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SUPERIOR COURT  
THURSTON COUNTY WASH.

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1  EXPEDITE

2  Hearing is Set:

3 Date: July 18, 2003

4 Time: 9:00 a.m.

5 The Honorable Daniel J. Berschauer

BETTY J. GOULD CLERK

BY W DEPUTY

THURSTON  
SUPERIOR COURT

8 STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

9 STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

10 Plaintiff,

11 v.

12 TIGER OIL CORPORATION, TIGER  
13 OIL COMPANY, FEDERATED  
14 SERVICE INSURANCE COMPANY,  
15 MERCY DEVELOPMENT  
16 COMPANY AND M & E COMPANY,

Defendants.

NO. 02-2-00956-2

CONSENT DECREE

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CONSENT DECREE

ORIGINAL

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1                   **I.       INTRODUCTION AND STATEMENT OF PURPOSE**

2           A.       In entering into this Consent Decree (Decree), the mutual objective of the  
3 Washington State Department of Ecology (Ecology) and Mercy Development Co., LLC  
4 (Mercy) is to provide for remedial action at a facility where there has been a release of  
5 hazardous substances and to provide for settlement which will lead to a more expeditious  
6 cleanup, in compliance with chapter 70.105D RCW, at the TIGER OIL SITE (the Site, further  
7 defined in Section V.A) located in Yakima County, Washington. This Decree requires Mercy  
8 to perform the actions described in Exhibits A and B, attached hereto. Exhibits A and B are  
9 incorporated into this Decree and are binding portions thereof. To accomplish these objectives  
10 and to resolve the matter constructively and without further litigation, Mercy and Ecology  
11 agree to its entry and agree to be bound by its terms.

12           B.       Ecology filed the Complaint in this action on June 6, 2002 in Thurston County  
13 Superior Court. In the Complaint, Ecology alleged that Mercy Development Company was a  
14 current owner and operator of a portion of the Site and M & E Company (M & E) was a former  
15 owner and operator of a portion of the Site and thus were potentially liable persons under RCW  
16 70.105D.040(1)(a) and (b). As the result of a merger and a name change, Mercy Development  
17 Company (actually Mercy Development Company, L.P.) became Mercy Development Co.,  
18 LLC. The answer on behalf of Mercy Development Company and M & E was filed on July 8,  
19 2002. There has not yet been a trial on any issue of fact or law in this case. However, the  
20 parties to this Decree wish to resolve the issues raised by Ecology's Complaint as they relate to  
21 Mercy and M & E. In addition, the parties agree that settlement of these matters without  
22 litigation is reasonable and in the public interest, and that entry of this Decree is the most  
23 appropriate means of resolving these matters.

24           C.       By entering into this Decree the parties do not intend to discharge non-settling  
25 parties from any liability they may have with respect to matters alleged in the Complaint or  
26

1 Addressed Matters (as defined in Section VI.B.) in this Decree. The parties reserve their rights  
2 to seek reimbursement from third parties for the costs of such matters.

3 D. This Decree shall not be construed as proof of liability or responsibility for any  
4 releases of hazardous substances or costs for remedial action or as an admission of any facts;  
5 provided, however, that Mercy shall not challenge the jurisdiction of Ecology in any  
6 proceeding to enforce this Decree.

7 E. The Court is fully advised of the reasons for entry of this Decree, and good  
8 cause having been shown:

9 Now, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

10 **II. JURISDICTION AND VENUE**

11 A. This Court has jurisdiction over the subject matter and over the parties pursuant  
12 to chapter 70.105D RCW, the Model Toxics Control Act (MTCA). The Court ruled that venue  
13 is proper in Thurston County pursuant to RCW 70.105D.050(5)(b) on July 19, 2002.

14 B. Authority is conferred upon the Washington State Attorney General by  
15 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after  
16 public notice and hearing, Ecology finds the proposed settlement would lead to a more  
17 expeditious cleanup of hazardous substances in compliance with cleanup standards in WAC  
18 173-340, promulgated under RCW 70.105D.030(2)(e). RCW 70.105D.040(4)(b) requires that  
19 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

20 C. In 1992 Ecology gave notice to M & E, as provided in RCW 70.105D.020(16),  
21 of Ecology's determination that M & E is a potentially liable person for the Site and that there  
22 had been a release of hazardous substances at the Site. In the Complaint, Ecology alleged that  
23 Mercy Development Company is a current owner and M & E was a former owner of a portion  
24 of the Site. In its answer, Mercy stated that it is a current owner and M & E was a former  
25 owner of a portion of the Site but asserted several defenses to Ecology's claims.

26

1 D. Ecology has determined that activities at the Site have resulted in the release of  
2 hazardous substances, which require remedial action pursuant to chapter 70.105D RCW.

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

5 F. By entering into this Decree, Mercy agrees not to challenge the jurisdiction of  
6 Ecology in any proceeding to enforce this Decree. In exchange for the protections provided by  
7 this Decree and to resolve the dispute with Ecology, Mercy has agreed to undertake the actions  
8 specified in this Decree and consents to the issuance of this Decree, pursuant to chapter  
9 70.105D RCW.

### 10 III. PARTIES BOUND

11 A. This Decree shall apply to, be binding upon and inure to the benefit of the  
12 signatories (parties) to this Decree, their successors and assigns. The undersigned  
13 representative of each party hereby certifies that he or she is fully authorized to enter into this  
14 Decree and to execute and legally bind such party to comply with the Decree. No change in  
15 Mercy's ownership or corporate status shall alter the responsibility of Mercy under this Decree.  
16 Mercy shall provide a copy of this Decree to all agents, contractors and subcontractors retained  
17 to perform the work required by this Decree and shall ensure that all work undertaken by such  
18 contractors is in compliance with this Decree.

