

ATTORNEY GENERAL'S OFFICE
Ecology Division

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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
EARLE M. JORGENSEN CO.,)
DENNIS F. and)
SHIRLEY A. BECKWITH, and)
NORTHWEST SLAG PRODUCTS,)
INC.,)
)
Defendants.)

No. 95-2-15301-1
CONSENT DECREE

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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), the Earle M. Jorgensen Company, Dennis F. and Shirley
5 A. Beckwith and Northwest Slag Products, Inc., (Defendants) is
6 to provide for remedial action at a facility where there has
7 been a release or threatened release of hazardous substances.
8 This Decree requires the Defendants to undertake the following
9 remedial action(s):

10 Implement the Final Cleanup Action Plan (CAP), dated
11 July 5, 1994, for the "Slag Disposal/Beckwith Property" site
12 (Site). (Exhibit B to this Decree.) Ecology has determined
13 that these actions are necessary to protect public health and
14 the environment.

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

23 C. In signing this Decree, Defendants agree to its entry
24 and agree to be bound by its terms.

25 D. By entering into this Decree, the Parties do not
26 intend to discharge nonsettling persons from any liability they

1 may have with respect to matters alleged in the Complaint. Th
2 Parties retain the right to seek reimbursement, in whole or in
3 part, from any liable persons for sums expended under this
4 Decree.

5 E. This Decree shall not be construed as proof of
6 liability or responsibility for any releases of hazardous
7 substances or cost for remedial action nor an admission of any
8 facts, and Defendants deny all such liability; provided,
9 however, that the Defendants shall not challenge the
10 jurisdiction of Ecology in any proceeding to enforce this
11 Decree.

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

15 II. JURISDICTION

16 A. This Court has jurisdiction over the subject matter
17 and over the Parties pursuant to Chapter 70.105D RCW, the Model
18 Toxics Control Act (MTCA). Venue is proper in King County
19 pursuant to RCW 70.105D.050(5)(b).

20 B. Authority is conferred upon the Washington State
21 Attorney General by RCW 70.105D.040(4)(a) to agree to a
22 settlement with any potentially liable person if, after public
23 notice and hearing, Ecology finds the proposed settlement would
24 lead to a more expeditious cleanup of hazardous substances. RCW
25 70.105D.040(4)(b) requires that such a settlement be entered as
26 a Consent Decree issued by a court of competent jurisdiction.

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

4 D. Ecology has given notice to Defendants, (except
5 Northwest Slag Products, Inc.), as set forth in RCW
6 70.105D.020(8), of Ecology's determination that the Defendants
7 are potentially liable persons for the Site and that there has
8 been a release or threatened release of hazardous substances at
9 the Site. By signing this Decree, Northwest Slag Products, Inc.
10 accepts its status as a potentially liable person for the Site
11 and waives its opportunity for any other notice and comment
12 regarding its PLP status.

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

16 F. Defendants have agreed to undertake the actions
17 specified in this Decree and consent to the entry of this Decree
18 under the MTCA.

19 III. PARTIES BOUND

20 This Decree shall apply to and be binding upon the
21 signatories to this Decree. The undersigned Party or
22 representative of each Party, as the case may be, hereby
23 certifies that he or she is fully authorized to enter into this
24 Decree and to execute and legally bind such Party to comply with
25 the Decree. Defendants agree to undertake all actions required
26 by the terms and conditions of this Decree and not to contest

1 state jurisdiction regarding this Decree. No change in
2 corporate status or ownership of the Site shall alter the
3 responsibility of the Defendants under this Decree. Defendants
4 shall provide a copy of this Decree to all agents, contractors
5 and subcontractors retained to perform work required by this
6 Decree and shall ensure that all work undertaken by such
7 contractors and subcontractors will be in compliance with this
8 Decree.

9 IV. DEFINITIONS

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

12 A. Consent Decree or Decree: Refers to this Consent
13 Decree, including each of the exhibits to the Decree. All
14 exhibits are integral and enforceable parts of this Consent
15 Decree. The Decree and the exhibits are intended to be read
16 together and construed in a manner to avoid conflict. In the
17 event of a conflict between the Decree and any exhibits, the
18 Decree shall control.

19 B. Contamination: Refers to the hazardous substances
20 that have come to be located at the Site.

21 C. Defendants: Refers to the Earle M. Jorgensen Co.
22 (hereafter Jorgensen) whose address is 3050 East Birch Street,
23 Brea, California 92621, Dennis F. and Shirley A. Beckwith whose
24 address is 10860 S.E. 196th Street, Renton, Washington 98058,
25 and Northwest Slag Products, Inc. (now known as Cascade Corridor
26 Development, Inc.), whose address is 10860 S.E. 196th Street,

1 Renton, Washington 98058. (Dennis F. and Shirley A. Beckwith
2 and Northwest Slag Products, Inc., are hereafter collectively
3 referred to as "Beckwiths".)

4 D. Parties: Refers to the Washington State Department of
5 Ecology (Ecology), Jorgensen and Beckwiths.

6 E. Site: The Site, referred to as Slag Disposal/Beckwith
7 Property, is located in Kent, Washington and is bordered by
8 South 218th Street to the north, 88th Avenue South to the west,
9 a steep embankment to the east and a wooded area to the south.
10 The Site is more particularly described in Exhibit A to this
11 Decree, which is a detailed site diagram and a legal description
12 of the Site.

13 F. "Successors in Interest to the Site" refers to any
14 person who acquires an interest in the Site through purchase,
15 lease, assignment, or otherwise, and who becomes a party to this
16 Decree as provided in sections XIII and XIV.

17 V. STATEMENT OF FACTS

18 Ecology makes the following findings of fact, but the
19 Defendants neither expressly nor impliedly admit the same:

20 1. The "Slag Disposal/Beckwith Property" Site/facility is
21 located in Township 22 North and Range 4 East,
22 section 7 (USGS 1973). The Site is located in Kent,
23 King County, Washington and is bordered by South 218th
24 Street to the north, 88th Avenue South to the west, a
25 steep embankment to the east and a wooded area to the
26 south. To the west of 88th Avenue South is Route 167.

1 2. Mr. Dennis F. Beckwith and Ms. Shirley A. Beckwith
2 were the owners of the Site from October 22, 1984
3 until February 10, 1995. Jorgensen became the owner
4 of the Site as of February 10, 1995 and is the current
5 owner of the Site.

6 3. Jorgensen is a company that generated secondary/
7 recycled steel slag waste materials from 1985 to 1989.
8 These secondary/recycled steel slag waste materials
9 were used as fill at the Site by the Beckwiths as part
10 of a plan to develop the Site. Slag waste materials
11 generated by Northwest Steel Rolling Mills were also
12 used as fill at the Site. A report prepared by Hart
13 Crowser discussed in Section V(5) below states:

14 During the period of 1984 to 1986, Northwest
15 Steel Rolling Mills disposed of about 100
16 cubic yards of large slag skulls in the
17 southern portion of the site at the maximum
depth of the fill. This material accounts
for less than 5 percent of the total slag on
the site.

18 4. The Site is nearly level with a slight downgrade slope
19 to the north. The ground in the slag fill area is
20 hard and compacted and has very little vegetative
21 growth. The Site is bordered on the west and east by
22 ditches. There is a steep embankment, which is
23 approximately 50 feet high and heavily vegetated,
24 rising from the east ditch. Water seeps from the
25 embankment and is collected in the ditch. Seep water
26 and surface runoff water are directed towards a

1 retention pond located at the north end of the Site.
2 Discharge from the retention pond flows through a
3 culvert pipe under South 218th Street about 800 feet
4 to Springbrook Creek and ditches adjacent to Route
5 167. Residential properties are located to the east
6 and northeast of the Site.

- 7 5. In July 1989, the Beckwiths and Jorgensen contracted
8 with Hart Crowser, Inc. of Seattle, Washington to
9 perform a slag/soil, sediment, and surface water
10 assessment of the Site. In summary, the Hart Crowser
11 report found that the slag fill material had "no
12 extractable metals [using EPTox test] present above
13 regulated hazardous waste levels" and the on-site pond
14 water had "no priority pollutant metals in excess of
15 DWS or Freshwater WQC."
16 6. On April 17, 1990, after receiving a report from the
17 City of Kent's Operations Department, the Municipality
18 of Metropolitan Seattle (METRO) collected surface
19 water samples at the Site. The surface water sample
20 collected had a pH of 9.5 and failed Microtox tests.
21 The sample was pH adjusted to neutrality (pH 7) and
22 still failed. METRO concluded that the toxicity
23 inherent in the sample is not pH-dependent nor
24 mediated; and therefore, the sample should be regarded
25 as toxic. On April 24, 1990, the City of Kent issued
26 a stop work order at the Site and stopped processing

1 the Beckwiths' permit to build pending further study
2 of the Site soils.

3 7. On April 18, 1990, METRO reported the Site to
4 Ecology's Toxics Cleanup Program at the Northwest
5 Regional Office (TCP-NWRO).

6 8. On April 24, 1990, site inspectors from the TCP-NWRO
7 collected additional surface water and slag and
8 sediment samples at the Site. One slurry or water
9 sample had a field pH of 12. Formation of crystals
10 had occurred in some areas of the on-site ditches and
11 retention pond. Laboratory results revealed 2,000 to
12 3,000 ppm of total chromium in the slag and sediment,
13 and 0.03 ppm of total chromium, lead, and copper in
14 the surface water. Follow-up investigations and
15 sampling were recommended. (Reference: Ecology
16 Inspection Report dated 4-24-90.)

17 9. On July 23, 1990, the Beckwiths were notified by TCP
18 that, as a Site which is "known or suspected to be
19 contaminated," the Site had been listed in Ecology's
20 Site Management Information System (SMIS).

21 10. Pursuant to Contract No. C0089007, Ecology and
22 Environment, Inc. (E & E) performed a Site Hazardous
23 Assessment (SHA) of the subject Site summarized in a
24 report dated January 23, 1991.

25 11. The SHA process, in general, evaluates actual or
26 potential environmental or public health hazards at

1 the particular site to generate sufficient information
2 for Ecology to determine, if deemed necessary, the
3 hazard ranking of the Site using the Washington
4 Ranking Method (WARM). The SHA process does not
5 include extensive or complete site characterization,
6 contamination fate determination, or quantitative risk
7 assessment.

8 12. The SHA results for the six slag fill subsurface
9 samples show metal concentrations substantially higher
10 than background for most metal analytes. Metal
11 samples for arsenic, antimony, beryllium, and nickel
12 exceeded current 1991 Ecology cleanup standards for
13 soil according to Method B (WAC 173-340-740).

14 13. Sediment sample results indicate that contamination
15 from the slag fill has migrated to the sediments in
16 the east ditch on the Site. The on-site sediment
17 results show increasing metals concentrations in the
18 downgradient ditch locations and in the pond compared
19 to upgradient locations.

20 14. All surface water sample concentrations collected
21 during the SHA were less than background. The pH
22 values rose from 8.2 in the seep water to between 11.1
23 and 12.0 in the ditch water.

24 15. The reported results of the SHA indicated slag,
25 surface water, and shallow sediment contamination. No
26 groundwater data was collected as part of the SHA.

- 1 16. There is no evidence that contamination has moved
2 off-site in six years since filling began.
- 3 17. SECOR International, Inc. (formerly SEACOR), of
4 Bellevue, Washington, performed a Focused Remedial
5 Investigation/Feasibility Study (RI/FS) under an
6 Agreed Order. The Order, No. DE 91TC-N250, and dated
7 February 3, 1992, was executed by Jorgensen and
8 Dennis F. Beckwith. The RI/FS was performed pursuant
9 to the requirements set forth in the Model Toxics
10 Control Act cleanup regulations (MTCA). The RI/FS
11 sought to more fully characterize environmental media
12 at the Site including the slag, underlying native
13 soils, groundwater, surface water, and sediment. The
14 RI/FS also defined applicable or relevant and
15 appropriate requirements (ARAR's) and identified
16 feasible remedial alternatives.
- 17 18. The RI/FS established that the chemical parameters of
18 potential concern in the slag are pH, antimony,
19 beryllium, nickel, and arsenic. Average total metal
20 concentrations of the slag are below MTCA soil cleanup
21 criteria and average slag pH values are below State of
22 Washington corrosive dangerous waste criterion.
- 23 19. Secondary steel slag operations produced oxidizing and
24 reducing slag that commonly contains calcium oxide
25 (commonly called lime). Discrete sampling of each of
26 these two types of slag showed they contained simil

1 concentrations of metals. The toxicity
2 characteristics leaching procedure (TCLP) was
3 conducted for metals on all slag samples obtained in
4 the remedial investigation. Leachate from all
5 remedial investigation samples passed the TCLP
6 criteria. Slag samples characterized in the SHA by
7 E&E passed the TCLP criteria and also passed fish
8 bioassay toxicity characteristic criteria. Therefore,
9 the slag has not been designated a state dangerous
10 waste.

11 20. Native soils underlying the portion of the Site filled
12 with slag have not been impacted by pH or metals.
13 Combined with the TCLP results, these results attests
14 to the insoluble nature of metallic constituents in
15 the slag.

16 21. Precipitation infiltration, surface water recharge
17 from the east ditch, and subsurface recharge have
18 created a perched saturated zone within the slag atop
19 the slag-native soil interface. Native soils do not
20 appear to be saturated. The indicated direction of
21 groundwater flow in the perched zone is to the
22 northwest at an estimated gradient of 0.03 foot per
23 foot (ft/ft). Two rounds of groundwater sampling
24 indicated that the pH of the perched groundwater
25 exceeds State of Washington groundwater quality
26 standards. No exceedance of MTCA Method B groundwater

1 cleanup values was indicated. The only chemical
2 parameter of concern in the perched saturated zone is
3 pH, but the neutral native soils underlying the slag
4 suggest that deeper impacts have not occurred.

