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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

KUK JIN CHOUNG,

Defendant.

92-2-08095 8

No.

ORDER ENTERING
CONSENT DECREE

ORIGINAL

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Affidavit of E. Christina Beusch, 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.

Signed this _____ day of April, 1992
JACK A. RICHEY
COURT COMMISSIONER

APR 8 - 1992
Superior Court Judge

Presented by:

E. Christina Beusch
E. Christina Beusch
Assistant Attorney General

EXP01

JOINT MOTION FOR ENTRY
OF CONSENT DECREE

APR - 3 1992

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
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Plaintiff,)
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v.)
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KUK JIN CHOUNG,)
)
Defendant.)

NO.

CONSENT DECREE

AG # 92-1762

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology) and Mr. Kuk Jin Choung (Defendant), is to provide
5 for reimbursement for costs incurred by Ecology in remediating
6 a release or threatened release of hazardous substances at the
7 Circle K Station #1461 site.

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

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

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

21 II. JURISDICTION

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

1 B. Ecology has authority pursuant to RCW 70.105D.040(4)
2 to file this Consent Decree with the appropriate superior
3 court after appropriate public notice and comment.

4 C. On the basis of the testing and analysis described
5 in the Statement of Facts, Section V, and Ecology files and
6 records, Ecology has determined that a release of hazardous
7 substances has occurred at the site.

8 D. Ecology has determined that the Defendant is a
9 potentially liable person for the site pursuant to RCW
10 70.105D.040. The Defendant has been given notice of Ecology's
11 determination, and has had opportunity to comment thereon.

12 E. The Defendant has applied to Ecology for financial
13 assistance under WAC 173-340-560. Based on the Defendant's
14 application, Ecology has determined the Defendant is eligible
15 for mixed funding. Ecology has also determined that making
16 available mixed funding under the circumstances described in
17 Section V of this Decree will achieve a more expeditious or
18 enhanced cleanup than would otherwise occur and will prevent
19 or mitigate unfair economic hardship.

20 F. Entering this Decree will result in a more
21 expeditious cleanup of the site and is appropriate given the
22 use of mixed funding at the site.

23 G. The actions to be taken pursuant to this Decree are
24 necessary to protect the public health, welfare and the
25 environment.

26 **CONSENT DECREE**

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1 III. PARTIES BOUND

2 This Decree shall apply to and be binding upon
3 Mr. Kuk Jin Choung and his marital community and Ecology and
4 their successors and assigns. The undersigned representative
5 of each party hereby certifies that he/she is fully authorized
6 to enter into this Decree and to execute and legally bind such
7 party to comply with the Decree. The parties agree to
8 undertake all actions required by the terms and conditions of
9 this Decree and the Defendant agrees not to contest state
10 jurisdiction regarding this Decree. No change in ownership
11 or corporate status shall alter the responsibility of the
12 Defendant under this Decree.

13 IV. DEFINITIONS

14 A. "Site" refers to the property and business located
15 at 2350 24th Ave. East, Seattle, Washington.

16 B. "Remedial action" refers to the work performed by
17 Ecology to clean up the site.

18 C. "Remedial action costs" refer to those direct and
19 indirect costs incurred by Ecology under this Consent Decree.
20 Such costs include work performed by Ecology or its
21 contractors for investigations, remedial actions, and order
22 preparation, negotiations, oversight, and administration.
23 Ecology costs shall also include costs of direct activities;
24 e.g., employee salary, laboratory costs, travel costs,

1 contractor fees, and employee benefit packages; and agency
2 indirect costs of direct activities.

3 D. "Days" refers to calendar days unless specified
4 otherwise.

5 E. "Parties" refers to the Department of Ecology and
6 Mr. Kuk Jin Choung and his marital community.

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

10 V. STATEMENT OF FACTS

11 Ecology makes the following findings of fact:

12 A. Site Location and Status

13 The Circle K Station #1461 site is located at 2350 24th
14 Ave. East, Seattle, Washington. The site is currently being
15 operated as a dry cleaning business.

