

16 B. Tidewater agrees not to perform any remedial actions to address the releases  
17 that are the subject of this Decree outside the scope of this Decree unless the Parties agree or  
18 the work is required by an emergency. All work conducted by Tidewater under this Decree  
19 shall be done in accordance with WAC chapter 173-340 unless otherwise provided herein.

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

### 23 VII. DESIGNATED PROJECT COORDINATORS

24 The project coordinator for Ecology is:

25 Patrick Cabbage, P.G.  
26 4601 North Monroe Street  
Spokane, WA 99205-1295

1 Phone: (509) 329-3543  
2 E-mail: pcab461@ecy.wa.gov

3 The project coordinator for Tidewater is:

4 William H. Collins  
5 Tidewater Terminal Company, Inc.  
6 P.O. Box 1210  
7 Vancouver, WA 98666-1210

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

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

#### 18 **VIII. PERFORMANCE**

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

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

26 All construction work performed pursuant to this Decree shall be under the direct  
supervision of a professional engineer or a qualified technician under the direct supervision of

1 a professional engineer. The professional engineer must be registered by the State of  
2 Washington, except as otherwise provided for by RCW 18.43.130.

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

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

9 **IX. ACCESS**

10 Ecology or any Ecology authorized representative shall have access to enter and freely  
11 move about all property at the Site that Tidewater either owns, controls, or has access rights to  
12 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and  
13 contracts related to the work being performed pursuant to this Decree; reviewing Tidewater's  
14 progress in carrying out the terms of this Decree; conducting such tests or collecting such  
15 samples as Ecology may deem necessary; using a camera, sound recording, or other  
16 documentary type equipment to record work done pursuant to this Decree; and verifying the  
17 data submitted to Ecology by Tidewater. Tidewater shall make all reasonable efforts to secure  
18 access rights for those properties within the Site not owned or controlled by Tidewater where  
19 remedial activities or investigations will be performed pursuant to this Decree. Ecology or any  
20 Ecology authorized representative shall give reasonable notice before entering any Site  
21 property owned or controlled by Tidewater unless an emergency prevents such notice. All  
22 Parties who access the Site pursuant to this section shall comply with any applicable health and  
23 safety plan(s). Ecology employees and their representatives shall not be required to sign any  
24 liability release or waiver as a condition of Site property access.

1                   **X.     SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

2           With respect to the implementation of this Decree, Tidewater shall make the results of  
3 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to  
4 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in  
5 both printed and electronic formats in accordance with Section XI (Progress Reports),  
6 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any  
7 subsequent procedures specified by Ecology for data submittal.

8           If requested by Ecology, Tidewater shall allow Ecology and/or its authorized  
9 representative to take split or duplicate samples of any samples collected by Tidewater  
10 pursuant to the implementation of this Decree. Tidewater shall notify Ecology seven (7) days  
11 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,  
12 allow Tidewater and/or its authorized representative to take split or duplicate samples of any  
13 samples collected by Ecology pursuant to the implementation of this Decree, provided that  
14 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights  
15 under Section IX (Access), Ecology shall notify Tidewater prior to any sample collection  
16 activity unless an emergency prevents such notice.

17           In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be  
18 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be  
19 conducted, unless otherwise approved by Ecology.

20                   **XI.    PROGRESS REPORTS**

21           Tidewater shall submit to Ecology written Progress Reports that describe the actions  
22 taken to implement the requirements of this Decree. The Progress Reports shall include the  
23 following:

- 24           A.     A list of on-site activities that have taken place during the reporting period;  
25           B.     Detailed description of any deviations from required tasks not otherwise  
26 documented in project plans or amendment requests;

1 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)  
2 during the current reporting period and any planned deviations in the upcoming reporting  
3 period;

4 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
5 compliance with the schedule;

6 E. All raw data (including laboratory analyses) received by Tidewater during the  
7 past reporting period and an identification of the source of the sample; and

8 F. A list of deliverables for the upcoming reporting period if different from the  
9 schedule.

10 All Progress Reports shall be submitted by the tenth (10th) day of the month in which  
11 they are due after the effective date of this Decree. Unless otherwise specified, Progress  
12 Reports and any other documents submitted pursuant to this Decree shall be sent by certified  
13 mail, return receipt requested, to Ecology's project coordinator.

## 14 XII. RETENTION OF RECORDS

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

22 Nothing in this Decree is intended by Tidewater to waive any right it may have under  
23 applicable law to limit disclosure of documents protected by the attorney work-product  
24 privilege and/or the attorney-client privilege. If Tidewater withholds any requested records  
25 based on an assertion of privilege, Tidewater shall provide Ecology with a privilege log  
26

1 specifying the records withheld and the applicable privilege. No Site-related data collected  
2 pursuant to this Decree shall be considered privileged.