### 19 IV. DEFINITIONS

20 A. Unless otherwise specified herein, the definitions set forth in WAC 173-340-200  
21 apply to the terms in this Decree.

- 22 1. Addressed Matters: is defined in Section VI.B.  
23 2. Complaint: means the Complaint filed by Ecology in the above-captioned  
24 case on June 6, 2002.  
25  
26

1           3.     Mercy Group: means M & E Company, Mercy Development Company,  
2 L.P., Mercy Transition, L.L.C., Mercy Development Co., L.L.C., and the officers, directors,  
3 employees, shareholders, partners and members of any of the foregoing.

4           4.     Parties: means Ecology, Mercy and M & E.

5                           **V.     STATEMENT OF FACTS**

6           Ecology makes the statement of facts in this section without any express or implied  
7 admissions of Mercy.

8           A.     The Tiger Oil Site, hereinafter also known as the "Facility" as defined in RCW  
9 70.105D.020(4) and in WAC 173-340-200, or the "Site" as defined in WAC 173-340-200 and in  
10 WAC 173-340-200, is located within the NW ¼, SE ¼ of Section 26, Township 13 North, Range  
11 18 East, Willamette Meridian (WM) in Yakima, Washington. As further described in the  
12 Complaint, the Site is currently bounded by South 24<sup>th</sup> Avenue on the west, by West Nob Hill  
13 Boulevard on the north, by the Yakima County Drainage Irrigation Ditch (DID) line and  
14 surrounding soil and backfill on the east and by the parking lot in front of the Rite-Aid drugstore  
15 and Safeway store to the south.

16           B.     The Site contains parcels owned by several different persons. Located on a parcel  
17 at the northwest portion of the Site is the Tiger Mart retail gasoline station. There have been  
18 several releases of petroleum hydrocarbons at the Tiger Mart property. The boundaries of the  
19 Site have been determined by where the contamination from the releases at the Tiger Mart station  
20 has come to be located, as is provided in RCW 70.105D.020(4). These releases have migrated to  
21 parcels to the south and east, including the parking lot that Mercy owns at the southeast portion  
22 of the Site and parcels between the Tiger Mart and Mercy properties. This Mercy property is  
23 topographically below and, for the most part, separated by a retaining wall from the Tiger Mart  
24 and intervening parcels.

25           C.     Operations at the Tiger Mart gasoline station since at least the early 1980s have  
26 resulted in spillage and/or releases of petroleum substances to the environment. As set forth in

1 greater detail in the Complaint, Ecology has issued several orders regarding this petroleum  
2 hydrocarbon contamination. These include (1) Enforcement Order No. DE 82-517,  
3 (2) Enforcement Order No. DE 90-C140, (3) Enforcement Order No. DE 94TC-C432,  
4 (4) Enforcement Order No. DE 98TC-C166, and (5) Enforcement Order No. DE 02TCPCR-3589  
5 (collectively, the "Enforcement Orders"), which are incorporated herein by this reference.

6 D. Investigations at the Site have confirmed that "releases" of "hazardous  
7 substances," as defined in RCW 70.105D.020(20) and (7) respectively, to soil and ground  
8 water have occurred and that hazardous substances are still present at the Site. Further  
9 information on such releases is set forth in the reports that are identified in Enforcement Order  
10 No. DE 02TCPCR-3589.

11 E. In Enforcement Order No. DE 02TCPCR-3589 Ecology ordered a number of  
12 persons to implement a Cleanup Action Plan, which Ecology issued on March 13, 2002. The  
13 Cleanup Action Plan specifies several actions to be undertaken by such persons in order to  
14 remediate the remaining soil and groundwater contamination at the Site, including without  
15 limitation, (1) removal of underground storage tank systems at the Tiger Mart property, (2)  
16 removal and disposal of petroleum contaminated soils from the Tiger Mart property and (3)  
17 installation and operation of a soil vapor extraction (SVE) system to address residual soil  
18 contamination and floating free petroleum product at the Site. As described in the Cleanup  
19 Action Plan, the SVE system would cover several of the parcels, including Mercy's property  
20 within the Site.

21 F. In November 1992, Ecology notified M & E that Ecology had determined it to  
22 be a potentially liable person with regard to the Site, as the Site was then defined. In March  
23 2002, Ecology issued Enforcement Order No. DE 02TCPCR-3589 to M & E and several other  
24 parties. In the Complaint, Ecology alleged that both M & E and Mercy were potentially liable  
25 persons with regard to the Site and requested that they and the other named defendants be  
26

1 ordered by the court to implement the Cleanup Action Plan at the Site. M & E and Mercy have  
2 consistently contested Ecology's naming of them as potentially liable persons.

3 G. Ecology alleges in the Complaint that both M & E and Mercy were potentially  
4 liable persons due to their ownership of a portion of the Facility. Ecology has reviewed the  
5 possible effect of historical activities at the Mercy property on the contamination that originated  
6 on and spread from the Tiger Mart property. Ecology has determined, pursuant to RCW  
7 70.105D.040(4)(a), that (1) that the work to be performed by Mercy under this settlement will  
8 allow a more expeditious cleanup of hazardous substances in compliance with cleanup standards  
9 under RCW 70.105D.030(2)(e) and with the Enforcement Orders and (2) that the contribution by  
10 M & E and Mercy to the contamination at the Site is insignificant and de minimis and that  
11 remedial action at the Site will be facilitated by this settlement with Mercy and M & E.

