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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MILTON A. WOODS,

Defendant.

08 2 90018 0

NO.

CONSENT DECREE

(360) 293-7651

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology) and Mr. Milton A. Woods (Defendant), is to provide for reimbursement for costs incurred by Ecology in remediating a release or threatened release of hazardous substances at the Cornet Bay Marina site.

B. The complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. The parties wish to resolve the issues raised by Ecology's complaint and agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, the Defendant agrees to its entry and agrees to be bound by its terms.

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

II. JURISDICTION

A. This court has jurisdiction over the subject matter and personal jurisdiction over the parties pursuant to the Model Toxics Control Act (ch. 70.105D RCW). Venue is properly

1 laid in Island County, Washington, the location of the
2 property at issue.

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

12 C. On the basis of the testing and analysis described
13 in the Statement of Facts, Section V, and Ecology files and
14 records, Ecology has determined that a release of hazardous
15 substances has occurred at the site.

16 D. Ecology has determined that the Defendant is a
17 potentially liable person for the site pursuant to RCW
18 70.105D.040. The Defendant has been given notice of Ecology's
19 determination, and has had opportunity to comment thereon.

20 E. The Defendant has applied to Ecology for financial
21 assistance under WAC 173-340-560. Based on the Defendant's
22 application, Ecology has determined the Defendant is eligible
23 for mixed funding. Ecology has also determined that making
24 available mixed funding under the circumstances described in
25 Section V of this Decree will achieve a more expeditious or

26 **CONSENT DECREE**

1 enhanced cleanup than would otherwise occur and will prevent
2 or mitigate unfair economic hardship.

3 F. Entering this Decree will result in a more
4 expeditious cleanup of the site and is appropriate given the
5 use of mixed funding at the site.

6 G. The actions to be taken pursuant to this Decree are
7 necessary to protect the public health, welfare and the
8 environment.

9 III. PARTIES BOUND

10 This Decree shall apply to and be binding upon
11 Mr. Milton A. Woods and his marital community and Ecology and
12 their successors and assigns. The undersigned representative
13 of each party hereby certifies that he/she is fully authorized
14 to enter into this Decree and to execute and legally bind such
15 party to comply with the Decree. The parties agree to under-
16 take all actions required by the terms and conditions of this
17 Decree and the Defendant agrees not to contest state juris-
18 diction regarding this Decree. No change in ownership or
19 corporate status shall alter the responsibility of the
20 Defendant under this Decree.

21 IV. DEFINITIONS

22 A. "Site" refers to the property and business located
23 at 5191 N. Cornet Bay Road, Oak Harbor, Washington.

24 B. "Remedial action costs" refer to all direct and
25 indirect costs incurred by Ecology under this Consent Decree.

26 **CONSENT DECREE**

1 Such costs include, but are not limited to, work performed by
2 Ecology or its contractors for investigations, remedial
3 actions, and order preparation, negotiations, oversight, and
4 administration.

5 C. "Days" refers to calendar days unless specified
6 otherwise.

7 D. "Parties" refers to the Department of Ecology and
8 Mr. Milton A. Woods and his marital community.

9 E. The definitions set forth in ch. 70.105D RCW and
10 ch. 173-340 WAC shall control the meanings of the terms used
11 in this Decree.

12 V. STATEMENT OF FACTS

13 Ecology makes the following findings of fact:

14 A. Site Location and Status

15 The Cornet Bay Marina site is located at 5191 N. Cornet
16 Bay Road, Oak Harbor, WA 98277. The site is currently
17 operating as a convenience store, marina, and fueling station
18 for boats. The site contains a 12,000 gallon tank enclosed in
19 an underground reinforced concrete vault. Other structures on
20 site include the convenience store, a storage shed, two above
21 ground waste oil tanks, and the boat harbor.

22 B. Facility History and Operations

23 This site has been in operation since the mid 1960's.
24 Mr. Milton A. Woods, d/b/a the Cornet Bay Marina Company, has
25 owned and operated the site since 1973. There were four
26

1 underground storage tanks in use from the mid 1960's through
2 February 1989. Three of the tanks contained gasoline and one
3 of the tanks contained diesel. A petroleum seepage appeared
4 in the bay during January 1989, and the tanks were
5 subsequently pumped, until an investigation could be conducted
6 to determine the source. These four tanks were removed in
7 March 1990.

