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MAR 24 2000

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ARCO PRODUCTS COMPANY, A DIVISION
OF ATLANTIC RICHFIELD COMPANY
(ARCO)

Defendants.

No. **00-2-05714-8SEA**

CONSENT DECREE

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MAR 28 2000

DEPT. OF ECOLOGY

Final Consent Decree

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- 16 Exhibit A - Site Diagram
- 17 Exhibit B - Cleanup Action Plan
- 18 Exhibit C - Site Access and Operating Procedures
- 19 Exhibit D - Restrictive Covenant
- 20 Exhibit E - Schedule
- 21 Exhibit F - Groundwater Compliance Monitoring and Contingency Plans

1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the Washington
3 State Department of Ecology (Ecology), and ARCO Products Company, a division of Atlantic
4 Richfield Company (ARCO or Defendant) is to provide for remedial action at a facility where there
5 has been a release or threatened release of hazardous substances. This Decree requires the Defendant

6 to undertake the following remedial action(s):

- 7 (1) Implement the Cleanup Action Plan (CAP)
8 (2) Provide for Public Participation
9 (3) Provide Remedial Design (RD)
10 (4) Implement the Groundwater Compliance Monitoring that includes:
11 (A) Protection Monitoring
12 (B) Performance Monitoring
13 (C) Confirmational Monitoring

14 Ecology has determined that these actions are necessary to protect public health and the environment.

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

20 C. In signing this Decree, Defendant agrees to its entry and subject to Paragraph E below
21 agrees to be bound by its terms.

22 D. By entering into this Decree, the parties do not intend to discharge nonsettling parties
23 from any liability they may have with respect to matters alleged in the complaint. The parties retain
24 the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under
25 this Decree.

1 E. This Decree is not an admission of and shall not be construed as proof of liability or
2 responsibility for any releases of hazardous substances or cost for remedial action nor an admission of
3 any facts; provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in
4 any proceeding to enforce this Decree.

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

7 II. JURISDICTION

8 A. This Court has jurisdiction over the subject matter and over the parties pursuant to
9 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and venue is proper in King
10 County.

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

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

18 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15), of
19 Ecology's determination that the Defendant is a potentially liable person for the Site and that there has
20 been a release or threatened release of hazardous substances at the Site.

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

23 F. Defendant has agreed to undertake the actions specified in this Decree and consents to
24 the entry of this Decree under the MTCA.

25 III. PARTIES BOUND

26 This Decree shall apply to and be binding upon the signatories to this Decree (parties), their

successors and assigns and shall supersede the prior Agreed Order entered into by the parties. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change in ownership or corporate status shall alter the responsibility of the Defendant under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors and subcontractors retained to perform work required by this Decree and shall ensure that the contract for such work will be in compliance with this Decree.

IV. DEFINITIONS

Except as specified herein, all definitions in WAC 173-340-200 apply to the terms in this Decree.

A. Site: The Site, owned by ARCO Products Company, a division of Atlantic Richfield Company (ARCO) is known as ARCO Harbor Island Terminal-Plant 1 and Plant 2 located at 1652 Southwest Lander Street and at the southwest quadrant of the intersection of Southwest Florida Street and Eleventh Avenue Southwest, respectively, Seattle, Washington, 98124 (collectively referred to as the "Site") on Harbor Island. The Site is part of the Tank Farm Operable Unit One (OU1) for the Harbor Island Superfund Site. The Site is more particularly described in Exhibit A to this Decree, which is a detailed site diagram.

B. Parties: Refers to the Washington State Department of Ecology and ARCO.

C. Defendant: Refers to ARCO Products Company, a division of Atlantic Richfield Company (ARCO).

D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to the Decree. All exhibits are by this reference incorporated herein, and are integral and enforceable parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall include all Exhibits to the Consent Decree.

1 V. STATEMENT OF FACTS

2 Ecology makes the following finding of facts without any express or implied admissions by
3 Defendant.

4 A. ARCO presently owns the following property known as ARCO Harbor Island
5 Terminal—Plant 1 and Plant 2 located at 1652 Southwest Lander Street and at the southwest quadrant
6 of the intersection of Southwest Florida Street and Eleventh Avenue Southwest, respectively, Seattle,
7 Washington, 98124 (collectively referred to as the "Site"). The ARCO Harbor Island Terminal, an
8 operating facility, consists of two separate bulk storage plants (Plant 1 and Plant 2). Plant 1 consists
9 of approximately 20 above-ground storage tanks and houses the main terminal facility which includes
10 a large warehouse, office building, pump room, truck wash, motor transport garage, boiler house,
11 vapor recovery unit, building, loading dock and several smaller buildings and sheds. The products
12 previously stored in Plant 1 include "black oil" (Bunker "C") and light black oil diesel, unleaded and
13 leaded gasoline, stove oil, heating oil, kerosene, "flash gas", aviation fuel, klenzene (paint thinner),
14 and gasoline additives. Plant 2 contains approximately 6 aboveground storage tanks in which No. 2
15 diesel fuels are presently stored. Plant 2 also houses a foam house and a salt tower.

16 B. Ecology files contain the following reports: Subsurface Environmental Assessment
17 ARCO Harbor Island Terminal, Seattle, Washington. Engineering Enterprises, Inc., October 5, 1987
18 (EEI Report) and Remedial Investigations, ARCO Harbor Island Terminal 21T, Seattle, Washington.
19 Geraghty & Miller, Inc., April 22, 1994 (RI Report). Based on the EEI and RI Reports, Ecology finds
20 as follows:

21 1. Free-phase hydrocarbons are confirmed to be present at the Site situated at the
22 top of the water table beneath portions of Plant 1, including under the warehouse next to the West
23 Waterway of the Duwamish River; and

24 2. Residual hydrocarbons are confirmed to be present in the soil at the Site
25 beneath portions of Plant 1, and Plant 2.
26

3 Dissolved petroleum hydrocarbons and cPAHs exceeding the Surface Water
1 Quality Standards are confirmed to be present in the groundwater at the Site beneath Plants 1 and 2.

2 C. Ecology files contain the following report: Feasibility Study Report; Conceptual Site
3 Model and Selection of The Preferred Remedial Alternative, ARCO Harbor Island Terminal 21I,
4 Seattle, Washington. Geraghty & Miller, Inc., December 6, 1996 (FS Report). Based on the FS
5 Report, Ecology finds as follows:

- 6 1. ARCO identified a preferred remedy after evaluating other alternative remedies
7 to address the hazardous substances located on site. Ecology concurs that the
8 remedy preferred by ARCO is appropriate. The preferred remedy is to:
 - 9 a. Expand the product extraction under the warehouse to include dissolved
10 petroleum hydrocarbons, implement vapor extraction, implement air
11 sparging
 - 12 b. Excavate accessible TPH hot spots in Plant 1, using the action levels of
13 10,000 mg/kg.
 - 14 c. Excavate accessible TPH hot spots in Plant 2, using the action levels of
15 20,000 mg/kg.
 - 16 d. Implement compliance groundwater monitoring program and if necessary,
17 contingency plans.
 - 18 e. Implement institutional controls.
 - 19 f. The Compliance Groundwater Monitoring Program will include
20 bioassay/sediment sampling at the West Waterway of the Duwamish River
21 to further evaluate risks to the marine organism, if any, and to evaluate if
22 additional remedial actions will be necessary.

23 D. In August, 1995, the United States District Court for Western District of Washington
24 (Civil Action No. 95-01495-Z) entered a Consent Decree ("Federal Consent Decree") in U.S. v. The
25 Port of Seattle et al. relating to claims under the Comprehensive Environmental Response,
26 Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9601 et seq. involving the Harbor Island

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1 Superfund Site. Article I, paragraph 8 of the Federal Consent Decree identifies operable units within
2 the Harbor Island Superfund Site and recites that the Petroleum Tank Farm Operable Unit is under
3 the management of the Department of Ecology. The Environmental Protection Agency and Ecology
4 have entered into Memorandums of Understanding dated February 5, 1991 and March 3, 1994 setting
5 forth the duties and responsibilities of each Agency with regard to site management and enforcement
6 activities at the Harbor Island Superfund Site.

7 E. Ecology and Defendant agree (a) that they have entered into a settlement agreement
8 under the MTCA and in particular RCW 70.105D.040(e), (ii) that all terms and conditions of the
9 settlement agreement are set forth in this Consent Decree, and (c) pursuant to Section 4, Chapter 406,
10 Laws of 1997 (Senate Bill 7900) (hereinafter Senate Bill 7900) this Consent Decree is not based on
11 circumstances unique to Defendant. Ecology and Defendant intend that this settlement agreement
12 shall be enforced to the maximum extent permitted under the MTCA.