12 **VI. WORK TO BE PERFORMED AND TERMS OF THE SETTLEMENT**

13 A. In settlement of its liability to the state of Washington for matters addressed  
14 herein, Mercy agrees to the following:

15 1. Mercy shall perform at its cost the work set forth in Exhibit A on the  
16 Mercy Property SVE System; and

17 2. Mercy shall record the restrictive covenant set forth in Exhibit B on  
18 property it owns within the Site.

19 B. This Consent Decree is a settlement entered into pursuant to  
20 RCW 70.105D.040(4). A party who has resolved its liability to the state under  
21 RCW 70.105D.040(4) shall not be liable for claims for contribution regarding matters  
22 addressed in the settlement. For the purpose of this Consent Decree, "matters addressed in the  
23 settlement" ("Addressed Matters") include (a) all investigation, assessment and remediation of  
24 releases of those hazardous substances at the Site described in the March 13, 2002 Cleanup  
25 Action Plan or in the documents referenced therein, (b) all remedial action costs and all natural  
26 resource damages (if any) resulting from such releases of those hazardous substances at the



1 Site described in the March 13, 2002 Cleanup Action Plan or in the documents referenced  
2 therein and (c) all claims, costs and obligations arising under any of the Enforcement Orders,  
3 the Complaint or this Consent Decree.

4 C. Without limiting the foregoing and except as expressly provided herein, the  
5 Mercy Group shall not be liable to the State of Washington for the state's costs associated with  
6 or arising from Addressed Matters, including, without limitation, all allocable Ecology costs,  
7 direct or indirect, associated with work performed by Ecology or its contractors for  
8 investigations, remedial actions, Decree preparation, negotiation, oversight, and administration  
9 and all attorneys' fees incurred by the state.

#### 10 VII. DESIGNATED PROJECT COORDINATORS

11 A. The project coordinator for Ecology is:

12 Ms. Rachel Caron  
13 Site Manager, Toxics Cleanup Program  
14 Washington State Department of Ecology  
15 15 West Yakima Avenue, Suite 200  
16 Yakima, WA 98902-3452

17 B. The project coordinator for Mercy is:

18 Ms. Janelle Den Beste  
19 Mercy Development Co. L.L.C.  
20 P. O. Box 50  
21 Yakima, WA 98907

22 C. To the maximum extent possible, communications between Ecology and Mercy,  
23 and all documents, including reports, approvals, and other correspondence concerning the  
24 activities performed pursuant to this Decree, will be directed through the project coordinators.  
25 The project coordinators shall be responsible for overseeing the implementation of this Decree.  
26 The project coordinators may agree to minor modifications to the work to be performed  
without formal amendments to this Decree. Minor modifications will be documented in  
writing by Ecology.

1 D. Should Ecology or Mercy change its project coordinator, written notification  
2 shall be provided to the other party at least ten (10) days prior to the change.

### 3 VIII. ACCESS TO MERCY PROPERTY

4 A. During the time that Mercy is performing its obligations under this Decree,  
5 Ecology or its authorized employees, agents or contractors shall have the authority to enter and  
6 freely move about the Mercy property within the Site for the purposes of: observing the work  
7 being performed; reviewing Mercy's progress in carrying out the terms of this Consent Decree;  
8 conducting such tests or collecting samples of the Mercy Property SVE System as Ecology or  
9 the project coordinator may deem necessary; and using a camera, sound recording, or other  
10 documentary-type equipment to record the work being performed by Mercy at the Site and  
11 verifying the data submitted to Ecology by Mercy. Ecology shall provide reasonable notice  
12 before entering property and shall use reasonable efforts to schedule its entry during normal  
13 business hours, unless an emergency prevents notice. Nothing in this paragraph shall limit  
14 Ecology's rights of access to the Site under RCW 70:105D.030(1):

### 15 IX. PUBLIC PARTICIPATION

16 A. Ecology will maintain the responsibility for public participation at the Site.  
17 Mercy will help coordinate and implement public participation activities. Ecology will fulfill  
18 the public participation requirements of Chapter 70.105D RCW and Chapter 173-340 WAC, as  
19 those provisions apply to the negotiation and entry of this Decree.

### 20 X. RETENTION OF RECORDS

21 A. Mercy shall preserve in a readily retrievable fashion, during the pendency of  
22 this Consent Decree and for ten (10) years from the date of this Decree, all records, reports,  
23 documents, and underlying data in its possession relevant to the implementation of this Decree,  
24 including, without limitation, records, operation logs, and contracts related to work being  
25 performed pursuant to this Decree. Should any portion of the work performed be undertaken  
26 through contractors or agents of Mercy, then Mercy agrees to include in their contract with

1 such contractors or agents a record retention requirement meeting the terms of this paragraph.  
2 Upon request of Ecology, Mercy shall make all records available to Ecology and allow access  
3 for review.

4 **XI. TRANSFER OF INTEREST IN PROPERTY**

5 A. Mercy shall not consummate any voluntary or involuntary conveyance or  
6 relinquishment of title, easement or other interest in the Mercy property within the Site without  
7 provision, as necessary, for continued operation, maintenance and monitoring of the Mercy  
8 Property SVE System as specified under Exhibit A.

9 B. Prior to transfer of any interest in all or any portion of the Mercy property on  
10 which the Mercy Property SVE System is located, Mercy shall serve a copy of this Decree and  
11 the attached Exhibits upon any prospective purchaser or other successor in interest of the  
12 property. At least thirty (30) days prior to any such transfer, Mercy shall notify Ecology of  
13 said transfer.