5 22. The closest registered well to the Site is
6 approximately 750 feet to the west at Kent Nursery and
7 was closed in 1990 (Washington State Department of
8 Ecology, 1985). This well was completed to a depth of
9 380 feet. Three municipal supply wells owned by the
10 City of Kent are within one-half mile of the Site, and
11 all are over 350 feet deep. Given the localized
12 nature of perched groundwater at the Site and the
13 absence of impacts to underlying native soils, no
14 public health threats to surrounding wells were
15 identified.

16 23. Slag is present in the east ditch. This slag is
17 transported in the east ditch as bedload and suspended
18 load to the retention pond. The bedload sediment
19 represents a thin veneer within the ditch and the
20 overall transported volume is low due to the low flow
21 velocity. While the retention pond reduces the amount
22 of slag that may be transported off-site through the
23 culverts, some slag may have migrated off-site. The
24 limit of off-site transport is reached where channeled
25 flow diminishes 50 feet north of the Site.
26

- 1 24. Unfiltered surface water samples were obtained from
2 five stations that, for comparative purposes, were
3 similarly located to those established in the SHA
4 (Ecology and Environment, 1991). Three stations were
5 located in the drainage ditch 50 feet downgradient of
6 the Site. Two rounds of surface water sampling were
7 conducted, with the second round of sampling conducted
8 during a precipitation event. No MTCA Method B
9 surface water cleanup values were exceeded. However,
10 pH is a chemical parameter of potential concern in
11 surface water due to exceedances of the State of
12 Washington Surface Water Quality Criteria.
- 13 25. In addition to the MTCA regulations, the primary ARARs
14 for the Site are the State of Washington Dangerous
15 Waste Regulations, ch. 173-303 Washington
16 Administrative Code (WAC); Water Quality Standards for
17 Groundwaters of the State of Washington, ch. 173-200
18 WAC; and Surface Water Standards for the State of
19 Washington, ch. 173-201A WAC.
- 20 26. The potential human exposure pathways were evaluated
21 for the chemical parameters of potential concern at
22 the Site. The main routes of exposure to the slag are
23 considered to be ingestion, inhalation, and dermal
24 contact. Routes of lesser importance include
25 ingestion or dermal contact with surface water and
26 ingestion of groundwater.

1 27. Slag-related Superfund Records of Decision were
2 researched to identify U.S. Environmental Protection
3 Agency (EPA) approved remedial alternatives for slag
4 sites. This information proved to be of limited use
5 since all the Superfund slag sites involved primary
6 smelter slag, rather than secondary steel slag. No
7 secondary steel slag Superfund sites were identified.
8 However, this information did enable an initial
9 screening of remedial alternatives.

10 28. Data collected to date are sufficient to describe the
11 nature and likely extent of hazardous substances
12 present at the Site. As of the date of the signing of
13 this Decree no additional remedial investigations
14 appear necessary prior to completing remedial cleanup
15 actions at the Site.

16 29. Ecology has issued the Final Cleanup Action Plan
17 (CAP). The CAP was issued for public notice and
18 comment pursuant to MTCA. Following a responsiveness
19 summary, the CAP was issued in its present and final
20 form on July 5, 1994. This CAP sets forth the
21 functional requirements for cleanup of the affected
22 environmental media at the Site.

23 VI. WORK TO BE PERFORMED

24 This Decree contains a program designed to protect public
25 health, welfare and the environment from the known release, or
26

1 threatened release, of hazardous substances or contaminants at,
2 on, or from the Site.

3 A. This program is set forth in Exhibit B to this Decree,
4 which is titled Final Cleanup Action Plan (CAP). Exhibit B is
5 an integral and enforceable part of this Decree, and the work to
6 be performed pursuant to such Exhibit is consistent with all
7 requirements of state law and regulations. The terms "Consent
8 Decree" or "Decree" shall include the CAP whenever used in this
9 document.

10 B. A draft engineering design report describing in detail
11 the necessary design for the proposed cleanup action plan shall
12 be developed and submitted to Ecology for review and approval
13 within 60 days of the effective date of this Decree. In
14 accordance with WAC 173-340-400(4)(a)(vi), a schedule for final
15 design and construction shall be included in the engineering
16 design report. During this 60-day period, it is anticipated by
17 the Parties that Jorgensen will meet with the City of Kent to
18 discuss the City of Kent's interest in purchasing a portion of
19 the Site. If an agreement is reached with the City of Kent, or
20 if progress is being made towards such an agreement, the City of
21 Kent's intended land use will be incorporated into the
22 engineering design document as anticipated by Section 5.1 of the
23 CAP. If the City of Kent's intended land use requires
24 modification to the CAP, such proposed modifications shall be
25 subject to review and approval by Ecology and if any such

26

1 modifications are substantial, an additional public comment
2 period may be required.

3 C. If the City of Kent agrees to purchase a portion of
4 the Site and if implementation of the CAP involves removing all
5 slag from the portion of the Site acquired by Kent, at the
6 request of Jorgensen, Ecology will redefine the Slag
7 Disposal/Beckwith Site as not including the portion of the
8 property acquired by Kent (the "City of Kent Parcel") if
9 sampling confirms that: (i) metals in the soil on the City of
10 Kent Parcel are at or below cleanup levels approved by Ecology
11 (which cleanup levels shall be no lower than Method A or
12 Method B cleanup levels, as applicable, pursuant to the Model
13 Toxics Control Act, WAC 173-340, Part VII); (ii) pH in the
14 surface water and groundwater at the City of Kent Parcel is
15 between 6.5 and 8.5, pursuant to the Water Quality Standards for
16 Surface Waters of the State of Washington, WAC 173-201A, and the
17 Water Quality Standards for Ground Waters of the State of
18 Washington, WAC 173-200; and (iii) the pH of the soil, when the
19 soil is mixed with an equal weight of water and tested pursuant
20 to the Washington Dangerous Waste Regulations, WAC 173-303-090,
21 is greater than two or less than 12.5. The sampling period and
22 frequency for confirming compliance with surface water and
23 groundwater requirements of this paragraph shall be the same as
24 required by paragraph VI.E.

25 Once such a demonstration has been made, Jorgensen may
26 submit to Ecology new legal descriptions and site diagrams (f

1 each of the two parcels). Upon receipt of the revised site
2 descriptions, the "Site" for purposes of this Decree shall not
3 include the City of Kent Parcel, Ecology will revise all lists
4 identifying contaminated sites to reflect that the City of Kent
5 Parcel is no longer part of the "Slag Disposal/Beckwith
6 Property" Site and the Beckwiths or Jorgensen may record an
7 amended Memorandum of Consent Decree regarding the Site which
8 reflects the changed site definition.

9 D. The final approved engineering design report will
10 include programs for surface and groundwater monitoring. It is
11 anticipated that such programs will include plans for
12 determining when the frequency of monitoring may be changed in
13 light of monitoring results. At the conclusion of the
14 particular phases of monitoring called for as part of the
15 monitoring program, Ecology will provide written notice to the
16 Defendants that the particular phase of monitoring has been
17 completed.

18 E. After a quarterly monitoring report establishes the pH
19 of surface water and groundwater downgradient of the slag
20 deposit on the Site is between 6.5 and 8.5, pursuant to the
21 Water Quality Standards for Surface Waters of the State of
22 Washington, WAC 173-201A and Water Quality Standards for Ground
23 Waters of the State of Washington, WAC 173-200, Defendants shall
24 continue to conduct quarterly surface and groundwater monitoring
25 for a two-year period. At the conclusion of the two-year
26 period, provided that there has been no failure to meet the

1 approved cleanup levels, Ecology shall deliver written
2 notification to Defendants pursuant to Section VI(D) that
3 Defendants have satisfactorily completed the surface and
4 groundwater monitoring requirements of this Decree.

5 F. Defendants agree not to perform any remedial actions
6 outside the scope of this Decree unless the Parties agree to
7 amend the scope of work to cover these actions. All work
8 conducted under this Decree shall be done in accordance with
9 ch. 173-340 WAC unless otherwise provided herein.

10 VII. DESIGNATED PROJECT COORDINATORS; PARTY REPRESENTATIVE

11 The project coordinator for Ecology is:

12 Brian Sato
13 Department of Ecology
14 Northwest Regional Office
15 3190 - 16th Avenue SE
16 Mail Stop: NB-81
17 Bellevue, WA 98008-5452
18 (206) 649-7265

16 The project coordinator for Defendants is:

17 Bert Hyde, P.G.
18 Project Manager
19 Secor International, Inc.
20 11040 Main Street, Suite 240
21 Bellevue, WA 98004-6320
22 (206) 646-0283

21 Each project coordinator shall be responsible for
22 overseeing the implementation of this Decree. The Ecology
23 project coordinator will be Ecology's designated representative
24 at the Site. To the maximum extent possible, communications
25 between Ecology and the Defendants and all documents, including
26 reports, approvals, and other correspondence concerning the
activities performed pursuant to the terms and conditions of

1 this Decree, shall be directed through the project coordinators,
2 with copies provided to the Party Representative identified
3 below. The project coordinators may designate, in writing,
4 working level staff contacts for all or portions of the
5 implementation of the remedial work required by this Decree.
6 The project coordinators may agree to minor modifications to the
7 work to be performed without formal amendments to this Decree.
8 Minor modifications will be documented in writing by Ecology.

9 The Party Representative for the Beckwiths is:

10 Mr. Dennis F. Beckwith
11 10860 Southeast 196th Street
12 Renton, WA 98055
(206) 859-9165

13 The Party Representative is not a project coordinator;
14 however, the Party Representative shall be provided with copies
15 of all written materials generated pursuant to this Decree.

16 Any Party may change its respective project coordinator or
17 Party Representative. Written notification shall be given to
18 the other parties at least ten (10) calendar days prior to the
19 change.

20 VIII. PERFORMANCE

21 All work performed pursuant to this Decree shall be under
22 the direction and supervision, as necessary, of a professional
23 engineer or hydrogeologist, or equivalent, with experience and
24 expertise in hazardous waste site investigation and cleanup.

25 Any construction work must be under the supervision of a
26 professional engineer. Defendants shall notify Ecology in
writing as to the identity of such engineer(s) or

1 hydrogeologist(s), or others, and of any contractors and
2 subcontractors to be used in carrying out the terms of this
3 Decree, in advance of their involvement at the Site.

4 IX. ACCESS

5 Ecology or any Ecology representatives authorized by
6 Ecology's Project Manager shall have the authority to enter and
7 freely move about all property at the Site at all reasonable
8 times for the purposes of, inter alia: inspecting records,
9 operation logs, and contracts related to the work being
10 performed pursuant to this Decree; reviewing Defendants'
11 progress in carrying out the terms of this Decree; conducting
12 such tests or collecting such samples as Ecology may deem
13 necessary; using a camera, sound recording, or other documentary
14 type equipment to record work done pursuant to this Decree; and
15 verifying the data submitted to Ecology by the Defendants.
16 Whenever Ecology shall conduct tests, collect samples, take
17 photographs, make recordings, or other documentaries, Ecology
18 shall promptly provide Defendants with the opportunity to take
19 split samples and shall also provide Defendants with complete
20 copies of all such documentaries. All persons with access to
21 the Site pursuant to this paragraph shall comply with approved
22 health and safety plans. Failure by any person to comply with
23 approved health and safety plans shall be grounds for immediate
24 removal from the Site. Consistent with Ecology's
25 responsibilities under state and federal law, Ecology, and any
26 persons acting for it, shall use reasonable efforts to minimi

1 any interference and use reasonable efforts not to unreasonably
2 interfere with the operations of the Defendants or the
3 Successors in Interest to the Site by such entry.

4 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

5 A. With respect to the implementation of this Decree,
6 Defendants and Ecology each shall have access to information and
7 data generated by or on behalf of the other in carrying out this
8 Decree. The Parties intend to share information developed in
9 implementing this Decree. Defendants shall submit all sampling
10 laboratory results in accordance with Section XI of this Decree.

11 B. If requested by Ecology, Defendants shall allow split
12 or duplicate samples to be taken by Ecology and/or their
13 authorized representatives of any samples collected by
14 Defendants pursuant to the implementation of this Decree.
15 Defendants shall notify Ecology seven (7) days in advance of any
16 sample collection or work activity at the Site. Ecology shall,
17 upon request, allow split or duplicate samples to be taken by
18 Defendants or their authorized representatives of any samples
19 collected by Ecology pursuant to the implementation of this
20 Decree. Without limitation on Ecology's rights under Section
21 IX, Ecology shall notify Defendants prior to any sample
22 collection activity.

23 XI. PROGRESS REPORTS

24 A. During the period in which grading, placement of
25 vegetation over the slag area, construction of a surface water
26 and groundwater drainage system, and other similar remedial work

1 is being conducted on the Site, and for one quarter after such
2 on-site work has been completed, Defendants shall submit to
3 Ecology written monthly progress reports which describe the
4 actions taken during the previous month to implement the
5 requirements of this Decree. The progress reports shall include
6 the following:

7 1. A list of on-site activities that have taken place
8 during the month;

9 2. Detailed description of any deviations from required
10 tasks not otherwise documented in project plans or amendment or
11 modification requests;

12 3. Description of all deviations from the schedule during
13 the current month and any planned deviations in the upcoming
14 month;

15 4. For any deviations in schedule, a plan for recovering
16 lost time and maintaining compliance with the schedule;

17 5. All data (including laboratory analysis) (which have
18 been reviewed for completeness, accuracy, and precision)
19 received by the Defendants during the past month and an
20 identification of the source of the sample; and

21 6. A list of deliverables for the upcoming month if
22 different from the schedule;

23 B. During the period in which long-term surface water and
24 groundwater monitoring and routine maintenance and repairs are
25 being conducted on the Site, Defendants shall submit to Ecology
26 written quarterly progress reports which discuss the actions

1 taken during the previous quarter to implement the requirements
2 of this Decree and shall include the information described
3 above. As the work under this Decree progresses, Ecology may
4 waive some or all of the above-described reporting requirements.
5 For example, Ecology may permit Defendants to submit progress
6 reports at yearly or longer intervals and may reduce the amount
7 of information that must be included in such progress reports.
8 All progress reports shall be submitted by the tenth day of the
9 month in which they are due after the effective date of this
10 Decree. Unless otherwise specified, progress reports and any
11 other documents submitted pursuant to this Decree shall be sent
12 by certified mail, return receipt requested, to Ecology's
13 project coordinator.