3 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

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

15 **XIV. RESOLUTION OF DISPUTES**

16 A. In the event that Tidewater elects to invoke dispute resolution, Tidewater must  
17 utilize the procedure set forth below.

18 1. Upon the triggering event (receipt of Ecology's project coordinator's  
19 written decision or an itemized billing statement), Tidewater has fourteen (14) calendar  
20 days within which to notify Ecology's project coordinator in writing of its dispute  
21 (Informal Dispute Notice).

22 2. The Parties' project coordinators shall then confer in an effort to resolve  
23 the dispute informally. The parties shall informally confer for up to fourteen (14)  
24 calendar days from receipt of the Informal Dispute Notice. If the project coordinators  
25 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar  
26 days Ecology's project coordinator shall issue a written decision (Informal Dispute

1 Decision) stating: the nature of the dispute; the Tidewater's position with regards to  
2 the dispute; Ecology's position with regards to the dispute; and the extent of resolution  
3 reached by informal discussion.

4 3. Tidewater may then request regional management review of the dispute.  
5 This request (Formal Dispute Notice) must be submitted in writing to the Eastern  
6 Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of  
7 Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a  
8 written statement of dispute setting forth: the nature of the dispute; the disputing  
9 Party's position with respect to the dispute; and the information relied upon to support  
10 its position.

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

14 5. If Tidewater finds Ecology's Regional Section Manager's decision  
15 unacceptable, Tidewater may then request final management review of the decision.  
16 This request (Final Review Request) shall be submitted in writing to the Toxics  
17 Cleanup Program Manager within seven (7) calendar days of Tidewater's receipt of the  
18 Decision on Dispute. The Final Review Request shall include a written statement of  
19 dispute setting forth: the nature of the dispute; the disputing Party's position with  
20 respect to the dispute; and the information relied upon to support its position.

21 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
22 the dispute and shall issue a written decision regarding the dispute (Final Decision on  
23 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The  
24 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the  
25 disputed matter.  
26

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

7 C. The Parties agree to only utilize the dispute resolution process in good faith and  
8 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
9 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
10 the other party may seek sanctions.

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

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

#### 18 XV. AMENDMENT OF DECREE

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

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

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

## 8 **XVI. EXTENSION OF SCHEDULE**

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

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

- 13 1. The deadline that is sought to be extended;
- 14 2. The length of the extension sought;
- 15 3. The reason(s) for the extension; and
- 16 4. Any related deadline or schedule that would be affected if the extension  
17 were granted.

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

- 21 1. Circumstances beyond the reasonable control and despite the due  
22 diligence of Tidewater including delays caused by unrelated third parties or Ecology,  
23 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
24 documents submitted by Tidewater;
- 25 2. Acts of God, including fire, flood, blizzard, extreme temperatures,  
26 storm, or other unavoidable casualty; or



1 coordinator as soon as possible, but no later than twenty-four (24) hours after making such  
2 determination or ceasing such activities. Upon Ecology's direction, Tidewater shall provide  
3 Ecology with documentation of the basis for the determination or cessation of such activities.  
4 If Ecology disagrees with Tidewater's cessation of activities, it may direct Tidewater to  
5 resume such activities.

6 If Ecology concurs with or orders a work stoppage pursuant to this section,  
7 Tidewater's obligations with respect to the ceased activities shall be suspended until Ecology  
8 determines the danger is abated, and the time for performance of such activities, as well as the  
9 time for any other work dependent upon such activities, shall be extended, in accordance with  
10 Section XVI (Extension of Schedule), for such period of time as Ecology determines is  
11 reasonable under the circumstances.

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

#### 14 **XVIII. COVENANT NOT TO SUE**

15 A. Covenant Not to Sue: In consideration of Tidewater's compliance with the  
16 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
17 actions against Tidewater regarding the release or threatened release of hazardous substances  
18 covered by this Decree.

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

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

- 24 1. Criminal liability;
- 25 2. Liability for damages to natural resources; and



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**XIX. CONTRIBUTION PROTECTION**

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

**XX. LAND USE RESTRICTIONS**

In consultation with Tidewater, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. Tidewater shall record the Environmental (Restrictive) Covenant with the office of the Franklin County Auditor within ten (10) days of the completion of the first performance monitoring event. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology and Tidewater. Tidewater shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

**XXI. INDEMNIFICATION**

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

**XXII. COMPLIANCE WITH APPLICABLE LAWS**

A. All actions carried out by Tidewater pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other

1 federal, state, or local requirements that the agency has determined are applicable and that are  
2 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

3 B. Pursuant to RCW 70.105D.090(1), Tidewater is exempt from the procedural  
4 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring  
5 or authorizing local government permits or approvals. However, Tidewater shall comply with  
6 the substantive requirements of such permits or approvals. The exempt permits or approvals  
7 and the applicable substantive requirements of those permits or approvals, as they are known at  
8 the time of entry of this Decree, have been identified in the CAP (Exhibit B).