14 **XII. COMPLIANCE WITH OTHER APPLICABLE LAWS**

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

18 **XIII. RESOLUTION OF DISPUTES**

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

22 1. Upon receipt of the Ecology project coordinator's decision, Mercy has  
23 fourteen (14) days within which to notify Ecology's project coordinator of its objection to the  
24 decision.

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

4           3.     Mercy may then request Ecology management review of the decision.  
5 This request shall be submitted in writing to the Toxics Cleanup Program Manager within  
6 seven (7) days of receipt of Ecology's project coordinator's decision.

7           4.     Ecology's Program Manager shall conduct a review of the dispute and  
8 shall issue a written decision regarding the dispute within thirty (30) days of the Mercy request  
9 for review. The Program Manager's decision shall be Ecology's final decision on the disputed  
10 matter.

11         B.     If Ecology's final written decision is unacceptable to Mercy; Mercy has the right  
12 to submit the dispute to the Court for resolution. The parties agree that one judge should retain  
13 jurisdiction over this case and shall, as necessary, resolve any dispute arising under this  
14 Decree. In the event Mercy presents an issue to the Court for review, the Court shall review  
15 the action or decision by Ecology on the basis of whether such action or decision was arbitrary  
16 and capricious and render a decision based on that standard of review.

17         C.     The parties agree to only utilize the dispute resolution process in good faith and  
18 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
19 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
20 the other party may seek sanctions.

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

#### 24                           XIV. AMENDMENT OF CONSENT DECREE

25         A.     This Decree may only be amended by a written stipulation among the parties  
26 to this Decree that is entered by the Court. Such amendment shall become effective upon

1 entry by the Court. Agreement to amend shall not be unreasonably withheld by any party to  
2 the Decree.

3 B. Mercy shall submit any request for an amendment to Ecology for approval.  
4 Ecology shall indicate its approval or disapproval in a timely manner after the request for  
5 amendment is received. If the amendment to the Decree is substantial, Ecology will provide  
6 public notice and opportunity to comment. If Ecology disapproves the proposed amendment,  
7 it shall state its reasons in writing. Mercy may address the disapproval through the dispute  
8 resolution procedures described in Section XIII above.

9 C. Ecology shall submit any request for an amendment to Mercy for its  
10 agreement. Mercy shall indicate its agreement or disagreement in a timely manner after the  
11 request for amendment is received. If Mercy disagrees with the proposed amendment, it  
12 shall state its reasons in writing. Ecology may address the disagreement through the dispute  
13 resolution procedures described in Section XIII above.

14 D. No guidance, suggestions, or comments by Ecology will be construed as  
15 relieving Mercy of its obligation to obtain formal approval as may be required by this  
16 Decree. No verbal communication by Ecology shall relieve Mercy of the obligations  
17 specified herein.

#### 18 XV. OTHER ACTIONS

19 A. Ecology reserves its right to institute remedial action(s) at the Site and  
20 subsequently pursue cost recovery and Ecology reserves its rights to issue orders and/or  
21 penalties or take any other enforcement action pursuant to available statutory authority under  
22 the following circumstances:

23 1. Where Mercy fails, after notice by Ecology, to comply with any  
24 requirement of this Decree;

25 2. In the event or upon the discovery of a release or threatened release of a  
26 hazardous substance that is not an Addressed Matter;

1           3.     Upon Ecology's determination that action beyond the terms of this  
2 Decree is necessary to abate an emergency situation which threatens public health or welfare or  
3 the environment; or

4           4.     Upon the occurrence or discovery of facts or conditions on the Mercy  
5 parcel that are not an Addressed Matter, as to which Ecology would be empowered to perform  
6 any remedial action or to issue an order and/or penalty, or to take any other enforcement action  
7 under applicable laws and which Mercy, after notice from Ecology, fails to address.

8           B.     Ecology reserves all rights regarding the injury to, destruction of, or loss of  
9 natural resources resulting from the release or threatened release of hazardous substances from  
10 the Site.

11          C.     Ecology reserves the right to take any enforcement action whatsoever, including  
12 a cost recovery action, against potentially liable persons other than the Mercy Group.

13                                 **XVI. INDEMNIFICATION**

14          A.     Mercy agrees to indemnify and save and hold the State of Washington and its  
15 employees and agents harmless from any and all claims or causes of action for death or injuries  
16 to persons or for loss or damage to property arising from or on account of acts or omissions of  
17 Mercy, its officers, employees, agents, or contractors in entering into and implementing this  
18 Decree, except for any claims or causes of action arising out of the negligent acts or omissions  
19 of the State of Washington or its employees or agents.

20                                 **XVII. COVENANT NOT TO SUE AND CONTRIBUTION PROTECTION**

21          A.     Covenant Not to Sue. In consideration of Mercy's compliance with the terms  
22 and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand in  
23 lieu of any and all administrative, legal, and equitable remedies and enforcement actions  
24 available to the State of Washington against the Mercy Group for Addressed Matters and shall  
25 resolve the liability of the Mercy Group to Ecology for Addressed Matters.

1 B. This Decree is a resolution of liability under RCW 70.105D.040(4)(d) and the  
2 Mercy Group shall not be liable for contribution for Addressed Matters.

3 C. This Covenant Not to Sue is strictly limited in its application to the Site and the  
4 Addressed Matters. This Covenant is not applicable to any other site or hazardous substance or  
5 area regarding which Ecology retains all of its authority.

6 D. Reopener. In the following circumstances Ecology may exercise its full legal  
7 authority to address releases of hazardous substances at the Site notwithstanding this Covenant  
8 Not to Sue:

9 1. In the event that Mercy fails, after notice by Ecology, to comply with  
10 any requirement of this Decree;

11 2. In the event that factors not known at the time of entry of this Decree are  
12 discovered and present a previously unknown threat to human health and the environment. In  
13 such a case, the Court shall be required to amend the Covenant Not to Sue as required by RCW  
14 70.105D.040(4)(c).

