

Ballard Mill?

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EX PARTE DEPARTMENT

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

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

CHAMPION INTERNATIONAL
CORPORATION, SALMON BAY
TERMINALS, INC., and COASTAL
TRANSPORTATION, INC.,

Defendants.

NO. 93-2 01448 1

CONSENT DECREE

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EXHIBITS

- Exhibit A Cleanup Action Plan (dated February, 1992)
- Exhibit B Engineering Design Document
- Exhibit C Site Map

INTRODUCTION

A. In entering into this Consent Decree ("Decree"), the mutual objective of the Washington State Department of Ecology ("Ecology"), Champion International Corporation, Salmon Bay Terminals, Inc., and Coastal Transportation, Inc. ("Defendants") is to provide for remedial action at a site where hazardous substances have been released. This Decree requires Defendants to undertake and implement a final cleanup plan for the upland portion of the Site. The Site is more fully described at Exhibit A.

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

C. In signing this Decree, Defendants agree to its entry, agree to be bound by its terms, and agree not to challenge Ecology's jurisdiction in any proceeding to enforce this Decree.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability that they may have with respect to matters alleged in the complaint.

E. This Decree is entered without prejudice to any existing or future claims, or causes of action among the

Defendants. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action. In signing this Decree, Defendants do not admit, and retain the right to controvert any of the factual or legal statements or determinations made herein. This Decree shall not be admissible in any judicial or administrative proceeding as proof of liability or an admission of any fact dealt with herein.

F. Defendants and Ecology retain the right to seek to recover response costs expended pursuant to this Decree from any other responsible persons.

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

I. JURISDICTION

A. This court has jurisdiction over the subject matter and over the parties pursuant to the Model Toxics Control Act ("MTCA"), Chapter 70.105D RCW. Venue is properly laid in King County, the location of the property at issue.

B. Authority is conferred upon the State of Washington Attorney General by RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice and hearing, Ecology finds that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with the cleanup standards under RCW 70.105D.030(2)(d). RCW 70.105D.040(4)(b) requires that such a

settlement be entered as a consent decree issued by a court of competent jurisdiction, after public notice and hearing.

C. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(8), of Ecology's determination that each defendant is a potentially liable person for the Site, and each defendant has been given notice of the release of hazardous substances at the Site.

D. Ecology has determined that past practices have given rise to a release of hazardous substances at the Ballard Mill Site (the "Site"). The Site is located at 4025 - 13th Avenue West, Seattle, Washington.

E. The actions to be taken pursuant to this Decree are necessary to protect the public health, welfare and the environment, and are consistent with requirements of the MTCA.

II. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories to this Decree ("Parties"), their successors and assigns. 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. Defendants agree 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 Defendants under this Decree. Defendants shall provide a copy of this Decree to each of their agents, including all contractors and

subcontractors retained to perform work contemplated by this Decree, and shall condition any contract for such work on compliance with this Decree.

III. DEFINITIONS

A. Consent Decree: Refers to this consent decree and all of the exhibits attached to the decree. All exhibits are integral and enforceable parts of this consent decree.

B. Days. Refer to calendar days, unless specified otherwise.

C. Defendants: Refers to Champion International Corporation, Salmon Bay Terminals, Inc., and Coastal Transportation, Inc.

D. Parties. Refers to the Washington State Department of Ecology, Champion International Corporation, Salmon Bay Terminals, Inc., and Coastal Transportation, Inc.

E. Notice of Completion. Refers to written notice by the Washington State Department of Ecology to the Defendants that the work designated as the cleanup action under the Consent Decree is considered completed.

F. Remedial Action: Same as RCW 70.105D.020(11).

G. Site: Refers to the former plywood mill property located south of Salmon Bay and the Lake Washington Ship Canal. The Site, which is described in more detail in Exhibit C to this Decree and which includes a detailed map and site diagram, consists of the area formerly operated by Champion International Corporation ("Champion") and the nearshore sediments, which are

located north of the mill area. The nearshore sediments are considered a separate operable unit from the remainder of the Site.