8 C. Previous Site Investigations

9 Roxbury Construction Corporation conducted a site
10 assessment by taking soil samples at the site in April 1989,
11 and found petroleum contamination in the soil was as high as
12 2396.94 ppm TPH. Technical Services Inc. removed the four
13 tanks in March 1990, but there is no documentation of soil
14 sampling having been conducted at that time. These tanks were
15 replaced with one 12,000 gallon tank enclosed in an
16 underground reinforced concrete vault (installation from
17 September through November 1990). This tank is a double
18 compartment tank which holds 9000 gallons gasoline and 3000
19 gallons diesel.

20 An Ecology inspector responded to a complaint by
21 inspecting the site on September 9, 1990 and observed piles of
22 diesel contaminated soil. The inspector also observed raw
23 diesel in the vault excavation, with a pump that had been
24 pumping it out into a ditch along the road. On October 30,
25 1990 an Ecology inspector sampled the roadside ditch with

26 **CONSENT DECREE**

1 results of 490 ppm TPH as diesel in the soil. Another sample
2 was collected under the waste oil tank area with results of
3 43,100 ppm TPH in the soil.

4 Welch Enterprises conducted a site assessment and
5 prepared a report with findings during December 1990. This
6 report also indicates petroleum releases at the site.
7 Groundwater contamination was identified on-site with levels
8 as high as: 10,100 ppm TPH as gasoline; 233.2 ppm benzene;
9 and 1174 ppm xylenes.

10 VI. WORK TO BE PERFORMED

11 A. Scope of Work

12 Ecology shall direct the remedial action at the site
13 according to the following scope of work:

14 1. Evaluate the existing data from previous
15 environmental investigations and other information pertinent
16 to the site.

17 2. Conduct a Remedial Investigation/Feasibility Study
18 (RI/FS) in accordance with the requirements of WAC
19 173-340-450(5) in order to assess the extent and degree of
20 soil and groundwater contamination.

21 3. Once the RI/FS is completed, a cleanup action will
22 be selected in accordance with WAC 173-340-360. The cleanup
23 action shall include at a minimum: protection of human health
24 and the environment, compliance with cleanup standards,
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1 compliance with applicable state and federal laws and
2 provisions for compliance monitoring.

3 4. The Cleanup Action Plan will be made available for
4 public review and comment in accordance with WAC 173-340-600
5 prior to finalizing a cleanup action plan.

6 5. The site cleanup and monitoring will be designed,
7 constructed, and operated in a manner which is consistent with
8 the final cleanup action plan.

9 6. All observations, conditions, and results will be
10 documented in a final report with at least four copies, one
11 for the Defendant and three for Ecology.

12 B. Resource Limitations

13 1. The obligations undertaken by Ecology pursuant to
14 this Decree need not be met unless sufficient funds are
15 available to Ecology to meet those obligations. Ecology has
16 discretion to decide whether funds available to it will be
17 used for remedial action at this site, or for some other
18 purpose. Such exercise of discretion by Ecology shall not be
19 subject to judicial review except as may be allowed by law.

20 2. The parties may determine in the future that it
21 would be more expeditious for Defendant instead of Ecology to
22 perform some of the tasks identified in this section. In that
23 event, Defendant may request that Ecology agree to amend this
24 Decree to allow Defendant to perform such work. Defendant's
25 request shall be in writing and directed to Ecology's project

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1 manager. If Ecology concurs that performance by the Defendant
2 instead of Ecology is appropriate, the parties may request
3 that the court amend this Decree as provided in Section XII
4 below.

5 VII. DESIGNATED PROJECT COORDINATOR

6 The project coordinator for Ecology is:

7 Annette Petrie (206) 649-7257
8 Department of Ecology
9 Northwest Regional Office
3190 - 160th Avenue S.E.
Bellevue, WA 98008-5452

10 The project coordinator shall be responsible for overseeing
11 the implementation of this Decree. To the maximum extent
12 possible, communications between Ecology and the Defendant,
13 and all documents, including reports, approvals, and other
14 correspondence concerning the activities performed pursuant to
15 the terms and conditions of this Decree, shall be directed
16 through the project coordinator. Should Ecology change
17 project coordinator, written notification shall be provided by
18 Ecology at least ten (10) calendar days prior to the change.