15 E. Applicability. This Covenant Not to Sue shall have no applicability whatsoever  
16 to:

17 1. Criminal liability;

18 2. Any actions against any person or entity other than the Mercy Group;

19 or

20 3. Liability for damages for injury to, or loss of, natural resources  
21 resulting from a release or threatened release of a hazardous substance.

## 22 XVIII. CLAIMS AGAINST THE STATE

23 A. Mercy warrants to Ecology that neither it nor any person or entity in the Mercy  
24 Group will seek to recover from or make any claim against the State of Washington, any of its  
25 agencies or State or Local Toxics Control Accounts for any costs incurred for Addressed  
26 Matters.

1 **XIX. MERCY'S RESERVATION OF RIGHTS**

2 A. The execution and performance of the Decree is neither an admission by  
3 Mercy of any fact or liability for any purposes other than as a foundation for the entry of this  
4 Decree nor an agreement by Mercy to take any action at the Site other than that required  
5 under this Decree. Mercy's performance under the Decree is undertaken without waiver of or  
6 prejudice to any claims or defenses whatsoever that may be asserted in the event of further  
7 administrative proceedings or litigation not associated with, or related to, this Decree.

8 **XX. EFFECTIVE DATE**

9 A. The effective date of this Consent Decree shall be the date upon which the  
10 Court enters this Consent Decree.

11 **XXI. DURATION OF DECREE AND RETENTION OF JURISDICTION**

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

17 **XXII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

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

22 B. If the Court withholds or withdraws its consent, this Decree shall be null and  
23 void at the option of any party and the accompanying Complaint shall be dismissed without  
24 costs and without prejudice. In such an event, no party shall be bound by the requirements of  
25 this Decree.

26



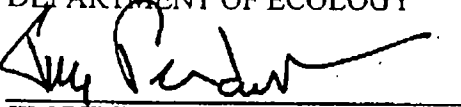
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C. The undersigned parties enter into this Consent Decree on the dates specified below.

Dated this 15 day of August, 2003.

  
\_\_\_\_\_  
Judge Daniel J. Berschauer


STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



\_\_\_\_\_  
JIM PENDOWSKI  
Program Manager  
Toxics Cleanup Program

Date: 6/14/03

CHRISTINE O. GREGOIRE  
ATTORNEY GENERAL



\_\_\_\_\_  
MICHAEL DUNNING, WSBA#29492  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington, Department of Ecology

Date: 6/19/03

MERCY DEVELOPMENT CO. L.L.C.

\_\_\_\_\_  
KATHI D. MERCY  
Manager, Mercy Development Co. LLC  
Date: \_\_\_\_\_

PERKINS COIE LLP

\_\_\_\_\_  
DOUGLAS S. LITTLE, WSBA #4963  
Attorneys for Mercy Development Co.  
Date: \_\_\_\_\_

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

3 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

4  
5 Judge Daniel J. Berschauer

7 STATE OF WASHINGTON  
8 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
ATTORNEY GENERAL

9 JIM PENDOWSKI  
10 Program Manager  
11 Toxics Cleanup Program

MICHAEL DUNNING, WSBA#29492  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington, Department of Ecology

12 Date: \_\_\_\_\_

Date: \_\_\_\_\_

14 MERCY DEVELOPMENT CO. L.L.C.

PERKINS COIE LLP

16 KATHI D. MERCY  
17 Manager, Mercy Development Co. LLC  
18 Date: \_\_\_\_\_

*Mark W. Little for D. Little WSBA 14105*  
DOUGLAS S. LITTLE, WSBA #4963  
Attorneys for Mercy Development Co.  
Date: 6/17/03

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Dated this \_\_\_ day of \_\_\_\_\_, 2003.

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CHRISTINE O. GREGOIRE  
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\_\_\_\_\_  
JIM PENDOWSKI  
Program Manager  
Toxics Cleanup Program

\_\_\_\_\_  
MICHAEL DUNNING, WSBA#29492  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington, Department of Ecology

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MERCY DEVELOPMENT CO. L.L.C.

PERKINS COIE LLP

*Kathi D. Mercy*  
\_\_\_\_\_  
KATHI D. MERCY  
Manager, Mercy Development Co. LLC  
Date: June 19, 2003

\_\_\_\_\_  
DOUGLAS S. LITTLE, WSBA #4963  
Attorneys for Mercy Development Co.  
Date: \_\_\_\_\_

CONSENT DECREE

15

ATTORNEY GENERAL OF WASHINGTON  
Ecology Division  
PO Box 40117  
Olympia, WA 98504-0117  
FAX (360) 586-6770

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EXHIBIT A

Mercy Property SVE System

The work to be performed for the Mercy Property SVE System is as follows:

1. Design: As shown on Figure 1, the soil vapor extraction (SVE) portion of the existing interim treatment system is to be extended in two directions, the KMW-06 to Nob Hill SVE Extension to the north and the MW-9/MW-13 SVE Extension to the southeast. The slotted SVE piping will be placed in shallow trenches at a depth below ground surface (bgs) that is above the seasonal high water table elevation. The piping for each extension shall be plumbed into the existing SVE system so that the two new extensions and the existing SVE piping can be operated independently using the existing system blower. The northern extension will include the area of monitoring well S-2 and extend to the area of monitoring well KMW-06. All of the additions are to be located on property owned by Mercy Development. Once installed, the Mercy Property SVE System shall consist of the SVE portion of the existing interim treatment system, the KMW-06 to Nob Hill SVE Extension to the north, the MW-9/MW-13 SVE Extension to the southeast and any connecting piping.