14 XII. RETENTION OF RECORDS

15 Defendants shall preserve, during the pendency of this
16 Decree and for ten (10) years after the date Ecology delivers
17 written notification to Defendants that they have satisfactorily
18 completed the surface and groundwater monitoring requirements
19 pursuant to section VI, Paragraphs D and E, all records,
20 reports, documents, and underlying data in its possession
21 relevant to the implementation of this Decree and shall insert
22 in contracts with project contractors and subcontractors a
23 similar record retention requirement. Upon request of Ecology,
24 Defendants shall make all non-archived records available to
25 Ecology and allow access for review. All archived records shall
26 be made available to Ecology within a reasonable period of time.

1 XIII. TRANSFER OF INTEREST IN PROPERTY

2 A. Except for a transfer between the Defendants, no
3 voluntary or involuntary conveyance or relinquishment of title,
4 easement, leasehold, or other interest in any portion of the
5 Site shall be consummated without provision for continued
6 operation and maintenance of any containment system, treatment
7 system, and monitoring system installed or implemented pursuant
8 to this Decree.

9 B. Except for transfer between the Defendants, prior to
10 transfer of any legal or equitable interest in all or any
11 portion of the Site, and during the effective period of this
12 Decree, Defendants shall serve a copy of this Decree upon any
13 prospective purchaser, lessee, transferee, assignee, or other
14 successor in interest of the Site; and, at least sixty (60) days
15 prior to any transfer, Defendants shall notify Ecology of said
16 contemplated transfer by written notification in the form of
17 Exhibit C-1 (Notice of Proposed Transfer). The notification
18 shall include the name of the proposed transferee and the
19 proposed transferee's intended use of the Site. The notice
20 shall indicate whether the proposed transferee proposes to
21 become a party to this Decree.

22 C. The restrictions, obligations and rights set forth in
23 this Decree shall be binding upon and inure to the benefit of
24 any and all persons who acquire any interest in all or any
25 portion of the Site, provided that the protections of the
26 Covenant Not to Sue may be obtained by successors in interest

1 and assigns only if they become parties to this Decree by
2 following the amendment procedures set forth in Section XIV.

3 D. Within sixty (60) calendar days of the effective date
4 of this Decree, the Beckwiths or Jorgensen shall record a
5 memorandum of this Decree with the Recorder's Office, King
6 County, Washington.

7 E. The Covenant Not to Sue shall not be effective with
8 respect to any transferees who fail to execute the attached
9 Agreement of Successor in Interest to the Site (Exhibit C-2), or
10 a substantially equivalent document, and follow the amendment
11 procedure set forth in Section XIV.

12 XIV. AMENDMENT OF CONSENT DECREE; ADDING NEW PARTIES TO DECREE

13 A. This Decree may only be amended by a written
14 stipulation among the Parties to this Decree that is thereafter
15 entered and approved by order of the Court. Such amendment
16 shall become effective upon entry by the Court, or upon a later
17 date if such date is expressly stated in the Parties' written
18 stipulation or the Court so orders.

19 B. Amendments may cover any subject or be for any purpose
20 agreed to by the Parties to this Decree, including for the
21 purpose of making a successor in interest and assign a new Party
22 to the Decree thereby becoming a Successor in Interest to the
23 Site, the specific process for which is set forth in
24 paragraph C. If Ecology determines that the subject of an
25 amendment requires public input, Ecology shall provide thirty
26 (30) days public notice prior to seeking entry of the amendment

1 by the Court, except that Ecology agrees that an amendment to
2 make successors in interest and assigns parties to this Decree
3 will not by itself require public notice or comment.

4 C. As part of the notice to Ecology required by
5 Section XIII of this Decree, when Defendants or Successors in
6 Interest to the Site contemplate conveyance of an interest in
7 the Site and the proposed Successor in Interest to the Site
8 desires to become a Party to this Decree, the proposed Successor
9 in Interest to the Site shall request that the Decree be amended
10 as provided for in this paragraph. The amendment to the Decree
11 shall be in the form of Exhibit C-2, "Agreement of Successor in
12 Interest to the Site" or a substantially equivalent document.
13 Ecology shall have thirty (30) days from receipt of the
14 notification to object to the proposed Successor in Interest to
15 the Site becoming a party to the Decree. Ecology will be
16 deemed to have given its consent to an amendment making the
17 proposed Successor in Interest to the Site a party to this
18 Decree unless within thirty (30) days of receiving notice,
19 Ecology provides written notification to the Party or Parties
20 notifying Ecology of the proposed transfer in interest pursuant
21 to Section XIII of this Decree of its objection on either of the
22 following grounds: that Defendants or their proposed Successors
23 in Interest to the Site are in violation or will be in violation
24 of a material term of the Decree or that the use proposed by the
25 proposed Successors in Interest to the Site will interfere with
26 the CAP for the Site.

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XV. RESOLUTION OF DISPUTES

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

(1) Upon receipt of the Ecology project coordinator's decision, the Defendants have fourteen (14) days within which to notify Ecology's project coordinator of their objection to the decision.

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

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

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

B. If Ecology's final written decision is unacceptable to Defendants, Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as

1 necessary, resolve any dispute arising under this Decree. In
2 the event Defendants present an issue to the Court for review,
3 the Court shall review the action or decision of Ecology on the
4 basis of whether such action or decision was arbitrary and
5 capricious and render a decision based on such standard of
6 review.

7 C. The Parties agree to only utilize the dispute
8 resolution process in good faith and agree to expedite, to the
9 extent possible, the dispute resolution process whenever it is
10 used. Where any Party utilizes the dispute resolution process
11 in bad faith or for purposes of delay, the other Parties may
12 seek sanctions.

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

17 XVI. EXTENSION OF SCHEDULE

18 A. An extension of schedule shall be granted only when a
19 request for an extension is submitted in a timely fashion,
20 generally at least 30 days prior to expiration of the deadline
21 for which the extension is requested, or as otherwise is
22 reasonable under the circumstances, and good cause exists for
23 granting the extension. All extensions shall be requested in
24 writing. The request shall specify the reason(s) the extension
25 is needed.

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1 B. An extension shall only be granted for such period of
2 time as Ecology determines is reasonable under the
3 circumstances. A requested extension shall not be effective
4 until approved by Ecology or the Court. Ecology shall act upon
5 any written request for extension in a timely fashion. It shall
6 not be necessary to formally amend this Decree pursuant to
7 Section XV when a schedule extension is granted.

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

13 (1) Circumstances beyond the reasonable control and
14 despite the due diligence of Defendants including delays caused
15 by unrelated third parties or Ecology, such as (but not limited
16 to) delays by Ecology in reviewing, approving, or modifying
17 documents submitted by Defendants or delays by local governments
18 in providing review or comment on required submittals; or

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

21 (3) Endangerment as described in Section XVII.

22 However, neither increased costs of performance of the
23 terms of the Decree nor changed economic circumstances of the
24 Defendants shall be considered circumstances beyond the
25 reasonable control of Defendants.

26

1 D. Ecology may extend the schedule for a period not to
2 exceed ninety (90) days, except that Ecology may extend the
3 schedule for a longer period of time where an extension is
4 needed as a result of:

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

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

9 (3) Endangerment as described in Section XVII.

10 Ecology shall give Defendants written notification in a
11 timely fashion of any extensions granted pursuant to this
12 Decree.

13 **XVII. ENDANGERMENT**

14 A. In the event Ecology determines that activities
15 implementing or in noncompliance with this Decree, or any other
16 circumstances or activities, are creating or have the potential
17 to create a danger to the health or welfare of the people on the
18 Site or in the surrounding area or to the environment, Ecology
19 may order Defendants to stop further implementation of this
20 Decree for such period of time as needed to abate the danger or
21 may petition the Court for an order as appropriate provided,
22 however, that before any order is issued or petition is filed,
23 Ecology will provide reasonable notice and opportunity to confer
24 to Defendants except in the event of an emergency that makes
25 advance notice not possible. During any stoppage of work under
26 this section, the obligations of Defendants with respect to

1 work under this Decree which is ordered to be stopped shall be
2 suspended and the time periods for performance of that work, as
3 well as the time period for any other work dependent upon the
4 work which is stopped, shall be extended, pursuant to Section
5 XVI of this Decree, for such period of time as Ecology
6 determines is reasonable under the circumstances.

7 B. In the event Defendants determine that activities
8 undertaken in furtherance of this Decree or any other
9 circumstances or activities are creating an endangerment to the
10 people on the Site or in the surrounding area or to the
11 environment, Defendants may stop implementation of this Decree
12 for such period of time necessary for Ecology, in consultation
13 with Defendants, to evaluate the situation and determine whether
14 Defendants should proceed with implementation of the Decree or
15 whether the work stoppage should be continued until the danger
16 is abated. Defendants shall notify Ecology's project
17 coordinator as soon as possible, but no later than twenty-four
18 (24) hours after such stoppage of work, and, thereafter, provide
19 Ecology with documentation of the basis for the work stoppage.
20 If Ecology disagrees with the Defendants' determination, it may
21 order Defendants to resume implementation of this Decree. If
22 Ecology concurs with the work stoppage, the Defendants'
23 obligations shall be suspended and the time period for
24 performance of that work, as well as the time period for any
25 other work dependent upon the work which was stopped, shall be
26 extended, pursuant to Section XVI of this Decree, for such

1 | period of time as Ecology determines is reasonable under the
2 | circumstances. Any disagreements pursuant to the clause shall
3 | be resolved through the dispute resolution procedures in Section
4 | XIV.

5 | XVIII. COVENANT NOT TO SUE UNDER MTCA; REOPENERS

6 | A. In consideration of the mutual promises and covenants
7 | herein, Ecology hereby covenants not to sue, not to execute
8 | judgment, nor to take any civil, judicial, or administrative
9 | action, nor to establish any lien against Defendants or
10 | Successors in Interest to the Site for claims pursuant to
11 | RCW 70.105D.040, or otherwise under state or federal law, with
12 | respect to the Contamination described in Section V of this
13 | Decree. This Covenant Not to Sue is subject to the reopeners
14 | set forth in paragraph D of this section and the applicability
15 | provision set forth in paragraph E of this section.

16 | B. Defendants and Successors in Interest to the Site
17 | agree not to assert any claims or causes of action against the
18 | State Toxics Control Account, any local toxics control account,
19 | or Ecology, for reimbursement of funds expended, or to seek any
20 | other costs, damages, or attorney's fees from Ecology, with
21 | respect to any remedial activities undertaken or costs incurred
22 | pursuant to this Decree, or arising from the known, documented,
23 | or suspected Contamination described in Section V.

24 | C. Ecology retains all of its legal and equitable rights
25 | against all persons, except as otherwise provided in this
26 | Decree. The legal and equitable rights retained by Ecology

1 include, but are not limited to, the right to compel any person,
2 other than Defendants, to take remedial actions to address
3 Contamination described in Section V, and to seek reimbursement
4 against such persons for costs incurred by Ecology as a result
5 of such Contamination.

6 D. Reopeners:

7 (1) Ecology reserves the right to seek modification of
8 this Decree, or to institute an action under § 70.105D.050 of
9 MTCA, or take any other action authorized by law against any
10 person, including Defendants or Successors in Interest to the
11 Site, and Defendants reserve all rights with respect to such
12 claims, if Contamination unknown or undocumented at the Site at
13 the time of entry of the Decree is discovered subsequent to
14 entry of the Decree and presents a previously unknown threat to
15 human health or the environment.

16 (2) Ecology reserves the right to seek modification of
17 this Decree, or to institute an action under § 70.105D.050 of
18 MTCA, or take any other action authorized by law in the event
19 Defendants or Successors in Interest to the Site fail to comply
20 with the terms and conditions of this Decree, and after written
21 notice of noncompliance fail to come into compliance. Ecology
22 agrees that it will use good faith in determining whether to
23 invoke this reopener. This reopener should ordinarily not be
24 invoked, for example, where Defendants' or Successors' in
25 Interest to the Site noncompliance with a term or condition of
26

1 this Decree results in an insignificant time delay in
2 performance or insignificant deviation in performance.

3 E. Applicability: Notwithstanding any other provisions
4 of this Decree, Ecology reserves the right to assert, and the
5 Covenant Not to Sue set forth in Paragraph A of this section
6 shall not apply with respect to, and Defendants reserve all such
7 rights and defenses with respect to, any claims or causes of
8 action against Defendants or Successors in Interest to the Site,
9 either administrative or judicial, after the effective date of
10 this Decree, arising from any of the following scenarios
11 (provided, however, that Ecology does not reserve the right to
12 assert claims or causes of action against Defendants or
13 Successors in Interest to the Site with respect to any work of
14 Defendants under this Decree which is conducted in accordance
15 with the terms and conditions of this Decree, and the Covenant
16 Not to Sue set forth in Paragraph A of this section shall apply
17 to such work):

18 (1) Release or threat of release of hazardous substances,
19 pollutants or contaminants, other than those described in
20 Section V, resulting from Defendants' or Successors' in Interest
21 to the Site ownership, operation, use, or development of the
22 Site;

23 (2) Introduction of any hazardous substances, pollutant,
24 or contaminant to or at the Site in the future;

25 (3) Interference with any remediation of the Site
26 conducted or required by Ecology and any failure of Defendant

1 or Successors in Interest to the Site to cooperate, as required
2 by MTCA, with Ecology, its employees, agents, contractors, or
3 other authorized representatives conducting response activities
4 under Ecology direction or oversight at the Site;

5 (4) Future transportation and disposal of hazardous
6 substances from the Site;

7 (5) Exacerbation of the Contamination described in
8 Section V by Defendants or Successors in Interest to the Site;

9 (6) Failure to exercise due care (or other standard where
10 a higher standard is required) with respect to any hazardous
11 substances, pollutants, or contaminants at the Site including,
12 but not limited to, Contamination described in Section V;

13 (7) Any and all criminal liability; or

14 (8) Liability for damages for injury to, destruction of,
15 or loss of natural resources.