19 VIII. REIMBURSEMENT OF ECOLOGY'S COSTS

20 1. Ecology has determined that the Defendant is
21 eligible for mixed funding. The Defendant agrees to reimburse
22 Ecology for the costs Ecology incurs in remediating the
23 release and/or threatened release of hazardous substances at
24 the site, including future monitoring (if any), up to a
25 maximum dollar amount of fifty thousand dollars (\$50,000)

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1 including interest if applicable. In the event Ecology incurs
2 remedial action costs exceeding \$50,000, payment of such costs
3 shall be satisfied by use of funds from the Toxics Control
4 Account.

5 2. Payment of Ecology's remedial action costs shall be
6 due on the first (1st) of each calendar month commencing upon
7 receipt of billing from Ecology. Ecology shall provide the
8 Defendant itemized quarterly statements describing the
9 remedial action costs incurred at the site.

10 3. During the reimbursement period, the Defendant
11 agrees to make monthly payments of not less than four hundred
12 (\$400.00) dollars. The Defendant shall be notified in writing
13 when its obligation to reimburse Ecology under this Decree has
14 been satisfied.

15 4. Monthly payments not received by Ecology within
16 thirty (30) days of the date due shall be considered late
17 payments and bear interest at a rate of one percent (1%) per
18 month, or fraction thereof.

19 5. Ecology's determination regarding mixed funding
20 applies only to the Defendant and is not transferable. In the
21 event the Defendant sells, assigns, or otherwise transfers any
22 or all interest in the site while this Decree is in effect,
23 the new owner may be liable for remedial action costs incurred
24 by Ecology at the site. If the Defendant sells, assigns, or
25 otherwise transfers its interest in the site while this Decree

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CONSENT DECREE

1 is in effect, the remedial action costs incurred by Ecology up
2 to the date of such sale, assignment, or transfer shall,
3 subject to paragraph 1 above, become immediately due and
4 payable regardless of whether the payment period described in
5 paragraph 3 above has commenced. Unless the immediate payment
6 required under this paragraph fully satisfies the Defendant's
7 obligation under Section VIII, paragraph 1 of this Decree, the
8 Defendant shall remain liable for payment of Ecology's future
9 remedial action costs at the site according to the terms of
10 this agreement.

11 6. The Defendant consents to the immediate filing of a
12 special lien in the amount of fifty thousand dollars (\$50,000)
13 on the property located at 5191 North Cornet Bay Road, Oak
14 Harbor, Washington to secure the Defendant's performance under
15 this Decree. Once the Defendant's obligation to reimburse
16 Ecology under this Decree has been satisfied, the Defendant
17 may request in writing that Ecology file a lien termination
18 statement with the court.

19 7. The Defendant agrees that if it fails to fully
20 reimburse Ecology for its share of remedial action costs or
21 refuses to make the monthly payments required under this
22 Decree after receiving thirty (30) days written demand,
23 Ecology may pursue any means authorized by law including but
24 not limited to foreclosure of its lien to satisfy the
25 Defendant's obligation under this Decree. If foreclosure of
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CONSENT DECREE

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1 the lien occurs but fails to satisfy the Defendant's
2 obligation under this Decree, the Defendant shall remain
3 liable to reimburse Ecology for any outstanding balance owing.
4 Foreclosure proceedings will be in accordance with all
5 applicable Washington State laws and regulations.

6 **IX. ACCESS**

7 Ecology or any Ecology authorized representative or
8 contractor hired by Ecology, shall have the authority to enter
9 and freely move about the site at all reasonable times for the
10 purposes of performing remedial action at the site.

11 **X. TRANSFERENCE OF PROPERTY**

12 A. No voluntary conveyance or relinquishment of
13 Defendant's title, easement, leasehold, or other interest in
14 any portion of the site shall be consummated without provision
15 for continued performance of all of Defendant's obligations
16 under this Decree. If an involuntary conveyance or
17 relinquishment of such interest occurs, the Defendant shall,
18 if possible, give prior written notice of this Decree to the
19 transferee.