2. Installation: Installation of the expanded SVE system on Mercy property shall be done following entry of the Consent Decree and final completion of any third party appeals to the entry. Prior to installation, Mercy will submit to Ecology, for review and approval, a SVE Implementation Workplan that combines applicable information typically contained in an Engineering Design Report, Construction Plans and Specifications, and an Operation and Maintenance Plan, prepared in general accordance with WAC 173-340-400. Installation of the SVE system may take place upon Ecology approval of the Workplan.

A second condition precedent to installation is Ecology's securing of the right for Mercy Development and its employees, agents, representatives, contractors, and subcontractors (and any subsequent operators of the Mercy Property SVE System) to connect to, use, maintain and operate the existing SVE portion of the interim treatment system. Ecology

1 shall notify Mercy Development in writing when such rights are secured from the owner of  
2 the interim treatment system. Ecology and Mercy Development agree that installation  
3 should optimally be done in the spring of 2003 if the specified conditions have been met. At  
4 its option, Mercy Development may perform the installation in a manner and during the  
5 hours when it will minimize any potential disruption of the businesses on its property.  
6 However, installation shall not be delayed by such manner of installation.

7       3.     Operation and Maintenance: Mercy Development shall be responsible for  
8 operation and maintenance of the Mercy Property SVE System during a period of 30 months  
9 that begins with commencement of operation as determined under this paragraph. The  
10 operation will not commence until (a) petroleum-contaminated soil on the Tiger Oil property  
11 has been excavated and removed, as required by the Cleanup Action Plan in Enforcement  
12 Order No. DE 02TCPCR-3589, and (b) Ecology notifies Mercy Development in writing that  
13 such work has been completed. Operation will commence with a restart of the existing SVE  
14 portion of the interim treatment system and pulsing of it for up to six months to evaluate the  
15 prior effectiveness of the interim SVE remediation. Pulsing means one month of operation  
16 of the interim treatment system and ceasing operation of that system for the following month.  
17 After this pulsing, SVE on the two new extensions shall be initiated. If it is determined that  
18 the pulsing activity on the interim SVE system is no longer achieving optimal contaminant  
19 removal prior to the end of the first six months of operation, the new portions of the SVE  
20 system may be initiated. This decision will be based on results from sampling the extracted  
21 soil vapors. The system shall be operated in compliance with the substantive requirements of  
22 the Yakima Regional Clean Air Authority. Operation may be suspended pursuant to  
23 Paragraph 5.

24       4.     Monitoring: Mercy Development shall be responsible for monitoring the  
25 Mercy Property SVE System during a period of 30 months that begins with commencement  
26 of operation, as determined under Paragraph 3. Monitoring shall consist of routine

1 inspections to determine that the system is operating as intended and periodic collections of  
2 an air sample from the system for laboratory analysis of the petroleum hydrocarbons in the  
3 extracted soil vapors. The analysis shall be for NW TPH(g) and for BTEX on a minimum  
4 quarterly basis and in accordance with requirements of the Yakima Regional Clean Air  
5 Authority operating permit. The monitoring results will be provided to Ecology on a  
6 monthly basis during the first six months of operation of the interim SVE system, and the  
7 first three months of operation of the new SVE system and quarterly thereafter. If Mercy and  
8 Ecology decide, based on monitoring results, that the interim SVE system should be shut  
9 down and the new SVE system should be turned on prior to the end of the initial 6 months of  
10 operation, monthly monitoring will only be required for the duration of operation of the  
11 interim SVE system and the first three months of operation of the new SVE system, with  
12 quarterly monitoring thereafter. All results will be provided promptly after the analysis is  
13 received.

14       5.     Suspension of Operation: At any time after 12 months of operation, Mercy  
15 Development may propose in writing to Ecology that operation of the system be suspended for  
16 a period of time should the monitoring results indicate that the amount of petroleum  
17 hydrocarbons being extracted is relatively insignificant. Relative insignificance may be  
18 shown, by among other measures, less than one pound of petroleum hydrocarbons per day.  
19 The proposal will also specify the period of suspension and how the system is to be operated  
20 after the suspension. Mercy Development may implement the proposal upon written approval  
21 by Ecology. Such approval shall not be unreasonably withheld or delayed.

22       6.     Information: Mercy Development shall promptly provide Ecology with all  
23 information and data gathered by it during performance of work on the Mercy Property SVE  
24 System.

25       7.     Subsequent Operation of the Mercy Property SVE System: Mercy  
26 Development's interest in and obligations regarding the Mercy Property SVE System,

1 including, without limitation, operation, maintenance and monitoring, shall terminate either 30  
2 months after the commencement of operation, as determined under Paragraph 3, or, if the  
3 commencement of operation has not occurred by 30 months after installation of the Mercy  
4 Property SVE System, 30 months after such installation. If Ecology deems further operation of  
5 the Mercy Property SVE System necessary beyond 30 months after commencement of  
6 operation, such operation may be conducted by Ecology or its authorized employees, agents or  
7 contractors pursuant to Ecology's access rights under RCW 70.105D.030(1) or by another  
8 person pursuant to the license set forth below.

9 If the subsequent operation is by Ecology or its authorized employees, agents or  
10 contractors, they will coordinate with Mercy so as to avoid or at least minimize unreasonably  
11 disrupting any business activities on Mercy Development's property or interfering with the use  
12 of the property by Mercy Development or its tenants. Ecology will also provide Mercy  
13 Development with a copy of any data gathered by or for Ecology during such operation or  
14 monitoring of the Mercy Property SVE System.