16 B. Facility History and Operations

17 The Circle K Station #1461 site was purchased by George
18 Renale of San Francisco, California in 1968. The site was
19 operated as a Stop-N-Go gasoline and convenience store until
20 1981. From 1981 until July of 1990 Mr. Renale leased the site
21 to the now bankrupt Circle K Corporation who operated the site
22 as a convenience store and gasoline station. The underground
23 storage tanks used to store gasoline were removed by the
24 Circle K Corporation on or around July 1990. The present
25
26

1 owner, Kuk Jin Choung, purchased the site from George Renale
2 in November of 1990.

3 C. Previous Site Investigations

4 Geo Engineers and Glacier Environmental conducted tank
5 removal and partial site remediation at the direction of
6 Circle K Corporation. Tank removal was completed but site
7 remediation was not due to a filing of bankruptcy by the
8 Circle K Corporation. Two Geo Engineers' reports (#1780-001-
9 B04 and #1780-002-B04) document the previous work. These
10 reports indicate petroleum releases at the site.

11 VI. WORK TO BE PERFORMED

12 A. Scope of Work

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

15 1. Assess the extent and degree of contamination. This
16 includes evaluating existing information, and gathering
17 additional information if necessary.

18 2. Develop and recommend method(s) for additional
19 cleanup of soil and groundwater contamination if necessary.
20 Cleanup may involve excavation of contaminated soils or an
21 alternative treatment technology such as a vapor extraction
22 system, or a combination thereof. The extent of excavation
23 shall be the limits of contamination, or such other limits as
24 determined by Ecology in accordance with WAC 173-340. Ecology
25 shall coordinate treatment of the excavated soils. On-site oi

1 off-site treatment of the soils may prove impracticable, and
2 Ecology shall then coordinate proper disposal of the soil.
3 Alternative treatment technology may be employed if that
4 technology is determined to be the most suitable for the
5 situation, in the professional judgment of the designated
6 project coordinator (see Part VII of this document). Cleanup
7 shall continue until cleanup standards in accordance with WAC
8 173-340 Part VII are achieved. Ecology may determine that
9 cleanup requires groundwater treatment.

10 3. Conduct a remedial investigation to assess the
11 potential for on-site and off-site environmental and human
12 health impacts of identified contamination. If groundwater
13 contamination is found, a more extensive remedial investiga-
14 tion, including a groundwater study, and also a feasibility
15 study may be required to assess the extent of contamination
16 and propose methods of remediation.

17 4. Develop a Cleanup Action Plan as soon as possible
18 after the remedial investigation and, if necessary, the
19 feasibility study have been completed. Ensure the Cleanup
20 Action Plan is or has been properly implemented.

21 5. Document all observations, conditions, and results
22 in a final report with at least four copies, one for the
23 property owner and three for the Ecology site inspector.
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VII. DESIGNATED PROJECT COORDINATOR

The project coordinator for Ecology is:

Joe Hickey (206) 649-7202
Department of Ecology
Northwest Regional Office
3190 - 160th Avenue S.E.
Bellevue, WA 98008-5452

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

VIII. REIMBURSEMENT OF ECOLOGY'S COSTS

1. Ecology has determined that the Defendant is eligible for mixed funding. The Defendant agrees to reimburse Ecology for the costs Ecology incurs in remediating the release and/or threatened release of hazardous substances at the site, including future monitoring (if any), up to a maximum dollar amount of fifty thousand dollars (\$50,000) including interest if applicable. In the event Ecology incurs remedial action costs exceeding \$50,000, payment of such costs shall be satisfied by use of funds from the Toxics Control Account.

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

6 3. During the reimbursement period, the Defendant
7 agrees to make monthly payments of not less than three hundred
8 (\$300) dollars. The Defendant shall be notified in writing
9 when its obligation to reimburse Ecology under this Decree has
10 been satisfied.