H. Unless otherwise specified, the definitions set forth in the Model Toxics Control Act, Ch. 70.105D RCW, shall control the meaning of the terms used in this Consent Decree.

IV. STATEMENT OF FACTS

Ecology makes the following findings of fact without any express or implied admissions by Defendants.

Site Location and Status:

A. The project area in this matter is known as the Ballard Mill property and is located in Seattle, Washington. The location and boundaries of the Site are depicted in Exhibit C to this Decree.

B. The property has been the site of plywood manufacturing for over 75 years. The property covers 13.7 acres, an estimated one-half of which is water or marginal shoreline. The exact shoreline boundary of the Site varies with seasonal water level fluctuation. Several buildings on the Site are supported by concrete foundations and pilings near or beyond the water line.

C. In 1905 and 1906 portions of the Seattle Tideland Property were sold by the Smith Cove Land Company to James Mullen. In 1909, two lots were sold to Queen City Lumber Company. After a series of transactions, in 1910, Queen City sold two lots to Gould-McMullen Lumber Company. In 1918, lots adjacent to 13th Avenue West were also sold to the Gould-McMullen

Lumber Company by the Oregon and Washington Railroad Company. In 1929, the Gould Lumber Company deeded all property to the Aircraft Plywood Corporation. U.S. Plywood of New York took over mortgages in 1937 and in 1952 the property was deeded to U.S. Plywood of Washington. In 1967, U.S. Plywood and Champion merged. The plywood mill ceased operations in January 1985.

D. In 1989, Salmon Bay Terminals, Inc. purchased the Ballard Mill Site. Salmon Bay Terminals, Inc., with its lessee Coastal Transportation, Inc., voluntarily assisted Champion in implementing a Remedial Action Order, including investigation and cleanup of the Ballard Mill site.

E. In the plywood manufacturing process, veneer was cut, dried, glued, pressed, trimmed, and sanded. Processes included debarking and peeling logs, cutting veneer, heating of the veneer by driers to remove the moisture, and gluing in steam presses. The glues used were ureaformaldehyde resins or phenolic resins. Leftover bark, sawdust, and trim pieces were burned in three boiler units to generate steam and electricity.

F. Known wastes generated at the facility through the years include normal wastes resulting from a plywood operation such as: wood product wastes; resin sludges and wastewater; fly ash and bottom slag from the burning of wood fuel; and residual paints, solvents, stains, and oils.

Previous Site Investigations:

G. From August 1985 through October 1989, Defendants, Parametrix, and Kennedy/Jenks/Chilton Consultants conducted a

series of environmental assessments and investigations of the site. These included: (1) Champion Property Environmental Audit (Parametrix 1985); (2) Champion International Preliminary Site Assessment (Parametrix 1987); (3) Supplemental Environmental Assessment, Ballard Mill, Seattle, Washington (Kennedy/Jenks/Chilton 1987); (4) Predesign Investigation, PCP Storage Area (Kennedy/Jenks/Chilton 1988); and (5) Remedial Alternative Evaluation, Glue Press Waste, Ballard Mill, Seattle, Washington (Kennedy/Jenks/Chilton 1988). As a result of the recommendations contained in these reports, defendants conducted a number of interim cleanup actions under the supervision of Ecology. These interim cleanup actions included removal of PCP-containing soils, removal of underground tanks and associated soils containing solvents and gasoline, and dredging and removal of some nearshore sediments.

H. Between October 1989 and March 1990, Defendants and Kennedy/Jenks/Chilton consultants conducted a Supplemental Remedial Investigation ("R/I"), Risk Assessment ("R/A"), and Feasibility Study ("F/S") at the Site. Data collected has been used to evaluate environmental conditions at the facility. Existing data is reported in the Kennedy/Jenks/Chilton Final Supplemental Remedial Investigation/Risk Assessment/Feasibility Study report dated August, 1991.