15 If the subsequent operation is by a person other than Ecology or its authorized  
16 employees, agents or contractors, Mercy Development agrees to provide a non-exclusive  
17 revocable license for access to the Mercy Property SVE System to such person and their  
18 employees, agents, representatives, contractors, and sub-contractors for the limited purpose of  
19 operation, maintenance and monitoring of the Mercy Property SVE System for such time as  
20 required by Ecology. This license for access shall be based on terms and conditions  
21 substantially similar to those in the license that Mercy provided to the Clearwater Group for  
22 installation and operation of the interim treatment system existing on Mercy's property. Mercy  
23 agrees to negotiate such license in good faith.

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**EXHIBIT B**

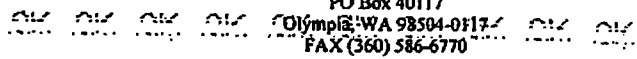
**Restrictive Covenant for Mercy Property**

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Mercy Development Co., LLC, ("Mercy") its successors and assigns, and the State of Washington Department of Ecology ("Ecology"), its successors and assigns.

Pursuant to a Consent Decree entered in *State of Washington v. Tiger Oil Corporation*, Thurston County Superior Court, Cause No. 02-2-00956-2, a remedial action involving the installation and operation of a soil vapor extraction system (the "Remedial Action") will be implemented on Mercy's property within the Tiger Oil Site ("Site") that is described in the Consent Decree. Exhibit A to the Consent Decree describes the remedial action being conducted. The Consent Decree and other documents to which it refers or otherwise relating to the Tiger Oil Site are on file at Ecology's Central Regional Office, 15 West Yakima Avenue, Yakima, WA 98902.

This Restrictive Covenant is required because the remedial action will address only a portion of the contamination at the Tiger Oil Site. Thus the residual concentrations of total petroleum hydrocarbons, benzene, toluene, ethylbenzene and xylenes (the "Identified Substances") within the Site may, despite the remedial action, still exceed the Model Toxics Control Act Method A Residential Cleanup Levels for soil and groundwater established under WAC 173-340-720 and 740. The persistence of this condition will depend on the cleanup efforts by other parties at the Site.

The undersigned, Mercy Development Co., LLC, is the fee owner of real property in the County of Yakima, State of Washington on which the remedial action is to be conducted ("Property"). The Property that is subject to this Restrictive Covenant is shown on the attached Figure 1.





1 Mercy makes the following declaration as to limitations, restrictions, and uses to which  
2 the Property may be put and specifies that such declarations shall constitute covenants to run  
3 with the land, as provided by law and shall be binding on all parties and all persons claiming  
4 under them, including all current and future owners of any portion of or interest in the Property  
5 (hereafter "Owner").

6 Section 1. No groundwater may be taken for domestic use from the Property unless the  
7 Method A groundwater Residential Cleanup Levels for the Identified Substances have been  
8 met at the Property.

9 Section 2. Any activity on the Property that may interfere with the integrity of either  
10 the remedial action or existing monitoring wells on the Property that are part of the  
11 investigation of the Site or with continued protection of human health and the environment is  
12 prohibited without the prior written approval of Ecology.

13 Section 3. Any activity on the Property that may result in the release or exposure to the  
14 environment of contaminated soil or create a new exposure pathway is prohibited without the  
15 prior written approval of Ecology, which shall not be unreasonably withheld or delayed. Some  
16 activities that are prohibited on the Property where contaminated soil is known to be located or  
17 may be located include: drilling, digging, placement of any objects or use of any equipment  
18 which deforms or stresses the surface beyond its load bearing capability, piercing the surface  
19 with a rod, spike or similar item, bulldozing or earthwork. Activities involving the routine  
20 repair and maintenance of the Property or existing improvements on it can be conducted  
21 without any prior written approval of Ecology to the extent that such activities otherwise  
22 comply with this Restrictive Covenant.

23 Section 4. At least thirty (30) days prior to transfer of a fee interest in all or any portion  
24 of the Property on which the Mercy Property SVE System is located, the Owner of the  
25 Property must give advance written notice to Ecology of such transfer. The Owner shall not  
26 consummate any voluntary or involuntary conveyance or relinquishment of title, easement or

1 other interest in the Property without provision, as necessary, for continued operation,  
2 maintenance and monitoring of the remedial action on the Property.

3 Section 5. The Owner shall allow Ecology and its authorized representatives the right  
4 to enter the Property as specified in the Consent Decree.

5 Section 6. The Owner of the Property reserves the right under WAC 173-340-440 to  
6 record an instrument that provides that this Restrictive Covenant shall no longer limit use of  
7 the Property or be of any further force or effect. However, such an instrument may be  
8 recorded only if Ecology, after public notice and opportunity for comment, concurs.

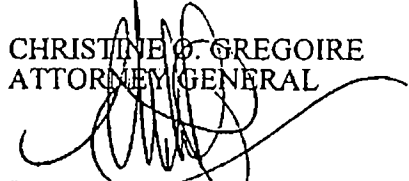
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10 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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12 JIM PENDOWSKI  
13 Program Manager  
Toxics Cleanup Program

14 Date: 6/16/03

CHRISTINE C. GREGOIRE  
ATTORNEY GENERAL



MICHAEL DUNNING, WSBA#29492  
Assistant Attorney General  
Attorneys for Plaintiff  
State of Washington, Department of Ecology

15 Date: 6/19/03

16  
17 MERCY DEVELOPMENT CO. L.L.C.

18  
19 KATHI D. MERCY  
20 Manager, Mercy Development Co. LLC

21 Date: \_\_\_\_\_

PERKINS COIE LLP

DOUGLAS S. LITTLE, WSBA #4963  
Attorneys for Mercy Development Co.