13 VI. WORK TO BE PERFORMED

14 This Decree contains a program designed to protect public health, welfare and the
15 environment from the known release, or threatened release, of hazardous substances at, on, or from
16 the Site. ARCO agrees to take the following remedial actions and that all work be conducted in
17 accordance with chapter 173-340 WAC, unless otherwise specifically provided herein. These actions
18 are more specifically described in the Cleanup Action Plan attached as Exhibit B.

19 A. Task 1: Implement the Cleanup Action Plan (CAP):

- 20 1. Expand the product extraction system under the warehouse and include
21 extraction of dissolved petroleum hydrocarbons along the shoreline
- 22 2. Implement soil vapor extraction
- 23 3. Implement air sparging above and below the watertable along the shoreline and
24 under the warehouse (to address in-accessible TPH hot spots in soils)
- 25 4. Excavate accessible TPH hot spots in Plant 1, using the action levels of 10,000
26 mg/kg. The accessible area in Plant 1 that will require excavation is in the southeast of the site

between the above storage Tank No. 1, 8, 9, and 13. The accessible TPH hot spots are in the vicinity of soil borings B-17, B-20, B-21, B-23, IS-25, IS-26, IS-27, IS-36, TS-37, IS-39, TS-40, TS-40, TS-41 and TS-42. It is Ecology's expectation that the accessible TPH soil hot spots will be excavated without undermining the integrity of the above storage tanks next to the hot spot. Excavate accessible TPH hot spots in Plant 2, using the action levels of 20,000 mg/kg. There are two accessible TPH hot spot areas in Plant 2 that will require excavation. The first TPH hot spot is located in the northeast corner of the site at soil boring IS-1. The second TPH hot spot is located south and southeast of the site between the above storage Tank No. 59001 and 20001 and are in the vicinity of soil borings B-36, B-37, IS-12, IS-14, TS-15, IS-17, IS-19, IS-31, IS-32, IS-34 and TS-35. It is Ecology's expectation that these accessible TPH soil hot spots will be excavated without undermining the integrity of the above storage tanks next to the hot spots.

5. Implement compliance groundwater monitoring program

6. As part of the compliance groundwater monitoring program, implement sediment/bioassay sampling as necessary to further evaluate risks to the marine organism, if any, and to evaluate if additional remedial actions will be necessary.

7. Implement institutional controls, Restrictive Covenant and Contingency Plans, if necessary.

B. Task 2: Provide for Public Participation

C. Task 3: Provide Remedial Design (or Engineering Report)

D. Task 4: Implement the Compliance Groundwater Monitoring Program that includes:

1. Protection Monitoring
2. Performance Monitoring
3. Confirmational Monitoring

E. Task 5: Implement Schedule as outlined in Exhibit E (Attached)

F. Defendant agrees not to perform any remedial actions on Site that are inconsistent with the remedial actions required under this Consent Decree.

1 supervision of a professional engineer. Defendant shall notify Ecology in writing as to the identity of
2 such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used
3 in carrying out the terms of this Decree, in advance of their involvement at the Site.

4 IX. ACCESS

5 Ecology or any Ecology authorized representatives shall have the authority to enter and freely
6 move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting
7 records, operation logs, and contracts related to the work being performed pursuant to this Decree;
8 reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or
9 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other
10 documentary type equipment to record work done pursuant to this Decree; and verifying the data
11 submitted to Ecology by the Defendant. Without limitation on Ecology's rights under this section,
12 Ecology will provide ARCO advance notice of its entry onto the Site when appropriate. All parties
13 with access to the Site pursuant to this paragraph shall comply with Site access and operating
14 procedures, Exhibit C. Ecology shall make the results of all sampling, laboratory reports, videos and
15 other test results generated by it or on its behalf available to Defendant.

16 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

17 With respect to the implementation of this Decree, Defendant shall make the results of all
18 sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology
19 and shall submit these results in accordance with Section XI of this Decree.

20 In accordance with WAC 173-340-840(5), groundwater sampling data shall be submitted
21 according to the requirements that will be established in the Groundwater Compliance Monitoring
22 Program. Each party shall allow split or replicate samples to be taken by the other and shall provide
23 5 working days notice before conducting any sampling activities.

24 XI. PROGRESS REPORTS

25 Defendant shall submit to Ecology written progress reports, which describe the actions taken
26 to implement the requirements of this Decree. The progress report shall be prepared no more
frequently than set forth in the following schedule:

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- Quarterly during remedial design activities
- Monthly during construction phase activities
- Monthly for the first quarter after remedial system startup

The frequency of progress reports to be submitted following the first quarter after remedial system startup shall be established in the Groundwater Compliance Monitoring Program. Progress reports shall include the following:

- A. A list of on-site activities that have taken place during the reporting period;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule (VI. Work To Be Performed) during the current reporting period and any planned deviations in the upcoming reporting period;
- D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- E. All raw data (including laboratory analysis) received by the Defendant during the past month and an identification of the source of the sample;
- F. A list of deliverables for the upcoming month if different from the schedule; and

All progress reports shall be submitted by the fifteenth day of the reporting period in which they are due after the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be sent to Ecology's project coordinator.

XII. RETENTION OF RECORDS

Defendant shall preserve, during the pendency of this Decree and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXV, all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors and subcontractors a similar record retention requirement. Upon request of Ecology, Defendant shall make all non-archived, non-privileged records available to Ecology and allow access for review. All archived non-privileged records shall be made available to Ecology within a reasonable period of time.

mutual agreement, submit the dispute to a neutral mediator. No more than thirty (30) days after the conclusion of any mediation, Ecology shall issue a written statement either reaffirming its original decision or setting forth a new decision. Defendant has the right to submit the dispute to the Court for resolution within thirty (30) days after any of the following: (i) Defendant receives written notice that Ecology does not agree to submit the dispute to mediation,; (ii) After mediation, Defendant receives a written statement from Ecology that is unacceptable to Defendant; or (iii) Ecology fails to issue the final decision described earlier in this paragraph. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.

C. For disputes that arise under the following sections of the Decree, the Court shall review the action or decision of Ecology under an arbitrary and capricious standard of review: work to be performed (Section VI), designated project coordinators (Section VII), performance (Section VIII), access (Section IX), sampling, data reporting and availability (Section X), progress reports (Section XI), retention of records (Section XII), amendment of Consent Decree (Section XV), extension of schedule (Section XVI), endangerment (Section XVII), compliance with applicable laws (Section XX), implementation of remedial action (Section XXII), five year review (Section XXIII), public participation (Section XXIV), duration of decree (Section XXV), and land use restrictions (Section XXIX).

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

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

XV. AMENDMENT OF CONSENT DECREE

Except for an extension granted pursuant to Section XVI below or technical revisions to Section VI or Exhibit B affecting the nature or scope of remedial work, this Decree may only be

1 amended by a written stipulation among the parties to this Decree that is entered by the Court or by
2 order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to
3 amend shall not be unreasonably withheld by any party to the Decree.

4 Defendant shall submit any request for an amendment to Ecology for approval. Ecology shall
5 indicate its approval or disapproval in a timely manner after the request for amendment is received. If
6 the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for
7 comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any
8 proposed amendment, the disagreement may be addressed through the dispute resolution procedures
9 described in Section XIV of this Decree. Technical revisions to Section VI or Exhibit B, affecting the
10 nature or scope of remedial work, may be made by mutual written agreement of the parties without
11 approval of the court.

12 XVI. EXTENSION OF SCHEDULE

13 A. An extension of schedule shall be granted only when a request for an extension is
14 submitted in a timely fashion, generally at least 15 days prior to expiration of the deadline for which
15 the extension is requested, and good cause exists for granting the extension. All extensions shall be
16 requested in writing. The request shall specify the reason(s) the extension is needed.

17 An extension shall only be granted for such period of time as Ecology determines is
18 reasonable under the circumstances. A requested extension shall not be effective until approved by
19 Ecology or the Court. Ecology shall act upon any written request for extension in a timely fashion. It
20 shall not be necessary to formally amend this Decree pursuant to Section XV when a schedule
21 extension is granted.

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

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

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

2 (3) Endangerment as described in Section XVII, or

3 (4) Other circumstances deemed by Ecology to be exceptional, extraordinary, or otherwise
4 necessary to protect the environment or public interest.

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

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

10 (1) Delays in the issuance of a necessary permit which was applied for in a timely manner;

11 or

12 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

13 (3) Endangerment as described in Section XVII.

14 Ecology shall give Defendant written notification in a timely fashion of any extensions granted
15 pursuant to this Decree. Ecology shall not unreasonably withhold approval of requested extensions.

16 XVII. ENDANGERMENT

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

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

14 XVIII. COVENANT NOT TO SUE

15 A. In consideration of ARCO's compliance with the terms and conditions of this Decree,
16 Ecology agrees that compliance with this Decree shall stand in lieu of any and all administrative,
17 legal, and equitable remedies and enforcement actions available to Ecology against ARCO for the
18 release or threatened release of hazardous substances covered by the terms of this Decree.