I. Data collected to date are sufficient to describe the nature and likely extent of hazardous substances present at the site. As of the date of the signing of this Decree no additional

remedial investigations appear necessary prior to completing remedial actions.

Conclusion:

J. Based on the facts set forth herein, Ecology has determined that the release or threat of release of hazardous substances from the Site requires remedial action to protect the public health and welfare and the environment. This Decree sets forth remedial measures necessary to protect public health, welfare and the environment and to clean up the Site in compliance with the cleanup standards under RCW 70.105D.

V. WORK TO BE PERFORMED

This Decree contains a program designed to protect the public health and welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site. This program is set forth in Exhibit A to this Decree, which is titled the Cleanup Action Plan ("CAP"). The Engineering Design Documents (Exhibit B) sets forth the work to be performed to accomplish required remedial action at the Site during the duration of this Decree. Exhibit B contains the schedule for implementing this work ("Schedule"). Exhibits A and B are integral and enforceable parts of this Decree, and the work to be performed pursuant to such Exhibits is consistent with all requirements of state law and regulations. The terms "Consent Decree" or "Decree" shall include the CAP and Engineering Design Document whenever used in this document.

Any changes to the work to be performed will be documented. Defendants or their representative will contact Ecology to propose any such changes. Initial contact and approval may be accomplished either verbally or in writing. Proposals for changes to the work to be performed must include justification for the changes proposed. If initial contact is verbal, both Defendants' request and Ecology's approval or disapproval must be documented in writing. Any disagreement shall be addressed through the dispute resolution procedures described in Section XVII of this Decree.

VI. DESIGNATED PROJECT COORDINATORS

On or before the entry of this Decree, Ecology and each Defendant shall designate a project coordinator. Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and Defendants 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 coordinators. The project coordinators may designate working level staff contacts for all or portions of the implementation of the remedial work required by this Decree.

Any Party may change its respective project coordinator. To the extent possible, written notification shall be given to the

other Parties, in writing, at least ten (10) calendar days prior to the change.

The project coordinator for Ecology is:

Brian Sato
Department of Ecology
Northwest Regional Office
3190 - 160th Avenue S.E.
Bellevue, Washington 98008-5452

The project coordinator for Champion International is:

Ralph Heinert
Champion International
952 East Spruce Street
Libby, Montana 59923

The project coordinator for Salmon Bay Terminals is:

Peter Strong
4025 - 13th Ave. West
Seattle, Washington 98119

The project coordinator for Coastal Transportation is:

Hugh Thompson
Coastal Transportation
4025 - 13th Avenue West
Seattle, Washington 98119

VII. PERFORMANCE

All response work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer, or equivalent, with experience and expertise in hazardous waste area investigation and cleanup. Defendants shall notify Ecology as to the identity of such engineer(s) or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

VIII. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, among other things: inspecting and copying records, operation logs, plans, specifications, engineering designs, files, photographs, documents, and other writings, including all sampling and monitoring data, and contracts related to the work being performed pursuant to this Decree; reviewing the progress in carrying out the terms of this Decree; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, video, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by Defendants. While Ecology reserves its right to enter and inspect the Site as set forth above, Ecology will, in most cases, provide 48-hour advance notice of any Site inspection. Upon request, Ecology shall split any samples taken during an inspection unless Defendants fail to make available a representative for the purpose of splitting samples. All Parties with access to the Site pursuant to this section shall comply with approved health and safety plans.

IX. SAMPLING, DATA REPORTING AND AVAILABILITY

With respect to the implementation of this Decree, Defendants shall make the quality-assured results of all sampling, laboratory reports, and/or test results generated by

them, or on their behalf, available to Ecology and shall submit these quality-assured results in progress reports submitted in accordance with Section X herein.

At the request of Ecology, Defendants shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Defendants pursuant to the implementation of this Decree. Defendants shall notify Ecology five (5) working days in advance of any scheduled sample collection activity and will give reasonable notice of unscheduled sampling activity. Without limitation on Ecology's rights under Section VIII, Ecology will provide the same five (5) day notice to Defendants and shall, upon request, allow split or duplicate samples to be taken by Defendants or their authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree.