16 XIX. CONTRIBUTION PROTECTION

17 With regard to claims for contribution against Defendants
18 or Successors in Interest to the Site for matters addressed in
19 this Decree, Ecology agrees that Defendants and Successors in
20 Interest to the Site are entitled to protection from
21 contribution actions or claims as is provided by MTCA, RCW
22 70.105D.040(4)(d), or as otherwise provided by law.

23 XX. INDEMNIFICATION

24 Defendants agree to indemnify and save and hold the State
25 of Washington, its employees, and agents harmless from any and
26 all claims or causes of action for death or injuries to persons

1 or for loss or damage to property arising from or on account of
2 the respective acts or omissions of Defendants, their officers,
3 employees, agents, or contractors in entering into and
4 implementing this Decree. However, the Defendants shall have no
5 obligation to indemnify nor save nor hold the State of
6 Washington, or its employees and agents harmless from any claims
7 or causes of action arising out of the negligent acts or
8 omissions of the State of Washington, or the employees or agents
9 of the State, in implementing the activities pursuant to this
10 Decree.

11 XXI. COMPLIANCE WITH APPLICABLE LAWS

12 A. All actions carried out by Defendants pursuant to this
13 Decree shall be done in accordance with all applicable federal,
14 state, and local requirements.

15 B. Pursuant to RCW 70.105D.090, activities conducted to
16 implement the remedial action required by this Decree are exempt
17 from any procedural requirements of chapter 70.94, 70.95,
18 70.105, 75.20, 90.48, and 90.58 RCW, and any laws requiring or
19 authorizing local government permits or approvals for remedial
20 actions. Pursuant to RCW 70.105D.090, Ecology will ensure
21 compliance with any applicable substantive requirements of
22 chapters 70.94, 70.95, 70.105, 75.20, 90.48, 90.58 RCW, or any
23 laws requiring or authorizing local government permits or
24 approvals.

25 C. As part of developing the Engineering Design Report,
26 Defendants will propose what, if any, requirements covered by

1 RCW 70.105D.090 would be implicated by the remedial action
2 required by this Decree. Ecology and Defendants will consult
3 with the appropriate state or local jurisdictions for input
4 regarding the determination of applicable substantive
5 requirements. Ecology shall make the final determinations
6 regarding what applicable substantive requirements Defendants
7 will be required to meet and how such requirements will be met
8 when implementing the remedial action required by this Decree.
9 Defendants will cooperate with and provide all necessary
10 information to Ecology and the state or local government to
11 facilitate Ecology's determinations regarding applicable
12 substantive requirements.

13 D. Once Ecology has made its determination regarding
14 applicable substantive requirements, Ecology shall issue a
15 letter to the Defendants making such requirements binding and
16 enforceable requirements.

17 XXII. REMEDIAL AND INVESTIGATIVE COSTS

18 A. The Defendants agree to pay costs incurred by Ecology
19 pursuant to this Decree. These costs shall include work
20 performed by Ecology or its contractors for, or on, the Site
21 under ch. 70.105D RCW both prior to and subsequent to the
22 issuance of this Decree for investigations, remedial actions,
23 and Decree preparation, negotiations, oversight and
24 administration. Ecology costs shall include costs of direct
25 activities and support costs of direct activities as defined in
26 WAC 173-340-550(2). The Defendants agree to pay the required

1 amount within ninety (90) days of receiving from Ecology an
2 itemized statement of costs that includes a summary of costs
3 incurred, an identification of involved staff, and the amount of
4 time spent by involved staff members on the project. A general
5 statement of work performed will be provided upon request.
6 Itemized statements shall be prepared quarterly. Failure to pay
7 Ecology's costs within ninety (90) days of receipt of the
8 itemized statement will result in interest charges.

9 B. Defendants also agree to pay Ecology's past costs that
10 have not previously been paid; past costs are those costs
11 incurred by Ecology through June 30, 1994. Ecology has provided
12 documentation to Defendants for past costs totaling \$34,702.13.
13 Defendants agree to pay Ecology this amount in four quarterly
14 installments that will be due according to the following
15 schedule:

| | | |
|----|--------------------|-----------|
| 16 | March 31, 1995 | \$8675.53 |
| 17 | June 30, 1995 | \$8675.53 |
| 18 | September 30, 1995 | \$8675.53 |
| 19 | December 31, 1995 | \$8675.54 |

20 Failure to pay these amounts within ninety (90) days of the due
21 dates will result in interest charges.

22 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

23 If Ecology determines that Defendants have failed without
24 good cause to implement the remedial action, Ecology may, thirty
25 (30) days after notice to Defendants, (or, in the event of an
26 imminent threat to human health or the environment, immediate

1 after notice to Defendants), perform any or all portions of the
2 remedial action that remain incomplete unless Defendants have
3 commenced and are diligently implementing such remedial action.
4 If Ecology performs all or portions of the remedial action
5 because of the Defendants' failure to comply with their
6 obligations under this Decree, Defendants shall reimburse
7 Ecology for the costs of doing such work in accordance with
8 Section XXI, provided that Defendants are not obligated under
9 this section to reimburse Ecology for costs incurred for work
10 inconsistent with or beyond the scope of this Decree.

11 XXIV. FIVE YEAR REVIEW

12 As remedial action, including ground water monitoring,
13 continues at the Site, the Parties agree to review the progress
14 of remedial action at the Site, and to review the data
15 accumulated as a result of site monitoring as often as is
16 necessary and appropriate under the circumstances. At least
17 every five years the Parties shall meet to discuss the status of
18 the Site and the need, if any, of further remedial action at the
19 Site. Ecology reserves the right to require further remedial
20 action at the Site pursuant to Section XVIII(D) and (E) of this
21 Decree. This provision shall remain in effect for the duration
22 of the Decree.

23 XXV. PUBLIC PARTICIPATION

24 Ecology shall maintain the responsibility for public
25 participation at the Site. However, Ecology and Defendants
26

1 shall cooperate with each other and, if agreed to by Ecology,
2 Defendants shall:

3 A. Prepare drafts of public notices and fact sheets at
4 important stages of the remedial action, such as the submission
5 of work plans and engineering design reports. Ecology will
6 finalize (including editing if necessary) and distribute such
7 fact sheets and prepare and distribute public notices of
8 Ecology's presentations and meetings;

9 B. Notify Ecology's project coordinator prior to the
10 preparation of all press releases and fact sheets, and before
11 major meetings with the interested public and local governments.
12 Likewise, Ecology shall notify Defendants prior to the issuance
13 of all press releases and fact sheets, and before major meetings
14 with the interested public and local governments;

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

19 D. In cooperation with Ecology, arrange and/or continue
20 information repositories to be located at the Kent Community
21 Library, 232 4th Avenue South, Kent, Washington 98032,
22 (206) 235-2610, and Ecology's Northwest Regional Office at 3190
23 160th Avenue S.E., Bellevue, Washington 98008-5452. At a
24 minimum, copies of all public notices, fact sheets, and press
25 releases; all quality assured ground water, surface water, soil
26 sediment, and air monitoring data; remedial actions plans,

1 supplemental remedial planning documents, and all other similar
2 documents relating to performance of the remedial action
3 required by this Decree shall be promptly placed in these
4 repositories.

5 XXVI. MISCELLANEOUS PROVISIONS

6 A. Captions. The section paragraph and sub-paragraph
7 captions used herein are for reference only, and shall not in
8 any way affect the meaning or interpretation of this Consent
9 Decree.

10 B. Final Completion. Upon final completion of Defendants'
11 obligations under this Decree, Ecology shall acknowledge in
12 writing that Defendants have fulfilled the requirements of this
13 Decree. Any costs allowed hereunder which Ecology has not
14 assessed as of the date of the issuance of the letter in the
15 preceding sentence, are hereby deemed waived by Ecology.

16 C. Gender and Number. In this Decree, the singular
17 includes the plural, the plural includes the singular, and the
18 use of any gender includes all genders.

19 D. Severability. In case any provision or authority of
20 this Decree or the application of this Decree to any Party or
21 circumstances is held by any judicial or administrative
22 authority to be invalid, the application of such provisions to
23 other Parties or circumstances and the remainder of the Decree
24 shall remain in force and shall not be affected thereby.

25 E. Agreed Order. Ecology agrees that Agreed Order No.
26 DE 91TC-N250 is satisfied in full.

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XXVII. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendants have received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. The Defendants may petition Ecology to remove the Site from the hazardous sites list pursuant to WAC 173-340-330(4)(a)(i) and (4)(b).

XXVIII. EFFECTIVE DATE

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

XXIX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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

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

3
4 *Marilyn K. Berg*
MARY BURG
5 Program Manager
6 Toxics Cleanup Program

7 Date June 13, 1995

Mary Sue Wilson
MARY SUE WILSON, WSBA #19257
Assistant Attorney General
for State Dept. of Ecology

8 Date June 13, 1995

9 *Charles P. Jorgensen*
EARLE M. JORGENSEN COMPANY
10 Defendant

11 Date 3/14/95

John Daniel Ballbach
JOHN DANIEL BALLBACH, WSBA #7173
PERKINS COIE
for the Earle M. Jorgensen Co.

12 Date 3/20/95

13 _____
14 DENNIS F. BECKWITH
Defendant

15 Date _____

SCOTT R. VOKEY, WSBA #14691
PRESTON GATES & ELLIS
for the Beckwiths

16 Date _____

17 _____
18 SHIRLEY A. BECKWITH
19 Defendant

20 Date _____

21
22
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1 without prejudice. In such an event, no Party shall be bound by
2 the requirements of this Decree.

3
4 *Mary Sue Wilson*
5 MARY BURG
6 Program Manager
7 Toxics Cleanup Program
8
9 Date *June 13, 1995*

Mary Sue Wilson
MARY SUE WILSON, WSBA #19257
Assistant Attorney General
for State Dept. of Ecology
Date *June 13, 1995*

9 EARLE M. JORGENSEN COMPANY
10 Defendant
11 Date _____

JOHN DANIEL BALLBACH, WSBA #7173
PERKINS COIE
for the Earle M. Jorgensen Co.
Date _____

12 *Dennis F. Beckwith*
13 DENNIS F. BECKWITH
14 Defendant
15 Date *March 10, 1995*

Scott R. Vokey
SCOTT R. VOKEY, WSBA #14691
PRESTON GATES & ELLIS
for the Beckwiths
Date *March 10, 1995*

17 *Shirley A. Beckwith*
18 SHIRLEY A. BECKWITH
19 Defendant
20 Date *March 10, 1995*

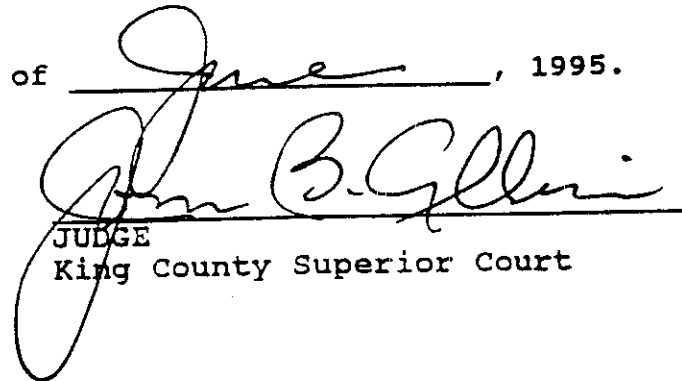
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NORTHWEST SLAG PRODUCTS, INC.
a/k/a CASCADE CORRIDOR
DEVELOPMENT, INC., Defendant
Dennis F. Beckwith, President

Date March 10, 1995

DATED this 22 day of June, 1995.