19 B. This covenant is strictly limited in its application to the Site specifically described in
20 Exhibit A and to those hazardous substances that Ecology knows to be located at the Site as of the
21 date of entry of this Decree. This covenant is not applicable to any other hazardous substance or area
22 and Ecology retains all of its authority relative to such substances and areas

23 C. In the following circumstances Ecology may exercise its full legal authority to address
24 releases of hazardous substances at the Site notwithstanding the Covenant Not to Sue set forth above:

25 (1) If ARCO fails to comply with the terms and conditions of this Decree,
26 including all exhibits, and, after written notice of noncompliance, fails to comply; or

1 (2) If factors not known at the time of entry of this Decree, including factors listed
2 in WAC 173-340-420(2), are discovered and Ecology determines, in light of these factors, that further
3 remedial action is necessary at the Site to protect human health or the environment; or

4 (3) If Ecology determines that conditions at the Site cause an endangerment to
5 human health or the environment, and that actions beyond those required under this Decree are
6 necessary

7 (4) Subject to compliance with the contingency plan, if monitoring at the site
8 establishes that contingency plan must be implemented, and further monitoring establishes that the
9 remedy set forth in the contingency plan is insufficient to meet cleanup standards.

10 D. The Covenant Not to Sue set forth above shall have no applicability whatsoever to

11 (1) Criminal liability;

12 (2) Any Liability for damages to natural resources;

13 (3) Any Ecology action against potentially liable persons not a party to this

14 Decree

15 XIX. INDEMNIFICATION

16 Defendant agrees to indemnify and save and hold the State of Washington, its employees, and
17 agents harmless from any and all claims or causes of action for death or injuries to persons or for loss
18 or damage to property arising from or on account of acts or omissions of Defendant, its officers,
19 employees, agents, or contractors in entering into and implementing this Decree. However, the
20 Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents
21 harmless from any claims or causes of action arising out of the intentional misconduct or negligent
22 acts or omissions of the State of Washington, or the employees or agents of the State, in
23 implementing the activities pursuant to this Decree.

24 XX. COMPLIANCE WITH APPLICABLE LAWS

25 A. All actions carried out by Defendant pursuant to this Decree shall be done in
26 accordance with all applicable federal, state, and local requirements, including requirements to obtain
27 necessary permits, except as provided in paragraph B of this section.

1 B Pursuant to RCW 70.105D.090 (1), the substantive requirements of chapters 70.94,
2 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local
3 government permits or approvals for the remedial action under this Decree that are known to be
4 applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action
5 Plan, and are binding and enforceable requirements of the Decree. Defendant has a continuing
6 obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1)
7 would otherwise be required for the remedial action under this Decree. In the event either Defendant
8 or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would
9 otherwise be required for the remedial action under this Decree, it shall promptly notify the other
10 party of this determination. Ecology shall determine whether Ecology or Defendant shall be
11 responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant
12 shall promptly consult with the appropriate state and/or local agencies and provide Ecology with
13 written documentation from those agencies of the substantive requirements those agencies believe are
14 applicable to the remedial action. Ecology shall make the final determination on the additional
15 substantive requirements that must be met by Defendant and on how Defendant must meet those
16 requirements. Ecology shall inform Defendant in writing of these requirements. Once established by
17 Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendant
18 shall not begin or continue the remedial action potentially subject to the additional requirements until
19 Ecology makes its final determination.

20 Ecology shall ensure that notice and opportunity for comment is provided to the public and
21 appropriate agencies prior to establishing the substantive requirements under this section. C.

22 Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from
23 complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would
24 result in the loss of approval from a federal agency which is necessary for the State to administer any
25 federal law, the exemption shall not apply and the Defendant shall comply with both the procedural
26 and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any
requirements to obtain permits.

1 D. In implementing this Decree for purposes such as sampling, it is contemplated that the
2 Defendant may remove limited quantities of soil, groundwater, and other materials (collectively,
3 "Materials") from real property within or adjacent to the Site. Any removal shall be done in
4 compliance with all applicable laws as required by this Section XX. It is agreed that any disposition
5 of the Material by the Defendant, including documents generated pursuant to such disposition shall
6 not be deemed to be an admission by such party of liability for purposes of the Model Toxics Control
7 Act

8 XXI. REMEDIAL AND INVESTIGATIVE COSTS

9 A. The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree which
10 have not been previously paid. These costs shall include work performed by Ecology or its
11 contractors for, or on, the Site under Ch. 70.105D RCW both prior to and subsequent to the issuance
12 of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight
13 and administration. Ecology costs shall include costs of direct activities and support costs of direct
14 activities as defined in WAC 173-340-550(2). The Defendant agrees to pay the required amount
15 within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a
16 summary of costs incurred, an identification of involved staff, and the amount of time spent by
17 involved staff members on the project. A general statement of work performed will be provided upon
18 request and Defendant has submitted such a request to Ecology. Itemized statements shall be
19 prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized
20 statement will result in interest charges at the rate of twelve percent per annum. Defendant reserves
21 the right to review and approve any charges prior to payment. Any dispute regarding remedial and
22 investigation costs for the Site shall be subject to dispute resolution pursuant to Section XIV.
23 Defendant reserves the right to pay the undisputed portion of an invoice and not pay the disputed
24 portion.

25 XXII. IMPLEMENTATION OF REMEDIAL ACTION

26 If Ecology determines that Defendant has failed without good cause to implement the
remedial action, Ecology may, after notice to Defendant, perform any or all portions of the remedial

1 action that remain incomplete. If Ecology performs all or portions of the remedial action because of
2 the Defendant's failure to comply with its obligations under this Decree, Defendant shall reimburse
3 Ecology for the costs of doing such work in accordance with Section XXI, provided that Defendant is
4 not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or
5 beyond the scope of this Decree.

6 XXIII. FIVE YEAR REVIEW

7 As remedial action, including groundwater monitoring, continues at the Site, the parties agree
8 to review the progress of remedial action at the Site, and to review the data accumulated as a result of
9 site monitoring as often as is necessary and appropriate under the circumstances or as agreed upon in
10 the Compliance Groundwater Monitoring Program for the ARCO Site. The parties agree to meet to
11 discuss the Site status every five years upon request from Ecology, or at Defendant's request.
12 Ecology reserves the right to require further remedial action at the Site under appropriate
13 circumstances. This provision shall remain in effect for the duration of the Decree.

14 XXIV. PUBLIC PARTICIPATION

15 Ecology shall maintain the responsibility for public participation at the Site. However,
16 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

17 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
18 action, such as the submission of engineering design reports. Ecology will finalize (including editing
19 if necessary) and after receiving and considering comments from the Defendant distribute such fact
20 sheets and prepare and distribute public notices of Ecology's presentations and meetings;

21 B. Notify Ecology's project coordinator prior to the preparation of all press releases and
22 fact sheets, and before major meetings with the interested public and local governments. Likewise,
23 Ecology shall notify and consult with Defendant prior to the issuance of all press releases and fact
24 sheets, and before major meetings with the interested public and local governments;

25 C. Participate in public presentations on the progress of the remedial action at the Site.
26 Participation may be through attendance at public meetings to assist in answering questions, or as a
presenter;

1 D. Provide Ecology with copies of documents to be placed in information repositories to
2 be located at the Seattle Public Library, Downtown Branch, Magazines, Newspapers and Government
3 Publications Dept 1000 4th Ave. Seattle, Washington 98104 and Ecology's Northwest Regional
4 Office at 3190 160th Avenue SE, Bellevue, Washington 98008-5452. At a minimum, copies of all
5 public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil
6 sediment, and air monitoring data; remedial actions plans, supplemental remedial planning
7 documents, and all other similar documents relating to performance of the remedial action required
8 by this Decree shall be promptly placed in these repositories.

9 XXV. DURATION OF DECREE

10 A. This Decree shall remain in effect and the remedial program described in the Decree
11 shall be maintained and continued until the Defendant has received written notification from Ecology
12 that the requirements of this Decree have been satisfactorily completed. Ecology shall issue such
13 notification within sixty (60) days after the requirements of this Decree have been satisfactorily
14 completed. Thereafter the parties within thirty (30) days shall jointly request that the Court vacate
15 this Consent Decree.

16 B. Upon completion of each action specified in the Final CAP, Ecology shall issue a
17 Certificate of Completion within sixty (60) days after such action has been completed.

18 XXVI. CLAIMS AGAINST THE STATE

19 Defendant hereby agrees that it will not seek to recover any costs incurred in implementing
20 the remedial action required by this Decree from the State of Washington or any of its agencies; and
21 further, that the Defendant will make no claim against the State Toxics Control Account or any Local
22 Toxics Control Account for any costs incurred in implementing this Decree. Except as provided
23 above, however, Defendant expressly reserves its right to seek to recover any costs incurred in
24 implementing this Decree from any other potentially liable person.