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

15 5. Ecology's determination regarding mixed funding
16 applies only to the Defendant and is not transferable. In the
17 event the Defendant sells, assigns, or otherwise transfers any
18 or all interest in the site while this Decree is in effect,
19 the new owner may be liable for remedial action costs incurred
20 by Ecology at the site. If the Defendant sells, assigns, or
21 otherwise transfers its interest in the site while this Decree
22 is in effect, the remedial action costs incurred by Ecology up
23 to the date of such sale, assignment, or transfer shall,
24 subject to paragraph 1 above, become immediately due and
25 payable regardless of whether the payment period described in

26 **CONSENT DECREE**

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1 paragraph 3 above has commenced. Unless the immediate payment
2 required under this paragraph fully satisfies the Defendant's
3 obligation under Section VIII, paragraph 1 of this Decree, the
4 Defendant shall remain liable for payment of Ecology's future
5 remedial action costs at the site according to the terms of
6 this agreement.

7 6. The Defendant consents to the immediate filing of a
8 special lien in the amount of fifty thousand dollars (\$50,000)
9 on the property located at 2350 - 24th Avenue East, Seattle,
10 Washington to secure the Defendant's performance under this
11 Decree. Once the Defendant's obligation to reimburse Ecology
12 under this Decree has been satisfied, the Defendant may
13 request in writing that Ecology file a lien termination
14 statement with the court.

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

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CONSENT DECREE

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1 Foreclosure proceedings will be in accordance with all
2 applicable Washington State laws and regulations.

3 IX. ACCESS

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

8 X. TRANSFERENCE OF PROPERTY

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

17 B. Within 90 days of entry of this Decree, the
18 Defendant shall record a notice in the title records to that
19 portion of the property underlying the site over which
20 Defendant holds fee title. The notice shall state that a
21 Consent Decree entered in the above-captioned proceeding
22 imposes certain restrictions on the use and improvement of the
23 site, and that said restrictions run with the land. Within 30
24 days of filing the notice with the King County Auditor, the
25 Defendant shall forward a copy of the notice to Ecology.

1 XI. DISPUTE RESOLUTION

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

11 XII. AMENDMENT OF CONSENT DECREE

12 Any Amendment to this Decree must be in writing and
13 signed by the parties. Such amendment shall become effective
14 when entered by the court.

15 XIII. INDEMNIFICATION

16 The Defendant agrees to indemnify and save and hold the
17 State of Washington, its employees, and agents harmless from
18 any and all claims or causes of action for death or injuries
19 to persons or for loss or damage to property arising from or
20 on account of acts or omissions of the Defendant, its
21 officers, employees, agents, or contractors in entering into
22 and implementing this Decree; provided, however, that the
23 Defendant shall not indemnify the State of Washington nor save
24 nor hold its employees and agents harmless from any claims or
25 causes of action brought by third parties arising out of the

1 negligent acts or omissions of the State of Washington, or the
2 employees or agents of the state, in implementing the
3 activities pursuant to this Decree.

4 XIV. PUBLIC NOTICE AND PARTICIPATION

5 Ecology shall be the lead for public notice and
6 participation at the site. If requested, Ecology shall allow
7 the Defendant to review fact sheets, press releases, and
8 public notices prior to issuance.

9 XV. SATISFACTION OF THIS DECREE

10 The provisions of this Decree shall be deemed satisfied
11 upon the Defendant's reimbursement to Ecology of all
12 reasonable costs incurred by Ecology in performing remedial
13 action at the site.

14 XVI. EFFECTIVE DATE

15 This Decree is effective upon the date it is entered by
16 the court.

17 XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

24 If the court withholds or withdraws its consent, this
25 Decree shall be null and void at the option of any party and

26 **CONSENT DECREE**

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the accompanying complaint shall be dismissed without cause and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

Carol L. Fleskes

CAROL FLESKES, Program Manager
Hazardous Waste Cleanup
Washington State
Department of Ecology

2/19/92

Date

Choung K. Choung

KUK JIN CHOUNG
Owner and Operator
Circle K Station #1461

2-18-92

Date

E. Christina Beusch

E. CHRISTINA BEUSCH, WSBA #18226
Assistant Attorney General
Ecology Division
Washington State
Office of Attorney General

April 1, 1992

Date

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