20 B. Within 90 days of entry of this Decree, the
21 Defendant shall record a restrictive covenant in the title
22 records to that portion of the site over which Defendant holds
23 fee title. The restrictive covenant shall state that a
24 Consent Decree entered in the above-captioned proceeding
25 imposes certain restrictions on the use and improvement of the

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1 site, and that said restrictions run with the land. Within 30
2 days of filing the restrictive covenant with the Island County
3 Auditor, the Defendant shall forward a copy of the notice to
4 Ecology.

5 **XI. DISPUTE RESOLUTION**

6 The Defendant may request Ecology to resolve disputes
7 which may arise during the implementation of this Consent
8 Decree. Such request shall be in writing and directed to the
9 Ecology signatory of this Consent Decree. Ecology resolution
10 of the dispute shall be binding and final. The Defendant is
11 not relieved of any requirement of this Consent Decree during
12 the pendency of the dispute and remains responsible for timely
13 compliance with the terms of the Consent Decree unless
14 otherwise provided by Ecology in writing.

15 **XII. AMENDMENT OF CONSENT DECREE**

16 Any Amendment to this Decree must be in writing and
17 signed by the parties. Such amendment shall become effective
18 when entered by the court.

19 **XIII. INDEMNIFICATION**

20 The Defendant agrees to indemnify and save and hold the
21 State of Washington, its employees, and agents harmless from
22 any and all claims or causes of action for death or injuries
23 to persons or for loss or damage to property arising from or
24 on account of acts or omissions of the Defendant, its
25 officers, employees, agents, or contractors in entering into

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1 and implementing this Decree: provided, however, that the
2 Defendant shall not indemnify the State of Washington nor save
3 nor hold its employees and agents harmless from any claims or
4 causes of action brought by third parties arising out of the
5 negligent acts or omissions of the State of Washington, or the
6 employees or agents of the state, in implementing the
7 activities pursuant to this Decree.

8 **XIV. PUBLIC NOTICE AND PARTICIPATION**

9 Ecology shall be the lead for public notice and
10 participation at the site. If requested, Ecology shall allow
11 the Defendant to review fact sheets, press releases, and
12 public notices prior to issuance.

13 **XV. SATISFACTION OF THIS DECREE**

14 The provisions of this Decree shall be deemed satisfied
15 upon written notification from Ecology to the Defendant that
16 remedial action is complete and that the reimbursable costs
17 incurred by Ecology in performing remedial actions at the site
18 have been reimbursed in accordance with the terms of this
19 Decree.

20 **XVI. EFFECTIVE DATE**

21 This Decree is effective upon the date it is entered by
22 the court.

23 **XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

24 This Decree will be subject to public notice and comment
25 under RCW 70.105D.040(4)(a). Ecology reserves the right to
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1 withdraw or withhold its consent to the proposed final Decree
2 as the comments received by Ecology disclose facts or
3 considerations which indicate that the proposed Decree is
4 inappropriate, improper, or inadequate.

5 If the court withholds or withdraws its consent, this
6 Decree shall be null and void at the option of any party and
7 the accompanying complaint shall be dismissed without cause
8 and without prejudice. In such an event, no party shall be
9 bound by the requirements of this Decree.

10 SIGNED by the parties who also hereby waive further
11 notice of presentation for entry by the Court.

12 STATE OF WASHINGTON
13 DEPARTMENT OF ECOLOGY

14 By Milton A. Woods By Carol L. Fleskes
15 MILTON A. WOODS CAROL FLESKES
16 Owner and Operator Program Manager
Cornet Bay Marina Toxics Cleanup Program
Department of Ecology

17 Date March 17, 1992 Date 6/5/92

18
19
20 STATE OF WASHINGTON
OFFICE OF ATTORNEY GENERAL

21 Jerry A. Ackerman Date 6/26/92
22 JERRY A. ACKERMAN, WSBA #6535
23 Assistant Attorney General
Attorneys for State of Washington

1 This DECREE is approved and IT IS SO ORDERED this

2 12th day of January, 1993.

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151 Alan R. Hancock
SUPERIOR COURT JUDGE
Island County Superior Court

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154:woods.csd

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CONSENT DECREE

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