22 Date: \_\_\_\_\_

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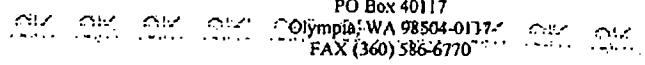
State of Washington )  
County of \_\_\_\_\_ ) ss.

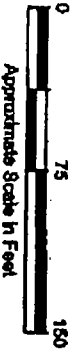
Subscribed and sworn to before me on \_\_\_\_\_ by \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
\_\_\_\_\_

Notary Public in and for the State of Washington.  
My appointment expires \_\_\_\_\_





Mercy Development  
Company Property  
Yakima, Washington

**Conceptual Remediation System**

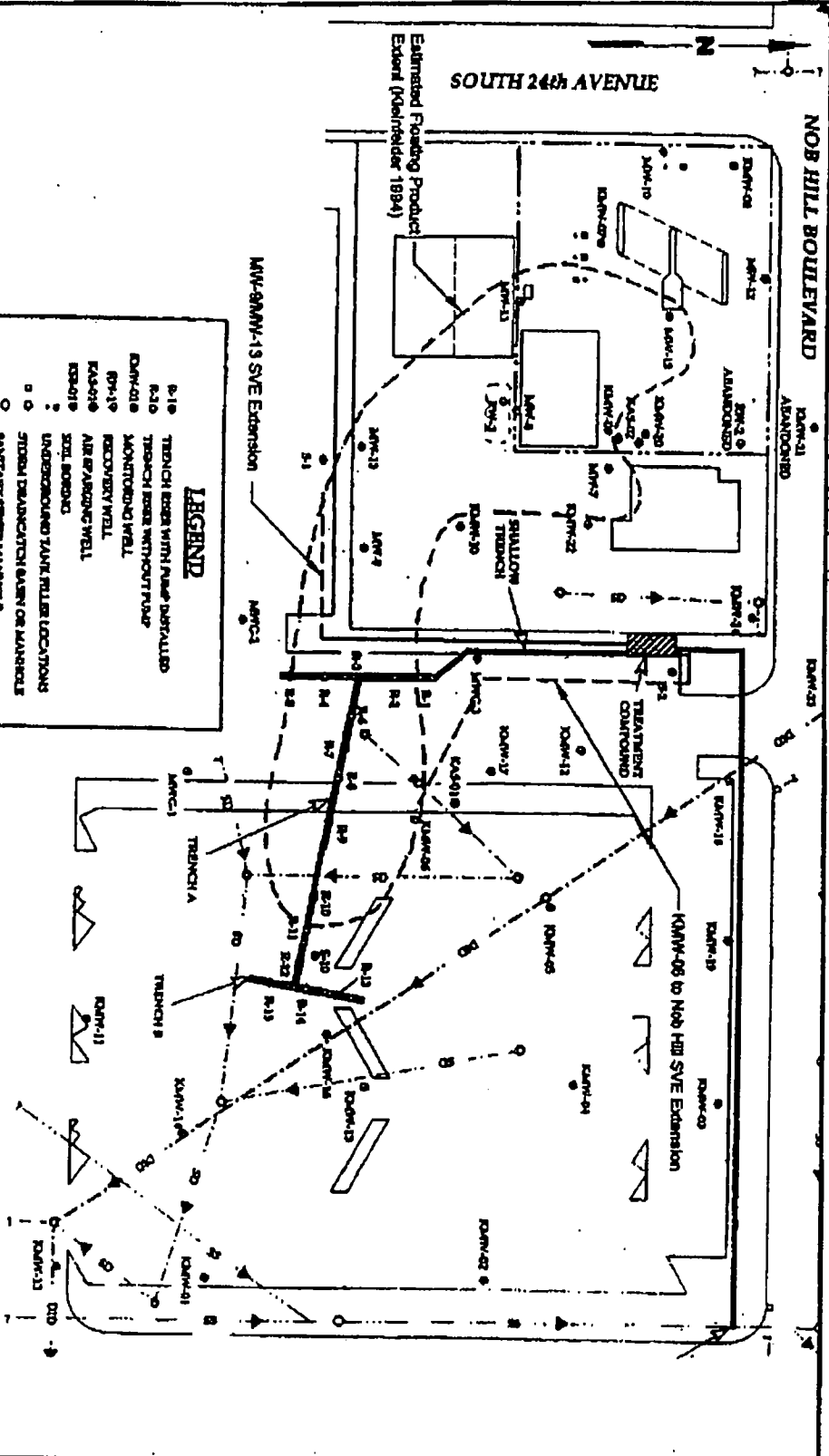
Figure  
**1**

Base map source: "Feasibility Study Addendum, Tracer Oil Facility, Yakima, Washington" Figure 2, Chamber Group, Inc. March 28, 1997

**Note**  
Bold items indicate components of conceptual remediation system.

**LEGEND**

- B-10 TRENCH EGGS WITH FINE DISTILLED
- B-10 TRENCH EGGS WITHOUT ROAD
- KAM-01-8 MONITORING WELL
- KAM-19 RECOVERY WELL
- KAS-01-8 AIR SPARGING WELL
- KSP-01-8 SOIL BORDERS
- UNDERGROUND TANK FILLER LOCATIONS
- STORM DRAINAGE BASIN OR MANHOLE
- SHALLOW TRENCHING
- DEEP EXTRACTION TRENCH
- STORM DRAIN LIDS WITH FLOW DIRECTION
- SHALLOW EGGS LIDS WITH FLOW DIRECTION



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