JUDGE
King County Superior Court

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NORTHWEST SLAG PRODUCTS, INC.
a/k/a CASCADE CORRIDOR
DEVELOPMENT, INC., Defendant
Dennis F. Beckwith, President

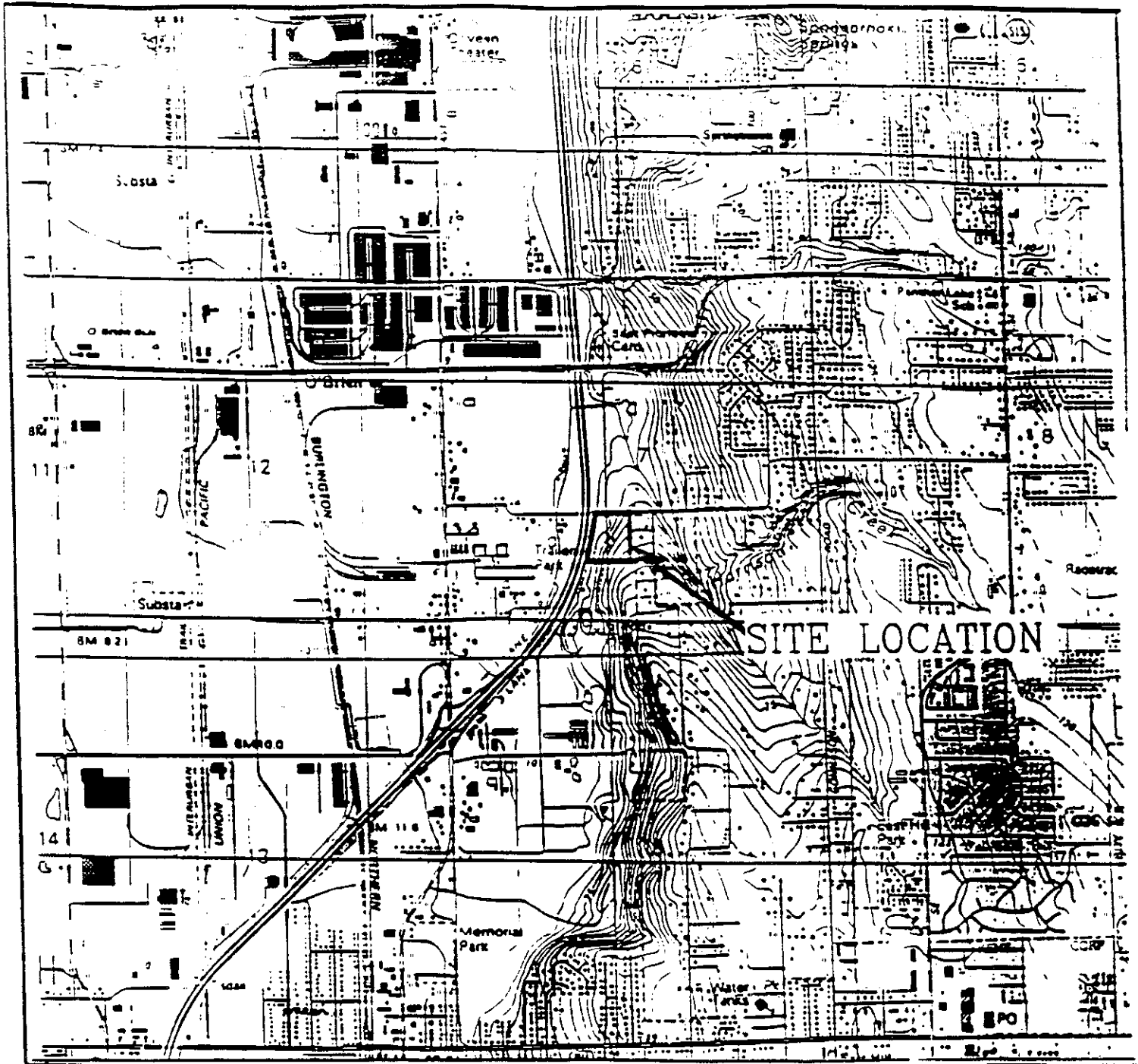
Date March 10, 1995

(June 22, 1995)

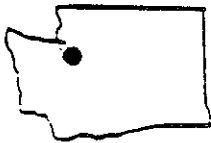
DATED this _____ day of June, 1995.

JUDGE
King County Superior Court

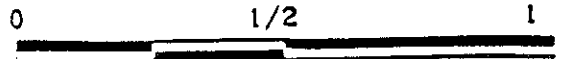
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SOURCE USGS 7.5 X 15 MINUTE QUADRANGLE, RENTON, WASHINGTON 1973



WASHINGTON



SCALE (MILES)

SE-COR

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|--------------|---------|
| DWN | RB |
| APPR | GE |
| DATE | 6/11/92 |
| JOB# | |
| 00075-008-01 | |

FIGURE 1
 SITE VICINITY MAP
 SLAG DISPOSAL/BECKWITH PROPERTY
 KENT, WASHINGTON

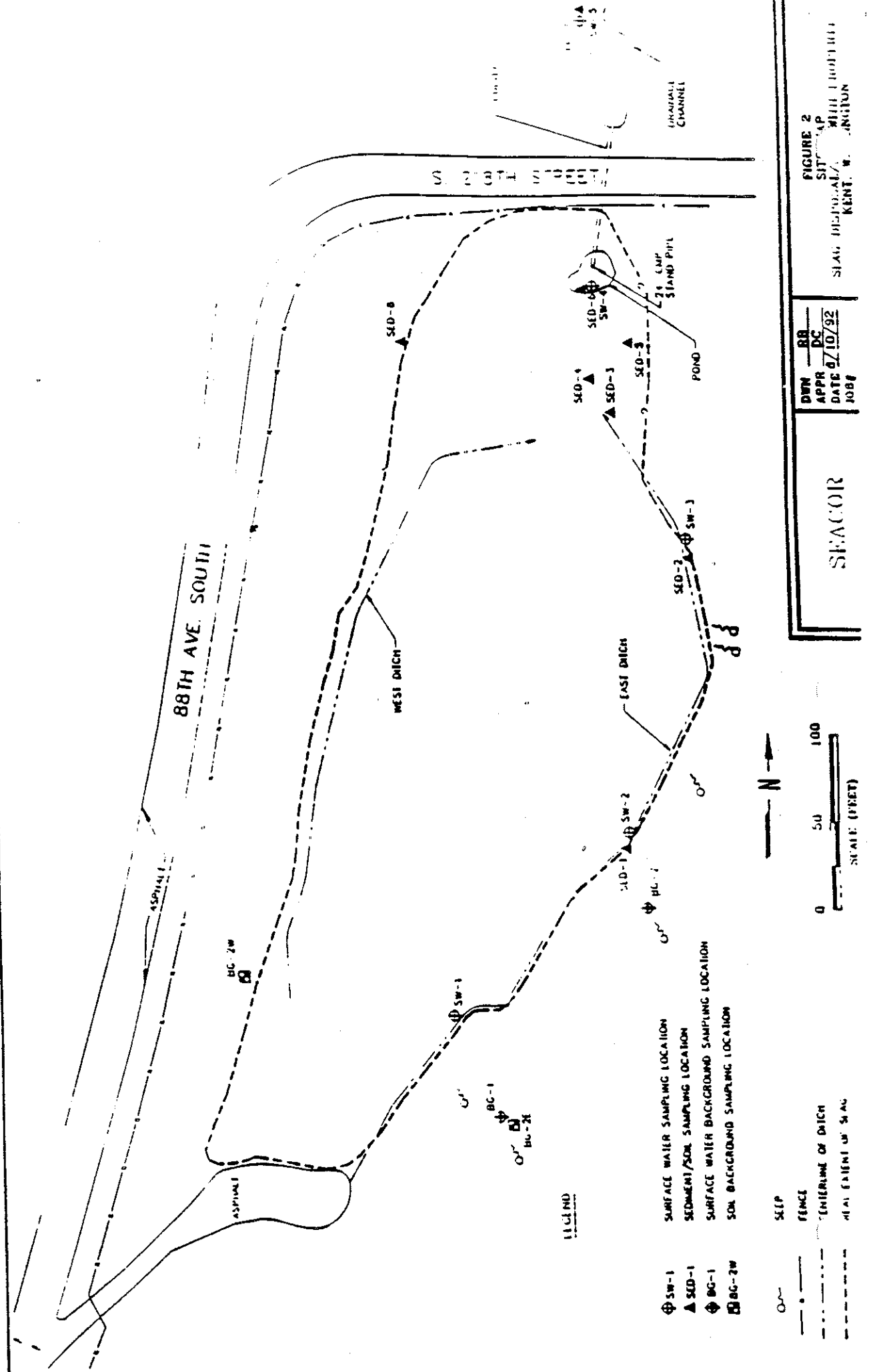


FIGURE 2
SITE MAP
SLAG CHANNEL/WEST DITCH
KENT, W. OHIO

DTN BB
APPR DC
DATE 07/10/92
JOB

SEACOR

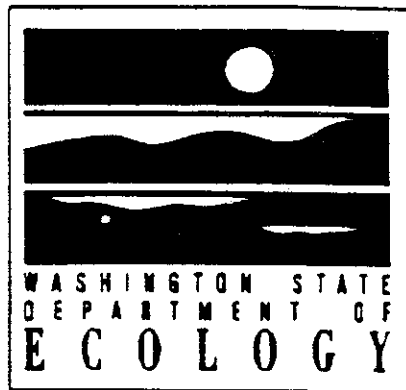
0 50 100
SCALE (FEET)

- LEGEND
- SW-1 SURFACE WATER SAMPLING LOCATION
 - SED-1 SEDIMENT/SOIL SAMPLING LOCATION
 - BG-1 SURFACE WATER BACKGROUND SAMPLING LOCATION
 - BC-2W SOIL BACKGROUND SAMPLING LOCATION
 - SEEP
 - FENCE
 - ENTERING OF DITCH
 - REAL EXTENT OF SLAG

EXHIBIT A-3

Legal Description of the Land

TRACTS 26 AND 31, SHINNS CLOVERDALE ADDITION TO KENT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE(S) 52, IN KING COUNTY, WASHINGTON, LYING EAST OF PRIMARY STATE HIGHWAY NO. 5, AS CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 5320168 AND SOUTH OF SOUTH 218TH STREET AS CONVEYED TO THE CITY OF KENT BY DEED RECORDED UNDER RECORDING NUMBER 8101130005;
EXCEPT THAT PORTION OF TRACT 31 KNOWN AS VALLEY VIEW SHORT SUBDIVISION SPC-8-78 RECORDED UNDER RECORDING NUMBER 7906261130.



**FINAL
CLEANUP ACTION PLAN
FOR
SLAG DISPOSAL/BECKWITH PROPERTY
KENT, WASHINGTON**

JIKLA
July 5, 1994

DECLARATIVE STATEMENT

Consistent with Chapter 70 105D RCW, "Model Toxics Control Act", as implemented by Chapter 173-340 WAC, "Model Toxics Control Act Cleanup Regulation", it is determined by the Department of Ecology that the selected cleanup actions are protective of human health and the environment, attain Federal and State requirements which are applicable or relevant and appropriate, comply with cleanup actions and provide for compliance monitoring. The cleanup actions satisfy the preference expressed in WAC 173-340-360 for the use of permanent solutions within a reasonable time-frame, and considers public concern raised during public comment on the draft Cleanup Action Plan.



Brian S. Sato, P.E.
Project Manager, Northwest Region
Toxics Cleanup Program
Washington Department of Ecology



Michael J. Gallagher
Section Head, Northwest Region
Toxics Cleanup Program
Washington Department of Ecology

7/6/94

Date

July 6, 1994

Date

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1.0 INTRODUCTION

1.1 Purpose

This document presents the Final Cleanup Action Plan (CAP) for the Slag Disposal/Beckwith Property located in Kent, Washington. This documentation is required by the site cleanup process established by Ecology under Chapter 173-340 WAC "Model Toxics Control Act Cleanup Regulations" and meets the requirements specified in WAC 173-340-360(10), Draft Cleanup Action Plan

The purpose of the CAP is to:

- Summarize the cleanup action alternatives evaluated;
- Describe the selected cleanup action alternative;
- Present the rationale for the selection; and
- Provide a document through which public comment may be solicited regarding the selected cleanup actions.

1.2 Scope

The CAP presents the property description, site history and land use, then summarizes the results of the remedial investigation and feasibility study, and finally outlines the cleanup action remedy selected by Ecology for remediating the site. These results are described in detail in the document titled "Focused Remedial Investigation and Feasibility Study for Slag Disposal/Beckwith Property, Kent, Washington" (SEACOR, 1992) (RI/FS). The RI/FS document provides a detailed analysis of the presence, character, and distribution of hazardous substances present at the site and is an integral part of this CAP. They are summarized herein to provide background information pertinent to the remainder of the document.

1.3 The Cleanup Action Plan and Cleanup Process

The CAP is one in a series of documents used by Ecology to monitor progress of site investigation and cleanup. The RI/FS document presents the results of investigations into the nature and extent of contamination at the Slag Disposal/Beckwith Property site and evaluates the feasibility of alternative methods of cleaning up the site. The investigations and studies were performed in accordance with Ecology approved work plans which were incorporated into an Agreed Order made effective on February 3, 1992 under the authority of RCW 70.105D(1).

The CAP sets forth functional requirements for cleanup of the affected environmental media at the site.

Other documents to be developed for site cleanup include:

- Engineering Design Report, Construction Plans and Specifications to provide the necessary technical drawings and specifications to allow a contractor to construct and implement site cleanup
- As-built drawings and documentation of any changes or modifications that were necessary during the course of construction.
- Site specific health and safety plan to address future site work.
- Deed notice to notify future property owners of site conditions and restrictions
- Operations and Maintenance Plans to present technical guidance and regulatory requirements to assure effective operations
- Monitoring Reports to confirm that human health and the environment are adequately protected.

2.0 BACKGROUND

2.1 Property Description

The site is located within S1/2, NE1/4, Section 7, Township 22 North, Range 5 East (USGS, 1983). The site is located at the eastern edge of the Kent Valley, approximately 200 feet east of State Highway 167 at the southeast corner of South 218th Street and 88th Avenue South in Kent, Washington (Figures 1 & 2). The fenced and locked site is bordered by South 218th Street to the north, 88th Avenue South to the west, a steep embankment to the east, and a wooded area to the south. The site is nearly level with a slight downgrade slope to the north. The ground in the slag fill area is hard and compacted and has little vegetative growth. The site is bordered on the west and east by ditches. The steep embankment to the east is approximately 50 feet high and heavily vegetated. Water seeps from the embankment and is collected in the ditch. Seep water and surface runoff are directed towards a retention pond located at the north end of the site. Discharge from the retention pond flows through a culvert pipe under South 218th Street. The property represents an area of approximately 4.7 acres. The parcel was formerly a 5-acre tract that was subdivided for residential development. A legal description of the property is provided in Appendix A of the RI/FS document.

2.2 Site History

Prior to 1984, the site was undeveloped. Mr. Dennis Beckwith, the current site owner, acquired the property on December 20, 1985. He has been the owner of an undivided one-half share of the site since October 22, 1984. The City of Kent zoned the site for multiple use at the time Mr. Beckwith obtained the property.