X. PROGRESS REPORTS

Defendants shall submit to Ecology written monthly progress reports that describe the actions Defendants have taken during the previous month to implement the requirements of this Decree. The progress reports shall include a detailed statement of the manner and extent to which the requirements and time schedules set out in the Decree are being met. Progress reports shall also describe the activities scheduled to be taken during the next month. All progress reports shall be submitted by the tenth day of the month 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 by United States mail to Ecology's project coordinator.

XI. RETENTION OF RECORDS

Defendants shall preserve, during the pendency of this Decree and for ten (10) years from the date of issuance of the Notice of Completion described 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 a similar record retention requirement. Upon request of Ecology, Defendants shall make all nonprivileged, nonarchived records available to Ecology and allow access for review. All nonprivileged, archived records shall be made available to Ecology within a reasonable period of time. Ecology agrees, to the extent permitted by law, to maintain the confidentiality of any proprietary information requested.

XII. TRANSFER OF INTEREST IN PROPERTY

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

Prior to transfer of any legal or equitable interest in all or any portion of the Site, Salmon Bay Terminals shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the

property; and, at least thirty (30) days prior to any transfer, Salmon Bay Terminals shall notify Ecology of such transfer.

The restrictions, obligations, and benefits set forth in this Decree shall run with the land and shall be binding upon any and all persons who acquire any interest in any property included in the Site. Within thirty (30) calendar days of entry of this Decree by the Court, a copy of this Decree shall be recorded with the Auditor's Office, King County, Washington. A copy of the recorded notice shall be sent to Ecology's project manager.

Any deed title, or other instrument of conveyance regarding the Site shall contain a notice that the Site is subject to this Decree, setting forth the case number and court having jurisdiction herein. The notice shall notify any potential purchasers or lessees of property contained within the capped portion of the Site that:

A. Hazardous substances remain under the cap at the Site; and

B. Post-remedial action and use is restricted such that use of the property must never be allowed to disturb the integrity of the cap or any other component of any containment system, unless Ecology determines that such disturbance:

1. is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or

2. is necessary to reduce a threat to human health or the environment.

XIII. RESOLUTION OF DISPUTES

If a Defendant objects to any Ecology disapproval, proposed modification, or decision made pursuant to this Decree, Defendant shall notify Ecology in writing of its objections within fourteen (14) calendar days of receipt of such disapproval, proposed modification or decision. Thereafter, the parties shall confer in an effort to resolve the dispute. If agreement cannot be reached on the dispute within fourteen (14) calendar days after receipt by Ecology of such objections, Ecology shall promptly provide a written statement of its decision to Defendants.

If Ecology's final written decision is unacceptable to any Defendant, the Defendant has the right to submit the dispute to this court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. In the event a Defendant presents an issue to the court for review, the court shall review the action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious and render a decision based on such standard of review. Ecology and Defendants 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 any 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.

XIV. AMENDMENT OF CONSENT DECREE

This Decree may only be amended by order of the court or by a written stipulation among all the Parties that is entered by the court. Such amendment shall become effective upon entry by the court. Agreement to amend shall not be unreasonably withheld by any party to the Decree.

Defendants shall submit any request for an amendment to Ecology for approval. Ecology shall approve or disapprove the request within fifteen (15) working days after the request for amendment is received, or, if additional time is necessary to review the request for amendment, Ecology shall notify Defendants within fifteen (15) days whether an extension to the Schedule is granted during the pendency of Ecology's review of the proposed amendment. Reasons for any disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XIII of this Decree.

No guidance, suggestions, or comments by Ecology will be construed as relieving Defendants of their obligation to obtain formal approval as may be required by this Decree. No verbal communication by Ecology shall relieve Defendants of the obligation specified herein.