25 XXVII. EFFECTIVE DATE

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

1 Jim Pendowski

1/12/00

2 Jim Pendowski
3 Program Manager
4 Toxics Cleanup Program

Date

6 H. C. Winsor

7 *of*
ARCO

December 1, 1999

7 H. C. Winsor
8 ARCO Products Company
9 Manager of Western Environmental Projects

Date

11 Thomas C Morrill

February 22, 2000

12 Tom Morrill WSBA#
13 Assistant Attorney General

Date

17 GRAHAM & DUNN

Frederick O. Frederickson

18 By: Frederick O. Frederickson

November 29, 1999

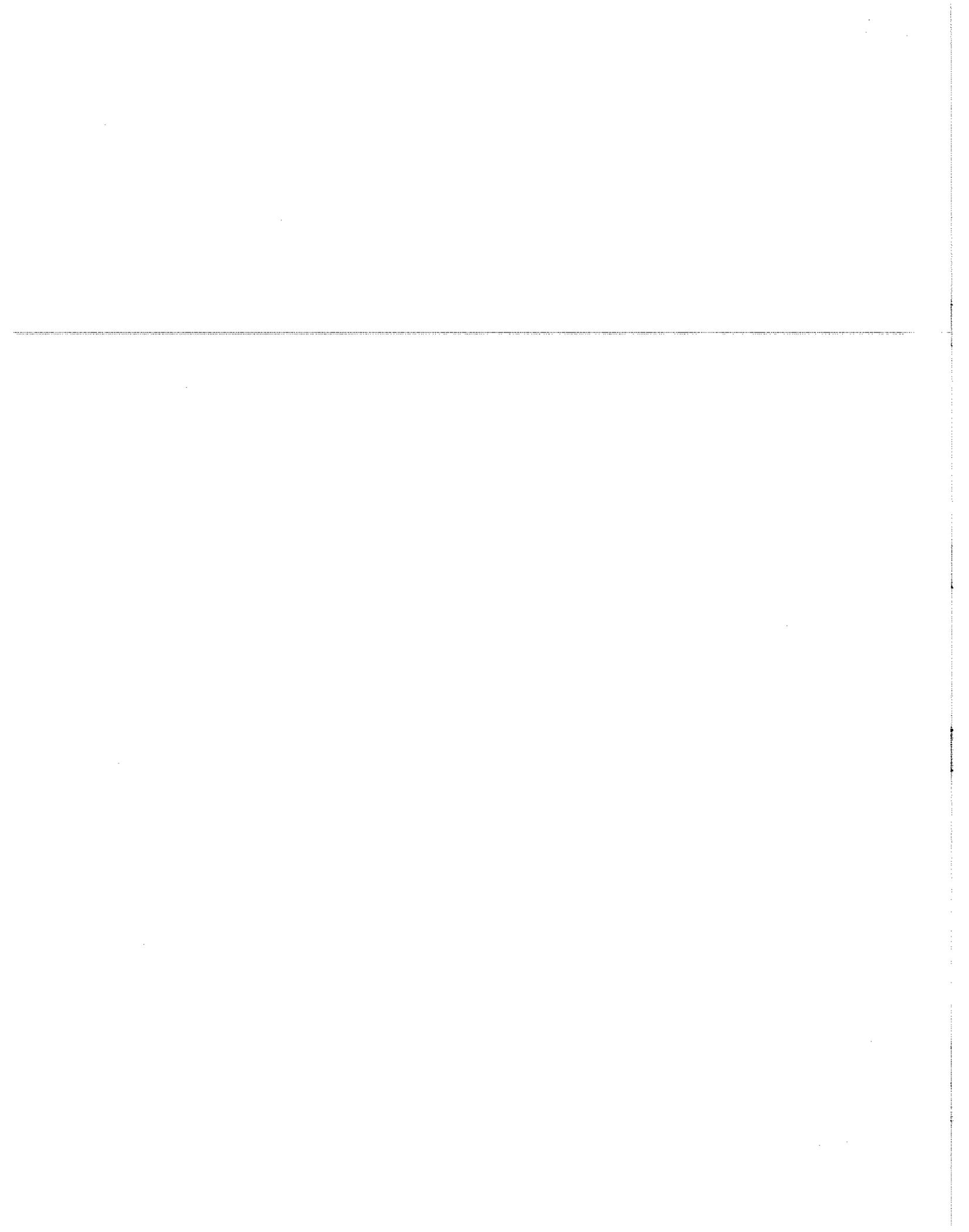
19 Frederick O. Frederickson
20 WSBA# 1856
21 Attorneys for ARCO

Date

23 DATED this _____ day of _____, 199__

26 _____
JUDGE

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MAR 24 2000

DEPARTMENT OF
ECOLOGICAL ADMINISTRATION

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

00-2-05714-8SEA

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ARCO PRODUCTS COMPANY, A
DIVISION OF ATLANTIC RICHFIELD
COMPANY (ARCO),

Respondents.

NO.

DECLARATION OF
THOMAS C. MORRILL

I, THOMAS C. MORRILL, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am an Assistant Attorney General assigned to represent the Washington State Department of Ecology and the Attorney General's Office on legal matters relating to the site in Seattle, Washington referred to as the ARCO Harbor Island Site.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations that led to the Consent Decree that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a). Ecology also conducted a public hearing as required by WAC 173-340-600(9)(d).

5. Ecology received comments during the first public comment period on the substance of the Consent Decree. Ecology considered the comments and made substantive changes

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DECLARATION OF
THOMAS C. MORRILL

DEPT. OF ECOLOGY

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

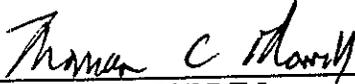
1 based on those comments. A second public comment period was then held. No public comments
2 were received following the second public comment period.

3 6. No significant changes were made to the Consent Decree following the second
4 public comment period, and thus Ecology has determined that additional public comment under
5 WAC 173-340-600(9)(e) is not required.

6 7. Ecology has determined that the proposed remedial action will lead to a more
7 expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW
8 70.105D.030(2)(e).

9 I declare under penalty of perjury of the laws of the state of Washington that the foregoing
10 is true and correct.

11 DATED this 22nd day of February, 2000.

12
13 
14 _____
15 THOMAS C. MORRILL
16 Assistant Attorney General
17

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ARCO PRODUCTS COMPANY, A
DIVISION OF ATLANTIC RICHFIELD
COMPANY (ARCO),

Respondents.

NO.

00-2-05714-8SEA
DECLARATION OF
NNAMDI MADAKOR

I, NNAMDI MADAKOR, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am employed as a Site Project Manager at the Washington State Department of Ecology. I am the site manager and am knowledgeable on matters relating to the Site in Seattle, Washington referred to as the ARCO Harbor Island Site.

3. On behalf of Ecology, I took part in the negotiations that led to the Consent Decree that is being presented to the Court.

4. The Consent Decree was the subject of public notice and public comment as required by RCW 70.105D.040(4)(a). Ecology also conducted a public hearing as required by WAC 173-340-600(9)(d).

5. Ecology received comments during the first public comment period on the substance of the Consent Decree. Ecology considered the comments and made substantive changes