The use of slag for fill at the site began in 1984 (Hart Crowser 1989). The majority of the slag was generated from secondary steel smelting operations by the Earle M. Jorgensen Company. Written permission to use steel slag as fill material on the site was obtained from Ecology and from the Seattle-King County Department of Public Health (King County). A letter response to Mr. Beckwith from an Ecology hazardous waste inspector, dated January 21, 1985 (Washington State Department of Ecology, 1985), stated that upon review of data submitted, "it appears that the slag described by the data may be utilized as fill material." A letter response to Mr. Beckwith from King County, dated February 21, 1985, classified the waste slag material as "acceptable fill" (King County, 1985). A previous owner of the site has obtained a fill permit from the City of Kent to place crushed slag on the site (Ecology and Environment 1991). Slag was deposited at the site intermittently until April 1990 (Washington State Department of Ecology 1990).

The property owner has initiated plans to develop the site and had obtained a grading permit and a certificate of non-significance from the City of Kent, but on April 24, 1990, the City of Kent issued a stop work order for the site. The City of Kent discontinued processing of the building permit application and withdrew the certificate of non-significance pending further study of the materials at the site. The stop work order remains in effect. The grading permit has expired and the City of Kent zoning classification had changed to standard residential.

2.3 Land Use

The current City of Kent zoning classification for the site is standard residential (R1) (City of Kent, 1992). Residential properties are located east, northeast, and south of the site. The surrounding properties are zoned as follows:

- Residential/Agricultural (RA) to the north of South 218th Street and west of Highway 167; and
- Commercial/Manufacturing (CM1) to the west of both the site and Highway 167.

Future development at the site will be influenced by remedial requirements, costs, and the City of Kent zoning requirements. Originally, an apartment complex was designed for the property. Until these issues are resolved, the future development of the site cannot be determined.

3.0 SUMMARY OF STUDIES CONDUCTED AT THE SITE

The remedial investigation sought to more fully characterize several media at the site including the slag, underlying native soils, groundwater, surface water, and sediment. A sampling and analysis plan (SAP) (SEACOR 1991) was prepared to guide the remedial investigation. The feasibility study defined applicable or relevant and appropriate requirements (ARARs) and identified feasible remedial alternatives.

Study findings are summarized below.

- The remedial investigation established that the chemical parameters of potential concern in the slag are pH, antimony, beryllium, nickel, and arsenic. Average total metal concentrations of the slag are below MTCA soil cleanup criteria and average slag pH values are below State of Washington Corrosive Dangerous Waste Criterion.
- Secondary steel slag operations produced oxidizing and reducing slag that commonly contains calcium oxide (lime). Discrete sampling of each of these two types of slag showed they contained similar concentrations of metals. The toxicity characteristic leaching procedure (TCLP) was conducted for metals on all slag samples obtained in the remedial investigation. Leachate from all remedial investigation samples passed the TCLP criteria. Slag samples characterized in the site hazard assessment (SHA) (Ecology and Environment, Inc. 1991) passed the TCLP criteria and also passed fish bioassay toxicity characteristic criteria. Therefore, the slag has not been designated a state dangerous waste.
- Native soils underlying the portion of the site filled with slag has not been impacted by pH or metals. Combined with the TCLP results, this attests to the insoluble nature of metallic constituents in the slag.
- Precipitation infiltration, surface water recharge from the east ditch, and subsurface recharge have created a perched saturated zone within the slag atop the slag-native soil interface. Native soils do not appear to be saturated. The indicated direction of groundwater flow in the perched zone is to the northwest at an estimated gradient of 0.03 foot per foot (ft/ft). Two rounds of groundwater sampling indicated that the pH of the perched groundwater exceeds State of Washington Groundwater Quality Standards. No exceedance of MTCA Method B groundwater cleanup values was indicated. The only chemical parameter of concern in the perched saturated zone is pH, but the neutral native soils underlying the slag suggest that deeper impacts have not occurred.
- The registered well closest to the site is approximately 750 feet to the west at Kent Nursery and was closed in 1990 (Washington State Department of Ecology, 1985). This well was completed to a depth of 380 feet. Three municipal supply wells owned by the City of Kent are within one-half mile of the site, and all are over 350 feet deep. Given the localized nature of perched groundwater at the site and the absence of impacts to underlying native soils, no public health threats to surrounding wells were identified.
- Slag is present in the east ditch. This slag is transported in the east ditch as bedload and suspended load to the retention pond. The bedload sediment represents a thin veneer within the ditch and the overall transported volume is low due to the low

flow velocity. While the retention pond reduces the amount of slag that may be transported off-site through the culverts, some slag may have migrated off-site. The limit of off-site transport is reached where channelized flow diminishes 50 feet north of the site.

- Unfiltered surface water samples were obtained from five stations that, for comparative purposes, were similarly located to those established in the SHA (Ecology and Environment, 1991). Three stations were located in the drainage ditch 50 feet downgradient of the site. Two rounds of surface water sampling were conducted, with the second round of sampling conducted during a precipitation event. No MTCB Method B surface water cleanup values were exceeded. However, pH is a chemical parameter of potential concern in surface water due to exceedances of the State of Washington Surface Water Quality Criteria.
- The primary ARARs at the site are MTCB for all media; the State of Washington Dangerous Waste Regulations [Washington Administrative Code (WAC) 173-303]; Water Quality Standards for Groundwaters of the State of Washington (WAC 173-200)
- The potential human exposure pathways were evaluated for the chemical parameters of potential concern at the site. The main routes of exposure to the slag are considered to be ingestion, inhalation, and dermal contact. Routes of lesser importance include ingestion or dermal contact with surface water and ingestion of groundwater.
- Slag-related Superfund Records of Decision were researched to identify U.S. Environmental Protection Agency (EPA) approved remedial alternatives for slag sites. This information proved to be of limited use since all the Superfund slag sites involved primary smelter slag, rather than secondary steel slag. No secondary steel slag Superfund sites were identified. However, this information did enable an initial screening of remedial alternatives.

4.0 REMEDIAL OBJECTIVES

There are few potentially applicable remedial technologies that have been successfully used at slag disposal sites under the EPA Superfund program. A search of EPA's record of decision (ROD) database of Superfund sites revealed that four sites with ROD's involved slag material. However, all of these sites were notably different from the Slag Disposal/Beckwith Property.

The significant difference was that the slag at these Superfund sites was generated from primary steel smelting of ore. The slag that is produced by primary steel smelting of ore usually contains much higher concentrations of arsenic and lead, which are the primary contaminants of concern in the researched ROD documents.

The Slag Disposal/Beckwith Property contains only slag from secondary steel smelting operations that produced oxidizing and reducing slag that commonly contains calcium oxide (lime). No raw ore was involved in the process. The concentrations of lead and arsenic detected in the secondary steel slag at the site are well below the concentrations of these compounds indicated in the ROD documents at the four primary steel smelting ore sites.

Despite these limitations, the previously approved ROD's helped to streamline the analysis of remedial alternatives. The initial screening of alternatives relied on information provided in the approved RODs. The lack of secondary steel slag Superfund sites nationally, may indicate that they pose a lower risk to human health and the environment than primary slag sites.

Ecology has established that cleanup of hazardous waste sites shall be conducted with preference given to technologies which minimize the amount of untreated hazardous substances remaining at a site. Toward that end, the following technologies for addressing specific hazardous substances or pathways shall be considered in order of descending preference as outlined in WAC 173-340-360(4):

- i) Reuse or recycling;
- ii) Destruction or detoxification;
- iii) Separation or volume reduction followed by reuse, recycling, destruction, or detoxification of the residual hazardous substance;
- iv) Immobilization of hazardous substances;
- v) On-site or off-site disposal at an engineered facility designed to minimize the future release of hazardous substances and in accordance with applicable state and federal laws;
- vi) Isolation or containment with attendant engineering controls; and
- vii) Institutional controls and monitoring.

A combination of technologies from more than one of the categories listed above may be used at a specific site. These categories were evaluated in the focused feasibility study and are presented below

4.1 Reuse or Recycling

Prior to using the material as fill at the site, Jorgensen reclaimed all economically recoverable metal from the slag. Since that time, Jorgensen has pursued numerous options for reuse or recycling of slag, all of which have proven to be uneconomical. Jorgensen currently must dispose of slag in a landfill because reuse or recycling options are not available. Reuse or recycling of the slag does not appear feasible at this time.

4.2 Destruction or Detoxification

Destruction or detoxification of the slag would involve excavating the material and performing either on-site treatment or off-site treatment at a permitted treatment facility. Chemical analyses of the slag indicate that the constituent metals do not typically exhibit toxicity characteristics as defined by current federal and state criteria. In most areas the slag exhibits a high pH due to the lime that is used in the secondary smelting process. While applicable or relevant and appropriate requirements (ARARs) that limit pH exist, the high pH at the site also serves as a beneficial factor to immobilize the metals in the slag. Chemical means could be used to reduce the pH of the slag. However, this could potentially increase the mobility of the contained metals. Destruction of the slag metals is not possible.

4.3 Separation or Volume Reduction

Separation or volume reduction, followed by one of the previous mentioned actions, is also not feasible. There are technologies that are effective in leaching certain metals from slag. However, these processes involve the application of acidic compounds and could result in the mobilization of metals, representing a potential risk to human health and the environment. Implementation of this technology is not feasible due to the site characteristics.

4.4 Immobilization of Hazardous Substances

Metals and pH are chemicals and parameters of potential concern at the site. The metals in the slag are relatively insoluble as indicated by the toxicity characteristic leaching procedure (TCLP) tests performed during the remedial investigation and the Site Hazardous Assessment (Ecology and Environment 1991). The mobility of pH is influenced by exposure of surface water and groundwater to the slag. Immobilization of pH could be achieved by controlling the transport media (surface water and groundwater). Immobilization by controlling these transport media and preventing contact with the slag is a feasible technology which is discussed further in this CAP.

4.5 On-site or Off-site Disposal

On-site disposal at an engineered facility is not feasible due to the large quantity of slag (16,500 cubic yards) and the limited acreage of the site. There is not adequate area to excavate and temporarily store the material pending construction of an engineered facility. Off-site disposal is a feasible but costly alternative. A detailed analysis of the off-site disposal alternative is presented in Section 6.3.

4.6 Isolation or Containment

Isolation or containment is a feasible alternative for eliminating potential contact of transport media to the slag. This technology also eliminates potential human exposure to the slag via direct contact.

A detailed analysis of isolation or containment technologies as they relate to the source media at the site is presented in Sections 5.0 and 6.2.

4.7 Institutional Controls and Monitoring

Institutional controls and monitoring are feasible when used in conjunction with isolation or containment technologies or alone as a no action alternative. In order to meet the Model Toxics Control Act (MTCA) requirements, the no action alternative must first be shown to be protective of human health and the environment. However, due to the presence of chemical parameters of potential concern that may exceed ARARs at the site, a risk assessment may be required to fully evaluate the feasibility of the no action alternative. A detailed analysis of institutional controls and monitoring is presented in Sections 5.0 and 6.1.

5.0 DESCRIPTION OF SELECTED CLEANUP ACTION

5.1 Surface Water/Groundwater Management, Institutional Controls, and Long Term Monitoring

The objective of this alternative is to eliminate the exposure pathways of the chemicals of concern. Immobilization, isolation, and institutional controls and monitoring will be used in combination to achieve the objective. Placement of vegetation over the slag area incorporated with the construction of a surface water and groundwater drainage system is considered a feasible alternative. The proposed cleanup action will include the following:

- Regrade the slag area to channel storm water around the perimeter of the slag;
- Cover the slag area with up to three (3) feet of top soil and plant tree seedlings and vegetation for erosion control;
- Construct a subsurface interceptor drain along the eastern boundary of the slag with sufficient depth to intercept groundwater migrating to the slag.
- Reconstruct the existing surface water drainage ditch along the eastern boundary of the slag;
- Conduct a pilot test to evaluate the effectiveness of gypsum rock at reducing surface water pH;
- Reconstruct the discharge outlet structure;
- Monitor and periodically remove accumulated debris in the drainage ditch and perform routine maintenance and repairs as necessary;
- Meet with the City of Kent and other prospective purchasers of all or portions of the property to incorporate their intended land use into the engineering design document;

- Prepare and implement as appropriate a site specific health and safety plan for implementation of the selected cleanup action including operations and maintenance and for future development at the site.
- Prepare and implement a site specific institutional controls program that provides for recording a deed notice on all or portions of the property, and removal of the same from all or portions of the property according to objective criteria which are used to determine when such a deed notice is no longer required; and
- Implement a routine surface water and groundwater monitoring program.

The vegetative cover will consist of up to three (3) feet of top soil with appropriate vegetation including tree seedlings. This cover will eliminate the route of transport of slag material and pH off-site into adjacent waterways and reduce surface water recharge to the subsurface. It will also provide a physical barrier that will prevent contact with the slag.

Surface water acts as a transport medium by physically transporting slag and soluble chemical parameters such as pH. Management of surface water will focus on eliminating the pathway for transport of slag and pH off site. The surface water drainage system will be constructed east of the slag area to intercept surface water from seeps and the adjacent hillside and channel it away from the slag area.

Sediment in existing drainage ditches would be removed and placed in the area to be covered with top soil. Management of surface water will eliminate the exposure of surface water to the slag which is the source of chemicals of potential concern.

Information from the City of Kent indicates that their proposed roadway realignment may be located in the area of the retention pond. The engineering design document will incorporate this intended land use into the design to provide adequate storm water detention if required for the site.

The groundwater drainage system will intercept subsurface water from the slag area and adjacent hillside and channel it away before it can come in contact with the buried slag. The surface cover and groundwater drainage system will greatly reduce the recharge potential of the perched saturated zone within the slag.