Ecology shall notify Defendants in writing of any Ecology proposed amendment and the basis for such proposal. Within fifteen (15) days of receipt of a proposed amendment, the Defendants shall comment in writing, and indicate their agreement or disagreement, and if they disagree, the rationale for that disagreement. If Defendants do not agree with those proposed amendments, the disagreement shall be addressed through the dispute resolution procedures described in Section XIII of this Decree.

XV. EXTENSION OF SCHEDULE

A. An extension of the Schedule shall be granted only when a request for an extension is submitted in a timely fashion and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. An extension shall only be granted for such period of time as is reasonable under the circumstances. It shall not be necessary to formally amend this Decree pursuant to Section XIV when a Schedule extension is granted.

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

1. Circumstances beyond the reasonable control and despite the due diligence of Defendants 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 Defendants;

2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, wave or water conditions, or other unavoidable casualty; or

3. Endangerment as described in Section XVI, however, neither increased costs of performance of the terms of the Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Defendants.

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

1. Delays in the issuance of a necessary permit that was timely applied for or, if necessary, to comply with permit conditions; or

2. Judicial review of the issuance, nonissuance, or reissuance of a necessary permit; or

3. Other circumstances that reasonably require an extension of more than 90 days; or

4. Endangerment as described in Section XVI; or

5. The need to protect the environment or public interest.

Ecology shall give Defendants written notice in a timely fashion of any extensions granted pursuant to the Decree.

XVI. ENDANGERMENT

In the event Ecology determines or concurs in a determination by another local, state or federal agency that activities implementing or in noncompliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Defendants to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the court for an order as appropriate.

During any stoppage of work under this section, the obligations of Defendants with respect to the work under this Decree that is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work that is stopped, shall be extended, pursuant to Section XV of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Defendants determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are endangering the people on the Site or in the surrounding area or are endangering the environment, Defendants may stop implementation of this Decree for such periods of time necessary for Ecology to evaluate the situation and determine whether Defendants should proceed with implementation of the

Decree or whether the work stoppage should be continued until the danger is abated. Defendants shall notify either Ecology field personnel "on-site or the Ecology project coordinator as soon as is possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of Defendants' analysis in reaching this determination. If Ecology disagrees with Defendants' determination, it may order Defendants to resume implementation of this Decree. If Ecology concurs in the work stoppage, Defendants' obligations shall be suspended and the time period for performance of that work, as well as the time period for any other work dependent upon the work that was stopped, shall be extended pursuant to Section XV of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to this clause shall be resolved through the dispute resolution procedures set forth in Section XIII.

XVII. OTHER ACTIONS

Ecology reserves its rights to issue orders and/or penalties pursuant to available statutory authority under the following circumstances:

1. Where Defendants fail to adhere to any requirement of this Decree, and after written notice of default, fail to come into compliance;

2. In the event or upon the discovery of a release or threatened release not addressed by this Decree that Defendants, after notice, fail to address;

3. Upon Ecology's determination that action beyond the terms of this Decree is necessary to abate an emergency situation that threatens the public health or welfare or the environment provided, however, that Ecology will first give Defendants notice and opportunity to perform such remedial action unless the threat is so immediate as to not permit the giving of notice;

4. Upon the occurrence or discovery of a situation beyond the scope of this Decree for which Ecology would be empowered to perform any remedial action or to issue an order and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the geographic Site described in Exhibit C and to those contaminants that Ecology knows to be at the Site when this Decree is entered; or

5. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the former Champion International Ballard Mill Site.

Ecology reserves the right to take any enforcement action whatsoever, including cost recovery action, against additional potentially liable persons.

XVIII. INDEMNIFICATION

Defendants agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Defendants, their officers, employees, agents, or contractors in entering into and implementing this Decree.

However, Defendants shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action brought by third parties arising out of the acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Decree.

XIX. COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by Defendants pursuant to this Decree shall be done in accordance with all applicable federal, state and local requirements, including requirements to obtain necessary permits.