9 Tidewater has a continuing obligation to determine whether additional permits or  
10 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
11 action under this Decree. In the event either Ecology or Tidewater determines that additional  
12 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
13 remedial action under this Decree, it shall promptly notify the other party of this determination.  
14 Ecology shall determine whether Ecology or Tidewater shall be responsible to contact the  
15 appropriate state and/or local agencies. If Ecology so requires, Tidewater shall promptly  
16 consult with the appropriate state and/or local agencies and provide Ecology with written  
17 documentation from those agencies of the substantive requirements those agencies believe are  
18 applicable to the remedial action. Ecology shall make the final determination on the additional  
19 substantive requirements that must be met by Tidewater and on how Tidewater must meet  
20 those requirements. Ecology shall inform Tidewater in writing of these requirements. Once  
21 established by Ecology, the additional requirements shall be enforceable requirements of this  
22 Decree. Tidewater shall not begin or continue the remedial action potentially subject to the  
23 additional requirements until Ecology makes its final determination.

24 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
25 exemption from complying with the procedural requirements of the laws referenced in  
26 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is

1 necessary for the state to administer any federal law, the exemption shall not apply and  
2 Tidewater shall comply with both the procedural and substantive requirements of the laws  
3 referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

#### 4 **XXIII. REMEDIAL ACTION COSTS**

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

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

#### 21 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

22 If Ecology determines that Tidewater has failed to make sufficient progress or failed to  
23 implement the remedial action, in whole or in part, Ecology may, after notice to Tidewater,  
24 perform any or all portions of the remedial action or, at Ecology's discretion, allow Tidewater  
25 opportunity to correct. Tidewater shall reimburse Ecology for the costs of doing such work in  
26 accordance with Section XXIV (Remedial Action Costs).

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

#### 5 **XXV. PERIODIC REVIEW**

6 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
7 agree to review the progress of remedial action at the Site, and to review the data accumulated  
8 as a result of monitoring the Site as often as is necessary and appropriate under the  
9 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the  
10 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial  
11 action at the Site. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to  
12 require further remedial action at the Site under appropriate circumstances. This provision shall  
13 remain in effect for the duration of this Decree.

#### 14 **XXVI. PUBLIC PARTICIPATION**

15 A Public Participation Plan (Exhibit D) is required for this Site. Ecology shall review  
16 any existing Public Participation Plan to determine its continued appropriateness and whether it  
17 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan  
18 alone or in conjunction with Tidewater.

19 Ecology shall maintain the responsibility for public participation at the Site. However,  
20 Tidewater shall cooperate with Ecology, and shall:

21 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of  
22 public notices and fact sheets at important stages of the remedial action, such as the submission  
23 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and  
24 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact  
25 sheets and prepare and distribute public notices of Ecology's presentations and meetings.  
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1 B. Notify Ecology's project coordinator prior to the preparation of all press  
2 releases and fact sheets, and before major meetings with the interested public and local  
3 governments. Likewise, Ecology shall notify Tidewater prior to the issuance of all press  
4 releases and fact sheets, and before major meetings with the interested public and local  
5 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
6 Tidewater that do not receive prior Ecology approval, Tidewater shall clearly indicate to its  
7 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored  
8 or endorsed by Ecology.

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

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

- 14 1. Mid-Columbia Library  
15 1320 West Hopkins Street  
Pasco, WA 99301
- 16 2. Ecology's Eastern Regional Office  
17 4601 North Monroe Street  
Spokane, WA 99205-1295

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

## 22 XXVII. DURATION OF DECREE

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

3 **XXVIII. CLAIMS AGAINST THE STATE**

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

11 **XXIX. EFFECTIVE DATE**

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

13 **XXX. WITHDRAWAL OF CONSENT**

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

18 STATE OF WASHINGTON  
19 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

20   
21 \_\_\_\_\_  
22 JAMES PENDOWSKI  
23 Program Manager  
24 Toxics Cleanup Program  
25 (360) 407-7177

20   
21 \_\_\_\_\_  
22 JOHN A. LEVEL, WSBA # 20439  
23 Assistant Attorney General  
24 (360) 586-6753

24 Date: 11/15/16

24 Date: 11/15/16

1 TIDEWATER TERMINAL COMPANY, INC.

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ROBERT A. CURCIO  
President & CEO  
(360) 693-1491

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Date: 8/12/16

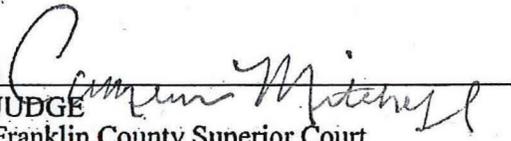
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ENTERED this 22<sup>nd</sup> day of NOV. 2016.

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JUDGE  
Franklin County Superior Court  
CAMERON MITCHELL

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