Institutional controls in the form of a deed notice and site specific health and safety plan will be required to provide protection for possible exposure to the elevated pH in the slag and groundwater. Future development of this site may expose workers to elevated pH during activities such as roadway preparation, footing excavations, or utility trenches. Because of this possible exposure scenario, a site specific health and safety plan shall be developed to provide guidance to workers exposed to the site.

In the event that the property is developed in the future in a manner not contemplated by the initial health and safety plan, amendments to the initial health and safety plan will be prepared and implemented prior to beginning the field work. At a minimum, the health and safety plan should be in accordance with Washington State (RCW 49 17, WAC 296-24 296-62, and 296-155) and federal (OSHA 29 CFR 1910 and 1926) regulations. The health and safety plan must be prepared and distributed to all potentially exposed personnel prior to initiating field work. The deed notice is intended to ensure that this cleanup action will not be compromised by future site development.

Long-term monitoring will be required to ensure that this cleanup action is protective of human health and the environment.

5.1.1 Overall Protectiveness

Overall protectiveness of this cleanup action has been evaluated for each of the media of potential concern based on the chemicals of potential concern identified in the remedial investigation. This evaluation is summarized below by media

- Native Soils - The native soils beneath the slag does not exceed MTCA cleanup standards and are currently in compliance with ARARs. Perched groundwater samples taken from the slag does not contain elevated levels of dissolved metals. TCLP analyses indicate metals are not readily soluble. Metal accumulation within the native soil below the slag is not anticipated due the above conditions.
- Slag - Average total metals concentrations do not exceed MTCA soil cleanup criteria. However, the slag does serve as the source of elevated pH in the surface water and perched groundwater zone. The proposed cleanup action achieves overall protectiveness of human health and the environment by eliminating the transport mechanism and providing a physical barrier to prevent exposure.
- Surface Water - The proposed cleanup action achieves overall protectiveness of human health and the environment by isolating surface water from the elevated pH in the slag.
- Groundwater - The perched groundwater zone within the slag material meets the definition of groundwater as defined by the State of Washington. The results of the remedial investigation indicate that pH is of potential concern in the perched groundwater in the slag. The saturated zone in the slag does not extend into the underlying native soil. Therefore, exposure to this groundwater is unlikely. By controlling surface and groundwater recharge to the slag, the presence of the perched groundwater may be eliminated.
- Drainage Sediment - The proposed cleanup action includes the removal of drainage ditch sediments. Planting vegetation over the surface of the slag should eliminate the potential of future

sediment deposition from the physical transport of slag via surface water runoff. Future deposition of sediment in the reconstructed surface water drainage ditches should not contain slag material.

5.1.2 Long-Term Effectiveness

The long-term effectiveness of the proposed cleanup action would be assessed through ongoing monitoring of surface water and groundwater. The vegetation would be inspected on a routine basis and additional topsoil and amendments would be added as needed to maintain the vegetation. Periodic cleaning of the drainage and surface water collection system may be necessary.

5.1.3 Short-Term Effectiveness

The proposed cleanup action can be implemented in a short time frame. This alternative will greatly reduce the potential exposure pathways for direct contact of surface water with the slag. Since the slag will remain relatively undisturbed during construction, airborne and water borne slag transport off-site should be minimal.

5.1.4 Permanent Reduction of Toxicity, Mobility, and Volume

Reduction in mobility of the slag at the site will be achieved by controlling transport mechanisms. Slag acts as both the source material and a transport medium. The mobility of the slag will be reduced by providing a soil and vegetation barrier and by virtually eliminating its transport via surface water. No reduction in slag volume will be achieved.

5.1.5 Ability to Implement Alternative

There are no known regulatory, logistical, or technical restrictions which would adversely affect the ability to implement the proposed cleanup action. In the event that the property is developed in the future, a health and safety plan will be prepared and implemented prior to beginning field work.

5.1.6 Cleanup Costs

The estimated cleanup costs for this proposed cleanup action is not known at this time. Cleanup costs were presented in the feasibility study but this proposed cleanup action is a variation of what was presented and has not been analyzed for cost.

5.1.7 Community Acceptance

Community acceptance of this proposed cleanup action will be assessed during the public comment period for the RI/FS and CAP.

5.1.8 Schedule of Implementation

An engineering document describing in detail the necessary design for the proposed cleanup action should take approximately 60 days to develop.

This document should be in accordance with WAC 173-340-400(4)(a)

6.0 OTHER ALTERNATIVES CONSIDERED

6.1 No Further Action Alternative

For the no action alternative, no remedial actions would be implemented at the site. However, continued monitoring of the transport and direct contact media (surface water, sediment, groundwater, and slag) and institutional controls would be required for this alternative.

A risk assessment would be required to assess the feasibility of this alternative. This risk assessment would address all media and chemical parameters of concern identified in the RI/FS. If the risk assessment indicates that overall protectiveness to human health and the environment can be achieved, then the no action alternative may be feasible.

6.2 Capping, Surface Water Management Controls and Long-Term Monitoring Alternative

The objective of this alternative is to eliminate the exposure pathway of the chemical parameters of potential concern. Capping the slag surface area and constructing an impervious surface water drainage system is considered a feasible alternative because it eliminates transport media and significantly limits infiltration through the slag area. Blocking the exposure pathway will eliminate the potential hazards of slag at the site.

Surface water acts as a transport medium by physically transporting slag particles as well as soluble chemical parameters such as pH. Eliminating surface water recharge in conjunction with reducing percolation through the slag may gradually eliminate the presence of perched groundwater. Management of surface water will eliminate the exposure of surface water to the slag which is the source of chemicals of potential concern. The proposed surface water management controls for the site include:

- Placing an asphalt cap over the surface slag area;
- Reconstructing and lining the drainage ditch along the eastern boundary of the slag;
- Excavating and removing slag in the settling pond, followed by;
- Lining the settling pond, replacing soil, and reconstructing the discharge outlet structure; and
- Obtaining surface water samples from the downgradient discharge culvert to monitor the effectiveness of the above measures.

The slag surface area would be regraded prior to capping to manage the flow of storm water across the site. An asphalt cap would be placed over the entire surface area of the slag in an effort to eliminate surface infiltration.

Storm water accumulation above the asphalt cap will be diverted to catch basins and conveyed to the discharge outlet via culvert pipes.

A new drainage ditch would be constructed east of the slag material boundary to eliminate the potential for surface water drainage to contact slag material. Sediment in existing drainage ditches would be removed and placed in the area to be capped.

This would be followed by placing an impervious liner at the base of the new drainage ditch to eliminate surface water infiltration from the ditch into the slag.

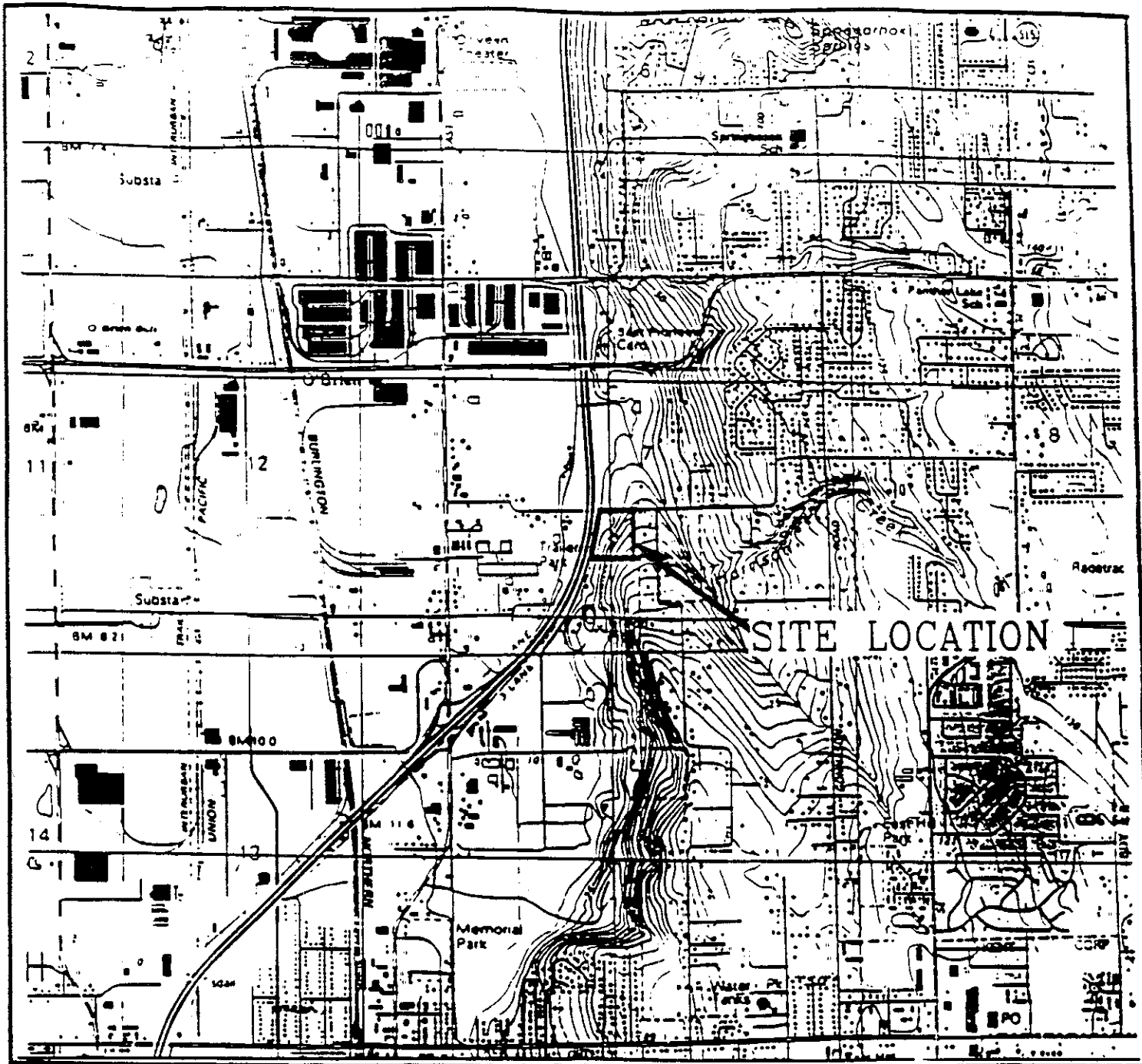
Slag material in the retention pond would be excavated and placed in the area to be capped. An impervious liner would be placed in the low-lying area and would then be backfilled with clean fill from an appropriate off-site source. The liner would reduce the potential for infiltration of pond surface water. A sedimentation catch basin would be constructed to replace the existing stand pipe as the discharge outlet structure. A retention pond would be maintained around the new discharge structure to provide adequate off-site storm water detention.

Long-term monitoring will be required to ensure that this remedial alternative is protective of human health and the environment. Institutional controls may be required to regulate future development at the site and to ensure that the remedial measures remain in-place and are maintained.

6.3 Removal and Off-Site Disposal Alternative

The objective of the removal and off-site disposal alternative is to eliminate the source media from the site. The total estimated quantity of slag placed on the site as fill material is approximately 16,500 cubic yards and is spread over approximately 11,300 square yards. The distribution of slag is documented in the findings of the remedial investigation. Under this alternative, the slag material would be excavated, transported, and disposed of at a solid waste landfill. Approximately 1,100 truck loads would be required to transport all of the material off-site. Erosion controls and dust control measures would be implemented to prevent migration of the source material. Placement of backfill to restore the site to its current elevation is an optional task that would most likely be necessary for future development. Regrading of the site after removal of the slag will be required to control surface runoff. If the site is not backfilled to its previous grade, the discharge outlet structure must be modified to account for the change in elevation on the site.

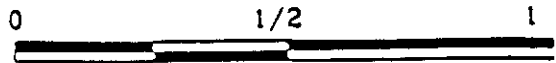
FIGURES



SOURCE USGS 7.5 X 15 MINUTE QUADRANGLE, RENTON, WASHINGTON, 1973



WASHINGTON

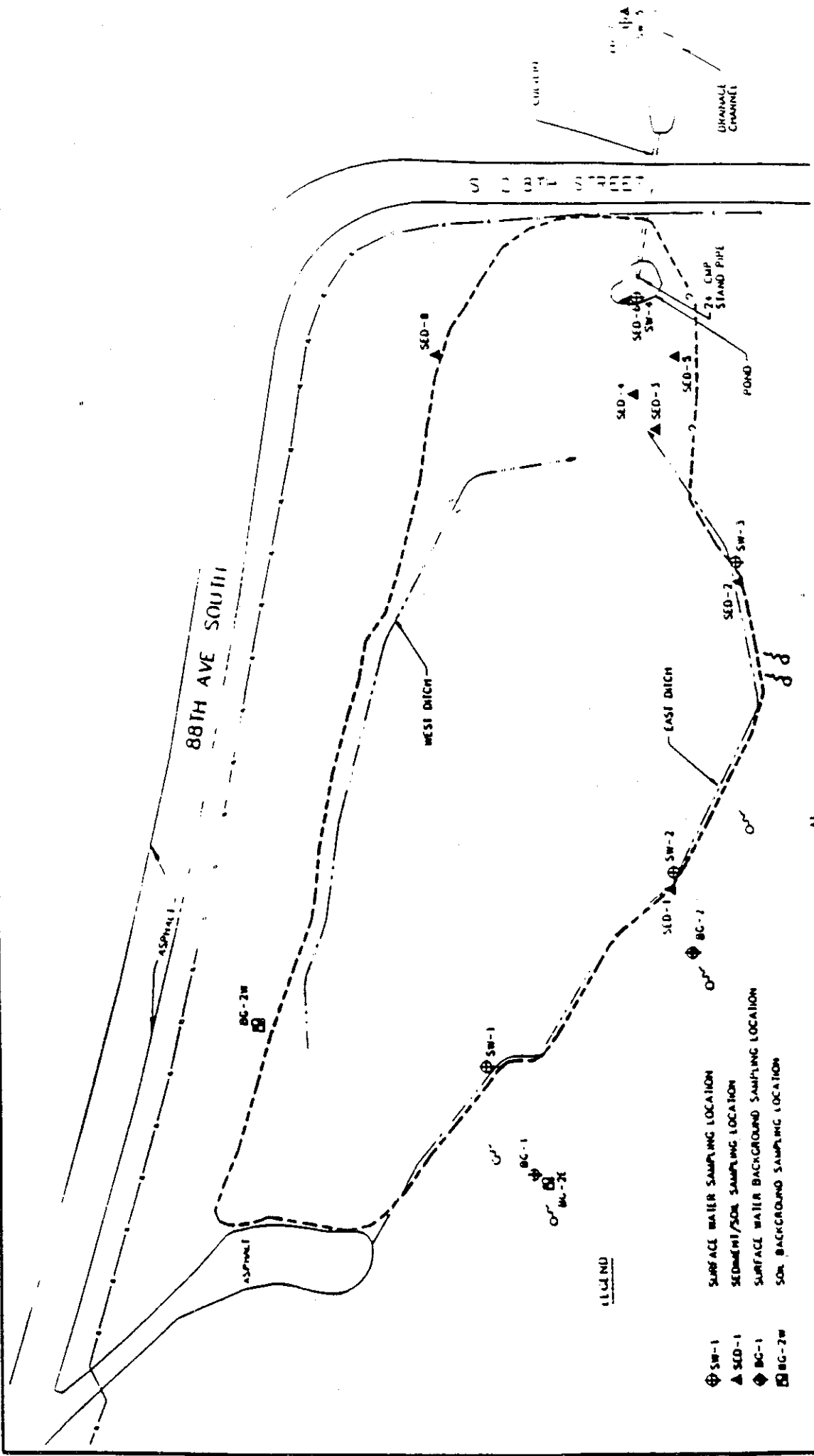


SCALE (MILES)