XX. OVERSIGHT COSTS

Defendants agree to reimburse Ecology for its oversight costs in implementing this Decree. Such oversight costs shall be in the amount of Ecology's actual costs of direct activities, support costs of direct activities, and interest charges for delayed payments. Defendants and Ecology will consult on a quarterly basis with respect to the oversight costs incurred by Ecology in the prior quarter and the costs Ecology anticipates it

will incur in the following quarter, however, nothing herein shall be deemed to limit Ecology's discretion regarding appropriate oversight activities. Oversight costs shall be billed by Ecology and paid by Defendants on a quarterly basis. Any disputes regarding oversight costs shall be subject to dispute resolution pursuant to Section XIII hereof.

Defendants further agree to reimburse Ecology pursuant to the procedure set forth above, for any Ecology costs relating to the Site which were incurred prior to the entry of this Decree, in accordance with Order No. DE 89-N162, and which remain unpaid on the effective date of this Decree.

XXI. IMPLEMENTATION OF CLEANUP ACTION

If Ecology determines that Defendants have failed without good cause to implement the remedial action, Ecology may, after notice to Defendants, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Defendants' failure to comply with its obligations under this Decree, Ecology may seek to recover from Defendants its costs of doing such work to the extent Ecology is entitled to such cost recovery under state and federal law.

XXII. FIVE YEAR REVIEW

As remedial action continues at the Site, the parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of site monitoring as often as is necessary and appropriate under the circumstances.

At least every five years the parties shall review the status of the Site and the need, if any, of further remedial action at the Site. As a result of this review, Ecology may request further remedial action at the Site pursuant to Section XVII of this Decree.

XXIII. RESERVATION OF RIGHTS

By agreeing to the entry of this Decree, Defendants and Ecology agree to abide by its terms. While the parties believe that the recitals contained in this Decree are accurate, the execution and performance of the Decree does not constitute an admission by any Defendant of any fact or liability for any purpose other than as a basis for the entry of this Decree. Defendants' performance under the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever including, but not limited to, the defenses enumerated under RCW 70.105 and RCW 70.105D.040 that may be asserted in the event of further administrative proceedings or litigation about or relating to the Site, except for actions to enforce this Decree. Nor is the execution or the performance of the Decree an agreement by Defendants to take any action at the Site other than that described in this Decree.

Nothing in this Decree, except as provided for in Section XXVIII, shall constitute a release of any claim, cause of action, or demand that Defendants, jointly or singly, may have against any person, entity, governmental entity, firm, partnership, or corporation ("person") for any liability arising out of or

relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substance, pollutant, or contaminant, or any hazardous solid waste, found at, taken to, or taken from the Site or to the ownership and/or operation of the Site.

Nothing herein is intended by any of the parties to create any private cause of action in favor of any person not a Defendant or to release any person not a Defendant from any legal liability, duty, or responsibility.

XXIV. COMMUNITY RELATIONS

Ecology shall maintain the responsibility for community relations regarding matters covered by this Decree at the Site, and shall provide notice to Defendants at least forty-eight (48) hours in advance of giving any written or formal notices to the public. Advance notice is not required for contemporaneous responses to questions from the public. Defendants shall cooperate with Ecology and shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans and the completion of engineering design. Ecology will finalize (include editing if necessary) and distribute such fact sheets and prepare and distribute notices of Ecology's presentations and meetings;

B. Notify Ecology's project coordinator prior to the issuance of all press releases and fact sheets, and before major

meetings with interested members of the public and local government;

C. Participate in public presentations on the progress of remedial action at the Site. Defendants may participate by attending public meetings to assist in answering questions or may act as a presenter;

D. In cooperation with Ecology, arrange and/or continue an information repository located at Ecology's Northwest Regional Office in Bellevue. At a minimum, copies of all public notices, fact sheets, and press releases, remedial action plans, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in this repository.

XXV. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in this Decree shall be maintained and continued until Defendants receive a written Notice of Completion from Ecology that the remedial action plan has been satisfactorily completed, or until the court determines that the requirements of the Decree have been completed.