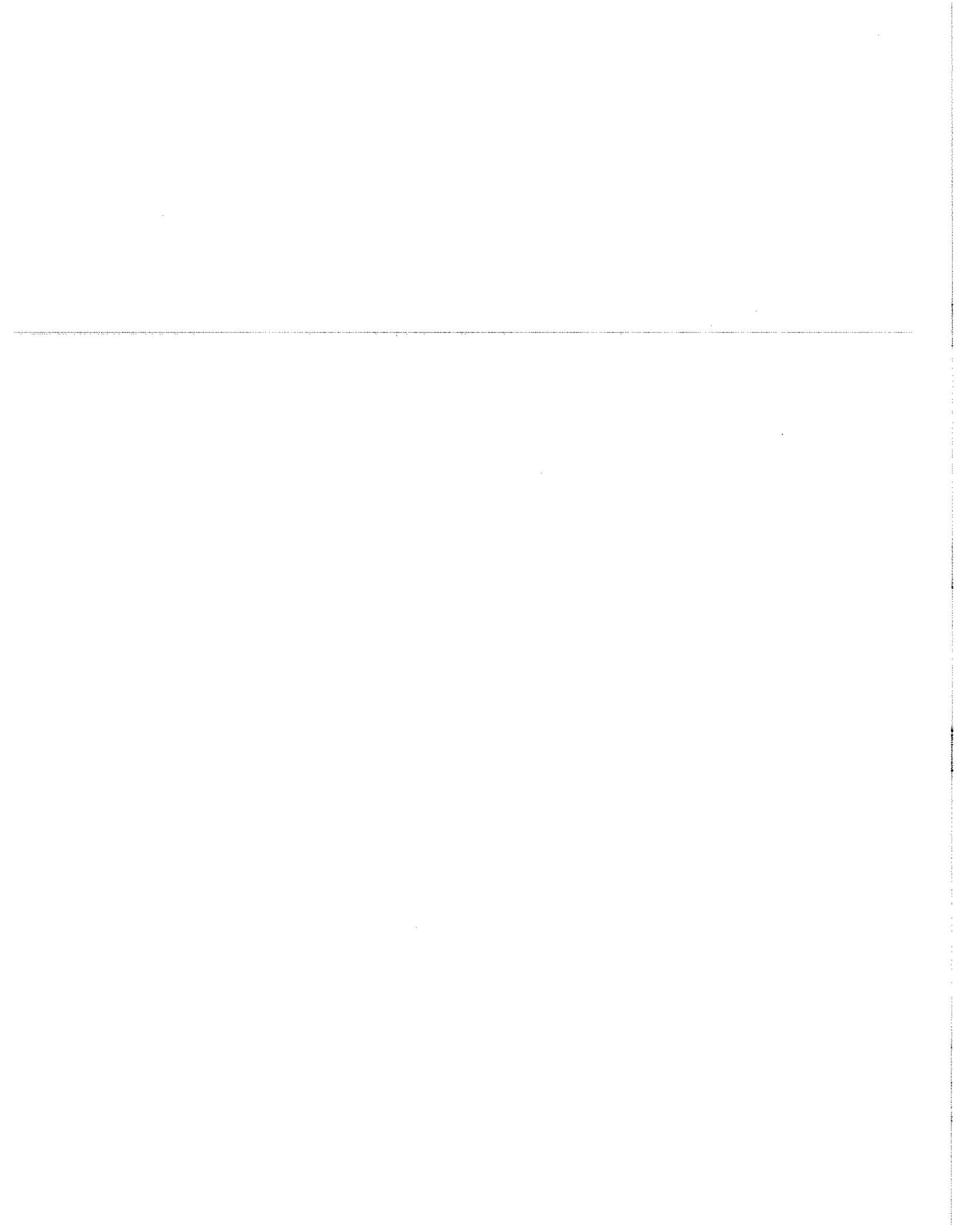
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MAR 28 2000

DECLARATION OF
NNAMDI MADAKOR

DEPT. OF ECOLOGY

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743



1 based on those comments. A second public comment period was then held. No public comments
2 were received following the second public comment period.

3 6. WAC 173-340-600(9)(e) provides:

4 Revisions. If the state and the potentially liable person agree to substantial changes
5 to the proposed Consent Decree, the department shall provide additional public
notice and opportunity to comment.

6 7. Ecology has determined that no additional public comment under WAC 173-340-
7 600(9)(c) is required.

8 8. Ecology has determined that the proposed remedial action will lead to a more
9 expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW
10 70.105D.030(2)(e).

11 I declare under penalty of perjury of the laws of the state of Washington that the foregoing
12 is true and correct.

13 DATED this 17th day of February, 2000.

14
15 Nnamdi Madakor
16 NNAMDI MADAKOR
17 State of Washington
18 Department of Ecology

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ATTORNEY GENERAL
OF WASHINGTON
Ecology Division

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DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,	
	Plaintiff,
v.	
ARCO PRODUCTS COMPANY, A DIVISION OF ATLANTIC RICHFIELD COMPANY (ARCO),	
	Respondents.

NO. **00-2-05714-8SEA**

**JOINT MOTION FOR ENTRY OF
THE CONSENT DECREE AND
MEMORANDUM IN SUPPORT
OF MOTION**

I. INTRODUCTION

Plaintiff Washington State Department of Ecology ("Ecology") and Defendant, ARCO (jointly "The Parties") bring this motion seeking entry of the attached Consent Decree. This motion is based upon the pleadings filed in this matter, including the Declarations of Nnamdi Madakor and Thomas C. Morrill.

II. RELIEF REQUESTED

The Parties request that the Court approve and enter the attached Consent Decree which requires certain remedial actions at the ARCO Harbor Island Site in Seattle, King County, Washington. The Parties also request that the Court retain jurisdiction over this action until the work required by the Consent Decree is completed and the Parties request a dismissal of this action.

III. AUTHORITY

RCW 70.105D.030 authorizes Ecology to issue such orders as may be necessary to effectuate the purposes of chapter 70.105D RCW and to enter into consent decrees through

JOINT MOTION FOR ENTRY OF THE
CONSENT DECREE AND
MEMORANDUM IN SUPPORT OF

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ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

1 judicial proceedings. In addition, RCW 70.105D.040(4) authorizes the Attorney General to agree
2 to a settlement with a potentially liable person and to request that the settlement be entered as a
3 consent decree in the superior court of the county where a violation is alleged to have occurred.

4 **IV. CONCLUSION**

5 The Parties believe it is appropriate for the Court to exercise its judicial discretion and
6 approve the attached Consent Decree, and hereby request that the Court enter the attached Order.

7 DATED this 22nd day of February, 2000.

8
9 CHRISTINE O. GREGOIRE
Attorney General

10
11 
12 THOMAS C. MORRILL, WSBA #18388
Assistant Attorney General
Attorneys for Plaintiff
Department of Ecology
13 (360) 459-6159

14
15 GRAHAM AND DUNN
16
17 
18 FRÉDERICK O. FRÉDERICKSON, WSBA #1856
Attorney for Defendant
ARCO Products Company, a division of
19 Atlantic Richfield Company (ARCO)
20 (206) 624-8300

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DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ARCO PRODUCTS COMPANY, A
DIVISION OF ATLANTIC RICHFIELD
COMPANY (ARCO),

Respondents

NO **00-2-05714-8SEA**

ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Declarations of Nnamdi Madakor and Thomas C. Morrill, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is Entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this _____ day of MAR 24 2000, 2000.

Stephen M. Gaddis

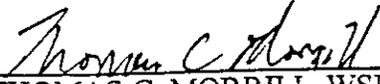
~~JUDGE~~/COMMISSIONER
King County

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MAR 28 2000
EPT DEPT OF ECOLOGY

1 Presented by:

2 CHRISTINE O. GREGOIRE
Attorney General

3

4 
5 THOMAS C. MORRILL, WSBA #18388
Assistant Attorney General

6

7 Attorneys for Plaintiff
State of Washington
Department of Ecology

8

9 DATED: Feb 22, 2000

10 GRAHAM AND DUNN

11

12 
13 FREDERICK O. FREDERICKSON, WSBA #1856
Attorney for Defendant
14 ARCO Products Company, a division of
Atlantic Richfield Company (ARCO)

15 DATED: February 18, 2000

16

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Nye, Roger

From: Perez, Carol
Sent: Thursday, July 29, 2004 12:03 PM
To: Nye, Roger
Subject: Addition to repository files

Hi, Roger –

I got the information, below, from Neil Wood. If I understand this right, he means that these two documents are not listed on the spreadsheet that I sent out. That tells me that we don't have a copy of these documents here at headquarters, since the spreadsheet was verified against all the documents in our files. Neil said the site manager should have copies. I'd like a copy of each of the documents, please, to complete my repository files. Thank you

Carol Perez

New additions:

FS# 2302, sm = Nye, region = nwro, county = king, name = BP Oil Station #11352, doc type = consent decree, date = march 1993, doc # = 93-2-04496-8

FS# 2024, sm = Nye, region = nwro, county = king, name = BP West Coast Products, doc type = consent decree, date = february 2000, doc # = 00-2-05714-8SEA

7/29/2004



F.S. 2024 ARCO Harbor Island

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DEPARTMENT OF
ECOLOGY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v

ARCO PRODUCTS COMPANY, A DIVISION
OF ATLANTIC RICHFIELD COMPANY
(ARCO)

Defendants.

No. **00-2-05714-8SEA**

CONSENT DECREE

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DEPT. OF ECOLOGY

Final Consent Decree

ATTORNEY GENERAL OF WASHINGTON
ECOLOGY DIVISION
P.O. BOX 40117
Olympia, WA 98504-0117
Fax: (360) 438-7743 340-9599

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16 Exhibit A - Site Diagram

17 Exhibit B - Cleanup Action Plan

18 Exhibit C - Site Access and Operating Procedures

19 Exhibit D - Restrictive Covenant

20 Exhibit E - Schedule

21 Exhibit F - Groundwater Compliance Monitoring and Contingency Plans

1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual objective of the Washington
3 State Department of Ecology (Ecology), and ARCO Products Company, a division of Atlantic
4 Richfield Company (ARCO or Defendant) is to provide for remedial action at a facility where there
5 has been a release or threatened release of hazardous substances. This Decree requires the Defendant
6 to undertake the following remedial action(s):

- 7 (1) Implement the Cleanup Action Plan (CAP)
8 (2) Provide for Public Participation
9 (3) Provide Remedial Design (RD)
10 (4) Implement the Groundwater Compliance Monitoring that includes:
11 (A) Protection Monitoring
12 (B) Performance Monitoring
13 (C) Confirmational Monitoring

14 Ecology has determined that these actions are necessary to protect public health and the environment.

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

20 C. In signing this Decree, Defendant agrees to its entry and subject to Paragraph E below
21 agrees to be bound by its terms.