XXVI. COMPLETION AND ACCEPTANCE OF CLEANUP WORK

A. Defendants may request that Ecology make a final inspection upon completion of the work as described in Exhibit A. Ecology shall promptly inspect the work to determine if such work has been completed in accordance with the plans. The inspection

shall occur within thirty (30) days of the request unless the parties agree to a later date.

B. Ecology shall notify Defendants in writing within fifteen (15) days of the initial inspection that the work has been satisfactorily completed or shall specify any corrective work it believes to be needed. Defendants shall notify Ecology of the completion of any necessary corrective work. Ecology shall reinspect if it deems necessary within ten (10) days of the notification from Defendants.

C. This procedure shall be utilized in combination with the dispute resolution procedures if necessary until it has been determined that the work has been satisfactorily completed. Within ten (10) days of determining the work has been satisfactorily completed, Ecology shall issue a written Notice of Completion to Defendants.

XXVII. COVENANT NOT TO SUE

A. General.

Ecology has determined that Defendants are eligible for a Covenant Not to Sue from the State consistent with RCW 70.105D.040(4)(c). Consequently, the State covenants not to assert claims against Defendants for the release or threatened release of hazardous substances covered by the terms of the Decree; and Defendants covenant to be responsible for carrying out the terms of this Decree, including performing the remedial action described in Exhibit A according to the schedule in Exhibit B. The Covenant Not to Sue shall apply to Defendants and

successors in interest who assume obligations under this Decree pursuant to Section XII.

B. Covenant.

In consideration of Defendants' performance of the terms and conditions of this Decree and pursuant to the limitations in RCW 70.105D.040(4)(c), Ecology hereby covenants not to sue, not to execute judgment nor take administrative, civil, or judicial action against Defendants, or their officers, directors, employees, or agents for any release or threat of release of hazardous substances covered by the terms of the Decree. This Covenant Not to Sue shall not limit the State from taking other actions authorized under Section XVII of this Decree.

C. Condition Precedent.

This covenant is conditioned upon satisfactory performance of the terms of this Decree.

D. Reopeners.

Pursuant to RCW 70.105D.040(4)(c), the Covenant Not to Sue set forth above is subject to the following reopener:

1. In the event Defendants fail to comply with the terms of this Decree; or
2. In the event factors not known at the time of entry of the Decree are discovered and present a previously unknown threat to human health or the environment and Defendants cannot demonstrate that the remedy will adequately address the newly discovered factors.

E. Applicability.

The Covenant Not to Sue set forth above shall have no applicability whatsoever to:

1. Criminal liability; or
2. Liability for damages to natural resources.

XXVIII. CLAIMS AGAINST THE STATE

Defendant hereby agrees that it will not seek to recover any costs accrued in implementing this Decree from the State of Washington or any of its agencies and, further, that the Defendants will make no claim against the state toxics control account or any local toxics control account for any costs incurred in implementing this Decree.

XXIX. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the court. This Consent Decree supersedes Order No. DE 89-162.

XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

If the court withholds or withdraws its consent, this Decree shall be null and void at the option of any Party and the accompanying Complaint shall be dismissed without costs and

without prejudice. In such event, no Party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

By Carol L. Fleskes ^{MSG} 12/11/92
~~Carol L. Fleskes~~ ~~Michael J. Gallagher~~ Date
Toxics Cleanup Program *Manager*
~~Section Supervisor, NWRC~~
Washington State
Department of Ecology

STATE OF WASHINGTON,
ATTORNEY GENERAL'S OFFICE

By E. Christina Beusch 1/4/93
E. Christina Beusch Date
Assistant Attorney General

CHAMPION INTERNATIONAL, CORPORATION

By James W. Caraway 11/11/92
James Caraway Date
Senior Manager, Environmental
Affairs

SALMON BAY TERMINALS, INC.

By Peter Strong Pres. October 30, 1992
Peter Strong Date

COASTAL TRANSPORTATION, INC.

By Ross A. Macfarlane 10/29/92
Ross A. Macfarlane Date
Attorney