22 D. By entering into this Decree, the parties do not intend to discharge nonsettling parties
23 from any liability they may have with respect to matters alleged in the complaint. The parties retain
24 the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under
25 this Decree.
26

1 E. This Decree is not an admission of and shall not be construed as proof of liability or
2 responsibility for any releases of hazardous substances or cost for remedial action nor an admission of
3 any facts; provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in
4 any proceeding to enforce this Decree.

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

7 II. JURISDICTION

8 A. This Court has jurisdiction over the subject matter and over the parties pursuant to
9 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and venue is proper in King
10 County.

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

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

18 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15), of
19 Ecology's determination that the Defendant is a potentially liable person for the Site and that there has
20 been a release or threatened release of hazardous substances at the Site.

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

23 F. Defendant has agreed to undertake the actions specified in this Decree and consents to
24 the entry of this Decree under the MTCA.

25 III. PARTIES BOUND

26 This Decree shall apply to and be binding upon the signatories to this Decree (parties), their

1 successors and assigns and shall supersede the prior Agreed Order entered into by the parties. The
2 undersigned representative of each party hereby certifies that he or she is fully authorized to enter into
3 this Decree and to execute and legally bind such party to comply with the Decree. Defendant agrees
4 to undertake all actions required by the terms and conditions of this Decree and not to contest state
5 jurisdiction regarding this Decree. No change in ownership or corporate status shall alter the
6 responsibility of the Defendant under this Decree. Defendant shall provide a copy of this Decree to
7 all agents, contractors and subcontractors retained to perform work required by this Decree and shall
8 ensure that the contract for such work will be in compliance with this Decree

9 IV. DEFINITIONS

10 Except as specified herein, all definitions in WAC 173-340-200 apply to the terms in this
11 Decree.

12 A. Site: The Site, owned by ARCO Products Company, a division of Atlantic Richfield
13 Company (ARCO) is known as ARCO Harbor Island Terminal-Plant 1 and Plant 2 located at 1652
14 Southwest Lander Street and at the southwest quadrant of the intersection of Southwest Florida Street
15 and Eleventh Avenue Southwest, respectively, Seattle, Washington, 98124 (collectively referred to as
16 the "Site") on Harbor Island. The Site is part of the Tank Farm Operable Unit One (OU1) for the
17 Harbor Island Superfund Site. The Site is more particularly described in Exhibit A to this Decree,
18 which is a detailed site diagram.

19 B. Parties: Refers to the Washington State Department of Ecology and ARCO.

20 C. Defendant: Refers to ARCO Products Company, a division of Atlantic Richfield
21 Company (ARCO).

22 D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to
23 the Decree. All exhibits are by this reference incorporated herein, and are integral and enforceable
24 parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall include all Exhibits to
25 the Consent Decree.
26

3. Dissolved petroleum hydrocarbons and cPAHs exceeding the Surface Water Quality Standards are confirmed to be present in the groundwater at the Site beneath Plants 1 and 2.

C. Ecology files contain the following report: Feasibility Study Report; Conceptual Site Model and Selection of The Preferred Remedial Alternative, ARCO Harbor Island Terminal 21T, Seattle, Washington. Geraghty & Miller, Inc., December 6, 1996 (FS Report). Based on the FS Report, Ecology finds as follows:

1. ARCO identified a preferred remedy after evaluating other alternative remedies to address the hazardous substances located on site. Ecology concurs that the remedy preferred by ARCO is appropriate. The preferred remedy is to:
 - a. Expand the product extraction under the warehouse to include dissolved petroleum hydrocarbons, implement vapor extraction, implement air sparging
 - b. Excavate accessible TPH hot spots in Plant 1, using the action levels of 10,000 mg/kg.
 - c. Excavate accessible TPH hot spots in Plant 2, using the action levels of 20,000 mg/kg.
 - d. Implement compliance groundwater monitoring program and if necessary, contingency plans.
 - e. Implement institutional controls.
 - f. The Compliance Groundwater Monitoring Program will include bioassay/sediment sampling at the West Waterway of the Duwamish River to further evaluate risks to the marine organism, if any, and to evaluate if additional remedial actions will be necessary.

D. In August, 1995, the United States District Court for Western District of Washington (Civil Action No. 95-01495-Z) entered a Consent Decree ("Federal Consent Decree") in U.S. v. The Port of Seattle et al. relating to claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9601 et seq. involving the Harbor Island

1 Superfund Site. Article I, paragraph 8 of the Federal Consent Decree identifies operable units within
2 the Harbor Island Superfund Site and recites that the Petroleum Tank Farm Operable Unit is under
3 the management of the Department of Ecology. The Environmental Protection Agency and Ecology
4 have entered into Memorandums of Understanding dated February 5, 1991 and March 3, 1994 setting
5 forth the duties and responsibilities of each Agency with regard to site management and enforcement
6 activities at the Harbor Island Superfund Site.

7 E. Ecology and Defendant agree (a) that they have entered into a settlement agreement
8 under the MTCA and in particular RCW 70.105D.040(e), (ii) that all terms and conditions of the
9 settlement agreement are set forth in this Consent Decree, and (c) pursuant to Section 4, Chapter 406,
10 Laws of 1997 (Senate Bill 7900) (hereinafter Senate Bill 7900) this Consent Decree is not based on
11 circumstances unique to Defendant. Ecology and Defendant intend that this settlement agreement
12 shall be enforced to the maximum extent permitted under the MTCA.

13 VI. WORK TO BE PERFORMED

14 This Decree contains a program designed to protect public health, welfare and the
15 environment from the known release, or threatened release, of hazardous substances at, on, or from
16 the Site. ARCO agrees to take the following remedial actions and that all work be conducted in
17 accordance with chapter 173-340 WAC, unless otherwise specifically provided herein. These actions
18 are more specifically described in the Cleanup Action Plan attached as Exhibit B.

19 A. Task 1: Implement the Cleanup Action Plan (CAP):

- 20 1. Expand the product extraction system under the warehouse and include
21 extraction of dissolved petroleum hydrocarbons along the shoreline
- 22 2. Implement soil vapor extraction
- 23 3. Implement air sparging above and below the watertable along the shoreline and
24 under the warehouse (to address in-accessible TPH hot spots in soils)
- 25 4. Excavate accessible TPH hot spots in Plant 1, using the action levels of 10,000
26 mg/kg. The accessible area in Plant 1 that will require excavation is in the southeast of the site

1 between the above storage Tank No. 1, 8, 9, and 13. The accessible TPH hot spots are in the vicinity of
2 soil borings B-17, B-20, B-21, B-23, TS-25, IS-26, IS-27, IS-36, IS-37, IS-39, TS-40, IS-40, TS-41
3 and TS-42. It is Ecology's expectation that the accessible TPH soil hot spots will be excavated without
4 undermining the integrity of the above storage tanks next to the hot spot. Excavate accessible TPH hot
5 spots in Plant 2, using the action levels of 20,000 mg/kg. There are two accessible TPH hot spot areas
6 in Plant 2 that will require excavation. The first TPH hot spot is located in the northeast corner of the
7 site at soil boring TS-1. The second TPH hot spot is located south and southeast of the site between the
8 above storage Tank No. 59001 and 20001 and are in the vicinity of soil borings B-36, B-37, IS-12, IS-
9 14, TS-15, TS-17, TS-19, TS-31, TS-32, TS-34 and TS-35. It is Ecology's expectation that these
10 accessible TPH soil hot spots will be excavated without undermining the integrity of the above storage
11 tanks next to the hot spots.

11 5. Implement compliance groundwater monitoring program

12 6. As part of the compliance groundwater monitoring program, implement
13 sediment/bioassay sampling as necessary to further evaluate risks to the marine organism, if any, and
14 to evaluate if additional remedial actions will be necessary.

15 7. Implement institutional controls, Restrictive Covenant and Contingency Plans,
16 if necessary.

17 B. Task 2: Provide for Public Participation

18 C. Task 3: Provide Remedial Design (or Engineering Report)

19 D. Task 4: Implement the Compliance Groundwater Monitoring Program that

20 includes:

21 1. Protection Monitoring

22 2. Performance Monitoring

23 3. Confirmational Monitoring

24 E. Task 5: Implement Schedule as outlined in Exhibit E (Attached)

25 F. Defendant agrees not to perform any remedial actions on Site that are inconsistent with the
26 remedial actions required under this Consent Decree.

1 supervision of a professional engineer. Defendant shall notify Ecology in writing as to the identity of
2 such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used
3 in carrying out the terms of this Decree, in advance of their involvement at the Site.

4 IX. ACCESS

5 Ecology or any Ecology authorized representatives shall have the authority to enter and freely
6 move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting
7 records, operation logs, and contracts related to the work being performed pursuant to this Decree;
8 reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or
9 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other
10 documentary type equipment to record work done pursuant to this Decree; and verifying the data
11 submitted to Ecology by the Defendant. Without limitation on Ecology's rights under this section,
12 Ecology will provide ARCO advance notice of its entry onto the Site when appropriate. All parties
13 with access to the Site pursuant to this paragraph shall comply with Site access and operating
14 procedures, Exhibit C. Ecology shall make the results of all sampling, laboratory reports, videos and
15 other test results generated by it or on its behalf available to Defendant.

16 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

17 With respect to the implementation of this Decree, Defendant shall make the results of all
18 sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology
19 and shall submit these results in accordance with Section XI of this Decree.

20 In accordance with WAC 173-340-840(5), groundwater sampling data shall be submitted
21 according to the requirements that will be established in the Groundwater Compliance Monitoring
22 Program. Each party shall allow split or replicate samples to be taken by the other and shall provide
23 5 working days notice before conducting any sampling activities.

24 XI. PROGRESS REPORTS

25 Defendant shall submit to Ecology written progress reports, which describe the actions taken
26 to implement the requirements of this Decree. The progress report shall be prepared no more
frequently than set forth in the following schedule:

- Quarterly during remedial design activities
- Monthly during construction phase activities
- Monthly for the first quarter after remedial system startup

The frequency of progress reports to be submitted following the first quarter after remedial system startup shall be established in the Groundwater Compliance Monitoring Program. Progress reports shall include the following:

- A. A list of on-site activities that have taken place during the reporting period;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule (VI. Work To Be Performed) during the current reporting period and any planned deviations in the upcoming reporting period;
- D. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- E. All raw data (including laboratory analysis) received by the Defendant during the past month and an identification of the source of the sample;
- F. A list of deliverables for the upcoming month if different from the schedule; and

All progress reports shall be submitted by the fifteenth day of the reporting period in which they are due after the effective date of this Decree. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Decree shall be sent to Ecology's project coordinator.

XII. RETENTION OF RECORDS

Defendant shall preserve, during the pendency of this Decree and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXV, all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert in contracts with project contractors and subcontractors a similar record retention requirement. Upon request of Ecology, Defendant shall make all non-archived, non-privileged records available to Ecology and allow access for review. All archived non-privileged records shall be made available to Ecology within a reasonable period of time.

mutual agreement, submit the dispute to a neutral mediator. No more than thirty (30) days after the conclusion of any mediation, Ecology shall issue a written statement either reaffirming its original decision or setting forth a new decision. Defendant has the right to submit the dispute to the Court for resolution within thirty (30) days after any of the following: (i) Defendant receives written notice that Ecology does not agree to submit the dispute to mediation,; (ii) After mediation, Defendant receives a written statement from Ecology that is unacceptable to Defendant; or (iii) Ecology fails to issue the final decision described earlier in this paragraph. The parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree.

C. For disputes that arise under the following sections of the Decree, the Court shall review the action or decision of Ecology under an arbitrary and capricious standard of review: work to be performed (Section VI), designated project coordinators (Section VII), performance (Section VIII), access (Section IX), sampling, data reporting and availability (Section X), progress reports (Section XI), retention of records (Section XII), amendment of Consent Decree (Section XV), extension of schedule (Section XVI), endangerment (Section XVII), compliance with applicable laws (Section XX), implementation of remedial action (Section XXII), five year review (Section XXIII), public participation (Section XXIV), duration of decree (Section XXV), and land use restrictions (Section XXIX).

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

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

XV. AMENDMENT OF CONSENT DECREE

Except for an extension granted pursuant to Section XVI below or technical revisions to Section VI or Exhibit B affecting the nature or scope of remedial work, this Decree may only be

1 amended by a written stipulation among the parties to this Decree that is entered by the Court or by
2 order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to
3 amend shall not be unreasonably withheld by any party to the Decree.

4 Defendant shall submit any request for an amendment to Ecology for approval. Ecology shall
5 indicate its approval or disapproval in a timely manner after the request for amendment is received. If
6 the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for
7 comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any
8 proposed amendment, the disagreement may be addressed through the dispute resolution procedures
9 described in Section XIV of this Decree. Technical revisions to Section VI or Exhibit B, affecting the
10 nature or scope of remedial work, may be made by mutual written agreement of the parties without
11 approval of the court.

12 XVI. EXTENSION OF SCHEDULE

13 A. An extension of schedule shall be granted only when a request for an extension is
14 submitted in a timely fashion, generally at least 15 days prior to expiration of the deadline for which
15 the extension is requested, and good cause exists for granting the extension. All extensions shall be
16 requested in writing. The request shall specify the reason(s) the extension is needed.

17 An extension shall only be granted for such period of time as Ecology determines is
18 reasonable under the circumstances. A requested extension shall not be effective until approved by
19 Ecology or the Court. Ecology shall act upon any written request for extension in a timely fashion. It
20 shall not be necessary to formally amend this Decree pursuant to Section XV when a schedule
21 extension is granted.

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

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

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

2 (3) Endangerment as described in Section XVII, or

3 (4) Other circumstances deemed by Ecology to be exceptional, extraordinary, or otherwise
4 necessary to protect the environment or public interest.

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

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

10 (1) Delays in the issuance of a necessary permit which was applied for in a timely manner;
11 or

12 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

13 (3) Endangerment as described in Section XVII.

14 Ecology shall give Defendant written notification in a timely fashion of any extensions granted
15 pursuant to this Decree. Ecology shall not unreasonably withhold approval of requested extensions.

16 **XVII. ENDANGERMENT**

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

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

14 XVIII. COVENANT NOT TO SUE

15 A. In consideration of ARCO's compliance with the terms and conditions of this Decree,
16 Ecology agrees that compliance with this Decree shall stand in lieu of any and all administrative,
17 legal, and equitable remedies and enforcement actions available to Ecology against ARCO for the
18 release or threatened release of hazardous substances covered by the terms of this Decree.

19 B. This covenant is strictly limited in its application to the Site specifically described in
20 Exhibit A and to those hazardous substances that Ecology knows to be located at the Site as of the
21 date of entry of this Decree. This covenant is not applicable to any other hazardous substance or area
22 and Ecology retains all of its authority relative to such substances and areas.

23 C. In the following circumstances Ecology may exercise its full legal authority to address
24 releases of hazardous substances at the Site notwithstanding the Covenant Not to Sue set forth above:

25 (1) If ARCO fails to comply with the terms and conditions of this Decree,
26 including all exhibits, and, after written notice of noncompliance, fails to comply; or

1 (2) If factors not known at the time of entry of this Decree, including factors listed
2 in WAC 173-340-420(2), are discovered and Ecology determines, in light of these factors, that further
3 remedial action is necessary at the Site to protect human health or the environment; or

4 (3) If Ecology determines that conditions at the Site cause an endangerment to
5 human health or the environment, and that actions beyond those required under this Decree are
6 necessary.

7 (4) Subject to compliance with the contingency plan, if monitoring at the site
8 establishes that contingency plan must be implemented, and further monitoring establishes that the
9 remedy set forth in the contingency plan is insufficient to meet cleanup standards.

10 D. The Covenant Not to Sue set forth above shall have no applicability whatsoever to

11 (1) Criminal liability;

12 (2) Any Liability for damages to natural resources;

13 (3) Any Ecology action against potentially liable persons not a party to this
14 Decree.

15 XIX. INDEMNIFICATION

16 Defendant agrees to indemnify and save and hold the State of Washington, its employees, and
17 agents harmless from any and all claims or causes of action for death or injuries to persons or for loss
18 or damage to property arising from or on account of acts or omissions of Defendant, its officers,
19 employees, agents, or contractors in entering into and implementing this Decree. However, the
20 Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents
21 harmless from any claims or causes of action arising out of the intentional misconduct or negligent
22 acts or omissions of the State of Washington, or the employees or agents of the State, in
23 implementing the activities pursuant to this Decree.

24 XX. COMPLIANCE WITH APPLICABLE LAWS

25 A. All actions carried out by Defendant pursuant to this Decree shall be done in
26 accordance with all applicable federal, state, and local requirements, including requirements to obtain
necessary permits, except as provided in paragraph B. of this section.

1 B Pursuant to RCW 70.105D.090 (1), the substantive requirements of chapters 70.94,
2 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local
3 government permits or approvals for the remedial action under this Decree that are known to be
4 applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup Action
5 Plan, and are binding and enforceable requirements of the Decree. Defendant has a continuing
6 obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1)
7 would otherwise be required for the remedial action under this Decree. In the event either Defendant
8 or Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would
9 otherwise be required for the remedial action under this Decree, it shall promptly notify the other
10 party of this determination. Ecology shall determine whether Ecology or Defendant shall be
11 responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant
12 shall promptly consult with the appropriate state and/or local agencies and provide Ecology with
13 written documentation from those agencies of the substantive requirements those agencies believe are
14 applicable to the remedial action. Ecology shall make the final determination on the additional
15 substantive requirements that must be met by Defendant and on how Defendant must meet those
16 requirements. Ecology shall inform Defendant in writing of these requirements. Once established by
17 Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendant
18 shall not begin or continue the remedial action potentially subject to the additional requirements until
19 Ecology makes its final determination.

20 Ecology shall ensure that notice and opportunity for comment is provided to the public and
21 appropriate agencies prior to establishing the substantive requirements under this section. C.

22 Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from
23 complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would
24 result in the loss of approval from a federal agency which is necessary for the State to administer any
25 federal law, the exemption shall not apply and the Defendant shall comply with both the procedural
26 and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any
requirements to obtain permits.

1 D. In implementing this Decree for purposes such as sampling, it is contemplated that the
2 Defendant may remove limited quantities of soil, groundwater, and other materials (collectively,
3 "Materials") from real property within or adjacent to the Site. Any removal shall be done in
4 compliance with all applicable laws as required by this Section XX. It is agreed that any disposition
5 of the Material by the Defendant, including documents generated pursuant to such disposition shall
6 not be deemed to be an admission by such party of liability for purposes of the Model Toxics Control
7 Act.

8 XXI. REMEDIAL AND INVESTIGATIVE COSTS

9 A. The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree which
10 have not been previously paid. These costs shall include work performed by Ecology or its
11 contractors for, or on, the Site under Ch. 70.105D RCW both prior to and subsequent to the issuance
12 of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight
13 and administration. Ecology costs shall include costs of direct activities and support costs of direct
14 activities as defined in WAC 173-340-550(2). The Defendant agrees to pay the required amount
15 within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a
16 summary of costs incurred, an identification of involved staff, and the amount of time spent by
17 involved staff members on the project. A general statement of work performed will be provided upon
18 request and Defendant has submitted such a request to Ecology. Itemized statements shall be
19 prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized
20 statement will result in interest charges at the rate of twelve percent per annum. Defendant reserves
21 the right to review and approve any charges prior to payment. Any dispute regarding remedial and
22 investigation costs for the Site shall be subject to dispute resolution pursuant to Section XIV.
23 Defendant reserves the right to pay the undisputed portion of an invoice and not pay the disputed
24 portion.

25 XXII. IMPLEMENTATION OF REMEDIAL ACTION

26 If Ecology determines that Defendant has failed without good cause to implement the
remedial action, Ecology may, after notice to Defendant, perform any or all portions of the remedial

1 action that remain incomplete. If Ecology performs all or portions of the remedial action because of
2 the Defendant's failure to comply with its obligations under this Decree, Defendant shall reimburse
3 Ecology for the costs of doing such work in accordance with Section XXI, provided that Defendant is
4 not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or
5 beyond the scope of this Decree.

6 XXIII. FIVE YEAR REVIEW

7 As remedial action, including groundwater monitoring, continues at the Site, the parties agree
8 to review the progress of remedial action at the Site, and to review the data accumulated as a result of
9 site monitoring as often as is necessary and appropriate under the circumstances or as agreed upon in
10 the Compliance Groundwater Monitoring Program for the ARCO Site. The parties agree to meet to
11 discuss the Site status every five years upon request from Ecology, or at Defendant's request.
12 Ecology reserves the right to require further remedial action at the Site under appropriate
13 circumstances. This provision shall remain in effect for the duration of the Decree.

14 XXIV. PUBLIC PARTICIPATION

15 Ecology shall maintain the responsibility for public participation at the Site. However,
16 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

17 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
18 action, such as the submission of engineering design reports. Ecology will finalize (including editing
19 if necessary) and after receiving and considering comments from the Defendant distribute such fact
20 sheets and prepare and distribute public notices of Ecology's presentations and meetings;

21 B. Notify Ecology's project coordinator prior to the preparation of all press releases and
22 fact sheets, and before major meetings with the interested public and local governments. Likewise,
23 Ecology shall notify and consult with Defendant prior to the issuance of all press releases and fact
24 sheets, and before major meetings with the interested public and local governments;

25 C. Participate in public presentations on the progress of the remedial action at the Site.
26 Participation may be through attendance at public meetings to assist in answering questions, or as a
presenter;

1 D. Provide Ecology with copies of documents to be placed in information repositories to
2 be located at the Seattle Public Library, Downtown Branch, Magazines, Newspapers and Government
3 Publications Dept. 1000 4th Ave. Seattle, Washington 98104 and Ecology's Northwest Regional
4 Office at 3190 160th Avenue SE, Bellevue, Washington 98008-5452. At a minimum, copies of all
5 public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil
6 sediment, and air monitoring data; remedial actions plans, supplemental remedial planning
7 documents, and all other similar documents relating to performance of the remedial action required
8 by this Decree shall be promptly placed in these repositories.

9 XXV. DURATION OF DECREE

10 A. This Decree shall remain in effect and the remedial program described in the Decree
11 shall be maintained and continued until the Defendant has received written notification from Ecology
12 that the requirements of this Decree have been satisfactorily completed. Ecology shall issue such
13 notification within sixty (60) days after the requirements of this Decree have been satisfactorily
14 completed. Thereafter the parties within thirty (30) days shall jointly request that the Court vacate
15 this Consent Decree.

16 B. Upon completion of each action specified in the Final CAP, Ecology shall issue a
17 Certificate of Completion within sixty (60) days after such action has been completed.

18 XXVI. CLAIMS AGAINST THE STATE

19 Defendant hereby agrees that it will not seek to recover any costs incurred in implementing
20 the remedial action required by this Decree from the State of Washington or any of its agencies; and
21 further, that the Defendant will make no claim against the State Toxics Control Account or any Local
22 Toxics Control Account for any costs incurred in implementing this Decree. Except as provided
23 above, however, Defendant expressly reserves its right to seek to recover any costs incurred in
24 implementing this Decree from any other potentially liable person.

25 XXVII. EFFECTIVE DATE

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

1 XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

2 This Decree has been the subject of public notice and comment under RCW
3 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more
4 expeditious cleanup of hazardous substances at the Site.

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

8 XXIX. LAND USE RESTRICTIONS

9 ARCO agrees that the restrictive covenant, attached hereto as Exhibit D and by this reference
10 incorporated herein, shall be recorded with the office of the King County Recorder within 10 days of
11 the entry of this Decree and shall restrict future uses of the Site. With Ecology's prior written
12 approval, and after completion of the remedial action required by this Decree, ARCO, or its
13 successor(s), may record an instrument that provides that the restrictive covenant provided in Exhibit
14 D shall no longer limit uses of the Site or be of any further force or effect. Prior to any approval,
15 Ecology will seek public comment.

16 XXX. CONTRIBUTION PROTECTION

17 A. By signing this Decree, the parties intend that Defendant will obtain the protection against
18 claims for contribution to the fullest extent provided by any applicable law for matters addressed in
19 this Decree and as is provided by MTCA, RCW 70.105D.040(d) (4).

20 XXXI. RESERVATION OF RIGHTS

21 By agreeing to this Decree, Defendant and Ecology agree to abide by its terms. The execution
22 and performance of the Decree is not, however, an admission by Defendant of any fact or liability for
23 any purpose other than as a foundation for the entry of this Decree. Defendant's performance under
24 the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that ay
25 be asserted in the event of further administrative proceedings or litigation not associated with, or
26 related to, this Decree.

1 Jim Pendowski

1/12/00

2 Jim Pendowski
3 Program Manager
4 Toxics Cleanup Program

Date

6 H. C. Winsor

7 *H. C. Winsor*

December 1, 1999

8 H. C. Winsor
9 ARCO Products Company
10 Manager of Western Environmental Projects

Date

11 Thomas C. Morrill

February 22, 2000

12 Tom Morrill WSBA#
13 Assistant Attorney General

Date

17 GRAHAM & DUNN

18 Frederick O. Frederickson

19 By: Frederick O. Frederickson

20 Frederick O. Frederickson
21 WSBA# 1856
22 Attorneys for ARCO

November 29, 1999

Date

23 DATED this _____ day of _____, 199__

26 _____
JUDGE

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