SE-COR

| | |
|--------------|---------|
| DWN | RB |
| APPR | GE |
| DATE | 6/11/92 |
| JOB# | |
| 00075-008-01 | |

FIGURE 1
 SITE VICINITY MAP
 SLAG DISPOSAL/BECKWITH PROPERTY
 KENT, WASHINGTON



DWN BB
 APPR BC
 DATE 6/10/92
 JOB#
 00075-008-01

SEACOR

FIGURE 2
 SITE MAP
 SLUG: W-100-AL/BLACKWICH PROJECT 101
 KENT, W. VIRGINIA

THIS WAS THE ORIGINAL DRAWING BY ALVIN ENGINEERING, LITTLE ROCK, AR. 3/92

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EXHIBIT B
FINAL CLEANUP ACTION PLAN
(to be inserted)

151\backslashbackwch exb

1 EXHIBIT C-1
2 NOTICE OF PROPOSED TRANSFER
3

4 To: Ecology Project Coordinator

5 From:

6 Earle M. Jorgensen Company and Dennis F. and
7 Shirley A. Beckwith and Northwest Slag Products,
8 Inc., or Current Successor in Interest and Assigns

and

9 Proposed Transferee

10 1. Pursuant to Sections XIII and XIV of the Consent Decree
11 re: Beckwith Property (King County Superior Court Cause
12 No. _____), _____ and

13 _____ hereby give Ecology notice of a
14 proposed transfer in interest of the Property and the Proposed
15 Transferee is indicating whether he/she/it intends to become
16 Party to the above-referenced Decree.

17 2. [Proposed Transferee] intends to [purchase/lease]
18 [all/_____ square feet of] the Property for purposes of
19 _____

20 3. [If the Proposed Transferee proposes to become a Party
21 to the Decree, state that intention here.]

22 4. [If the Proposed Transferee is requesting modification
23 of the Cleanup Action Plan (CAP) for the Site, Proposed
24 Transferee has attached a description of the proposed
25 modification.]

26 5. If the Proposed Transferee has indicated its desire to
become a Party to this Decree pursuant to paragraph 3 above,
Ecology has thirty (30) days from this notification to:

- a) object to [Proposed Transferee] becoming a party to
the Decree on the basis of an Ecology determination
that [Current Owner] or [Proposed Transferee] is or
will be in violation of a material term or is
otherwise not eligible to become a Party; or

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b) object to [Proposed Transferee] becoming a Party to the Decree on the basis of an Ecology determination that [Proposed Transferee's] use of the Property will interfere with the Cleanup Action Plan for the Site.

6. Failure of Ecology to take the actions described in Paragraph 5 above shall result in acceptance of the transfer proposed by [Proposed Transferee] and [Proposed Transferee] may seek entry by the court of its proposed amendment (see attached) without signature by Ecology.

7. The undersigned hereby certify that they are in compliance with all terms and conditions of the Decree and that when the Proposed Transferee becomes a Party, he/she will also be in compliance with all terms and conditions of the Decree.

Earle M. Jorgensen Company
and Dennis F. and
Shirley A. Beckwith, and
Northwest Slag Products, Inc., by
Dennis F. Beckwith, its President
or Successors in Interest and
Assigns

Proposed Transferee

151beckwe-1 czh

EXHIBIT C-2

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

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
EARLE M. JORGENSEN CO., and)
DENNIS F. and)
SHIRLEY A. BECKWITH, and)
NORTHWEST SLAG PRODUCTS, INC.,)
)
Defendants.)

No. _____

AMENDMENT TO CONSENT
DECREE RE: BECKWITH
PROPERTY

(AGREEMENT OF SUCCESSOR
IN INTEREST TO THE SITE)

Pursuant to Sections XIII and XIV of the attached Consent Decree (Decree), the undersigned Successor in Interest to the Site hereby agrees to be bound by all applicable provisions of the Decree.

[If modification to the Cleanup Action Plan is agreed to by Ecology and the transferee, a description of such modification shall be attached and incorporated.]

1 This Agreement of Successor in Interest to the Site shall
2 be effective upon approval by the court.

3 So ordered this ____ day of _____, 1995.

4

5

Judge
King County Superior Court

6

7

IT IS SO AGREED BY THE UNDERSIGNED
SUCCESSORS IN INTEREST AND ASSIGNS:

8

9

10

By _____

11

Its _____

12

Date _____

13

Address: _____

14

15

16

17

IT IS SO AGREED BY THE DEPARTMENT OF ECOLOGY:

18

19

By _____

20

Its _____

21

Date _____

22

Address: _____

23

24

25

26

151\beckwo-2.csh

O'MELVENY & MYERS

400 SOUTH HOPE STREET
LOS ANGELES CALIFORNIA 90071-2899

TELEPHONE (213) 669-6000
TELEX 674122 FACSIMILE (213) 669-6407

CITICORP CENTER
153 EAST 53RD STREET
NEW YORK, NEW YORK 10022-4611
TELEPHONE (212) 326-2000
FACSIMILE (212) 326-2061

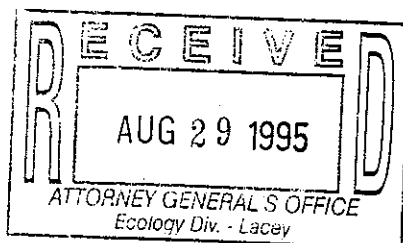
EMBARCADERO CENTER WEST
275 BATTERY STREET
SAN FRANCISCO CALIFORNIA 94111-3305
TELEPHONE (415) 984-8700
FACSIMILE (415) 984-8701

10 FINSBURY SQUARE
LONDON EC2A 1LA
TELEPHONE (0171) 256-8451
FACSIMILE (0171) 636-8205

SANBANCHO KB-6 BUILDING
6 SANBANCHO CHIYODA-KU
TOKYO 102
TELEPHONE (03) 3239-2800
FACSIMILE (03) 3239-2432

1104 LIPPO TOWER
LIPPO CENTRE
89 QUEENSWAY CENTRAL
HONG KONG
TELEPHONE (852) 2523-8266
FACSIMILE (852) 2522-1760

August
28th
1995



OUR FILE NUMBER
433,941-116
LA3-702578 V1

555 13TH STREET, N.W.
WASHINGTON, D. C. 20004-1109
TELEPHONE (202) 383-5300
FACSIMILE (202) 383-5414
1999 AVENUE OF THE STARS
LOS ANGELES CALIFORNIA 90067-6035
TELEPHONE (310) 553-6700
FACSIMILE (310) 246-6779
610 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660-6429
TELEPHONE (714) 760-9600
FACSIMILE (714) 669-6994
ONE GATEWAY CENTER
NEWARK, NEW JERSEY 07102
TELEPHONE (201) 639-8600
FACSIMILE (201) 639-8630 • 639-8631

WRITER'S DIRECT DIAL NUMBER
(213) 669-6452

VIA OVERNIGHT COURIER

Mary Sue Wilson, Esq.
Assistant Attorney General
Ecology Division
629 Woodland Square Loop, S.E., 4th Floor
Lacey, Washington 98503

Re: Slag Disposal/Beckwith Site

Dear Mary Sue:

I am enclosing for your records a copy of the Declaration of Restrictive Covenant for the above-referenced site that was recorded in the Official Records of King County as Instrument No. 9508250708. Please call me if you have any questions.

Yours very truly,

A handwritten signature in cursive script that reads "Sandra S. Ikuta".

Sandra S. Ikuta
for O'MELVENY & MYERS

Enc.

cc (w/enc.):

Mr. Dennis Beckwith
Scott R. Vokey, Esq.
Mitchell B. Menzer, Esq.

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

O'Melveny & Myers
400 South Hope Street
Los Angeles, California 90071-2899
Reference: 433,941-116
Att: Sandra S Ikuta

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF RESTRICTIVE COVENANT

11:00
005
10
KING COUNTY RECORDS
4/24/00 AM

9508250708

The property that is the subject of this Restrictive Covenant is the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property (hereafter the "Cleanup Action") is described in Washington State Department of Ecology Consent Decree No. 95-2-15301-1 (the "Decree"), and in attachments to the Decree. This Restrictive Covenant is required by the Department of Ecology ("Ecology") pursuant to WAC 173-340-440 and has been made by the undersigned solely for the benefit of Ecology and any successor agency.

Owner, as defined below, is the fee owner of real property in King County, state of Washington (legal description attached as Exhibit A), hereafter referred to as the "Site." As used herein, the term "Owner" shall mean the undersigned and all successors-in-interest and assigns to all or any portion of the Site. As a result of the Cleanup Action, secondary/recycled steel slag materials at the Site will be covered by a cap consisting of up to three feet of top soil, tree seedlings and vegetation. The Site will also include storm water, surface water, and groundwater drainage systems

Owner makes the following declaration as to limitations, restrictions, and uses to which the Site may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Site

Section 1. Owner agrees not to perform any Cleanup Action outside the scope of the Decree unless Ecology or any successor agency agrees to an amendment to the Cleanup Action as provided in the Decree. All Cleanup Actions shall be performed in accordance with the Decree. Any activity on the Site that is creating or has 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, may be prohibited by Ecology or any successor

agency pursuant to the Decree. It is understood that, subject to review and approval by Ecology or any successor agency, the Cleanup Action may be revised to accommodate the use of a portion of the Site by a governmental authority to expand a roadway (and the legal description of the Site for purposes of this Restrictive Covenant and the Decree may be revised to exclude the portion of the Site acquired by such governmental authority).

Section 2. Owner must give written notice to Ecology and any successor agency of Owner's intent to convey any interest in the Site. No conveyance of title, easement, lease or other interest in the Site shall be consummated by Owner without adequate and complete provision for the continued operation and maintenance of any containment system, treatment system, and monitoring system installed or implemented pursuant to this Decree and for continued compliance with this Restrictive Covenant.

Section 3. Owner shall maintain the cap, drainage systems, and monitoring system in accordance with the Decree. Owner shall notify Ecology or any successor agency prior to modifying the cap, drainage systems, or monitoring system in connection with any future development of the Site and shall obtain approval from Ecology for any substantial modification thereof. For purposes of this Restrictive Covenant, a modification shall not be deemed substantial if: (i) the proposed modification will not materially affect the pH of surface or groundwater; and (ii) Owner will restore the integrity of the cap, drainage systems, and monitoring system at the Site to their original condition in a timely manner. If Ecology or any successor agency approves a proposed substantial modification, and such modification is inconsistent with the terms of the Restrictive Covenant, this Restrictive Covenant shall be amended to reflect such modification.

Section 4. Owner shall allow authorized representatives of Ecology or any successor agency the right to enter the Site at reasonable times for the purpose of evaluating compliance with the Cleanup Action and the Decree, including the right to take samples, to inspect any remedial actions taken at the Site, and to inspect records that are related to the Cleanup Action, pursuant to the provisions of the Decree.

Section 5. Owner reserves the right under WAC 173-340-440 or other applicable law to record an instrument which provides that this Restrictive Covenant shall no longer limit the use of the Site or be of any further force or effect. Under WAC 173-340-440, such an instrument may be recorded only with the consent of Ecology or any successor agency and Ecology or any successor agency may consent to the recording of such an instrument only after public notice and comment.

9508250708

Section 6. If there is a breach of any material provision of this Restrictive Covenant by Owner, Ecology or any successor agency may enforce its rights hereunder by an action for specific performance or other injunctive relief permitted under the laws of the State of Washington, which injunctive relief shall be the exclusive remedy of Ecology and any successor agency hereunder. This Restrictive Covenant is not intended to, and does not, benefit or create any rights in any entity or person other than Owner and Ecology and any successor agency, and no such entity or person shall have any right to enforce this Restrictive Covenant.

Owner agrees to record this Restrictive Covenant on the Site with the register of deeds for King County and provide Ecology with a recorded copy.

Date: 8/22/95

THE EARLE M. JORGENSEN COMPANY

By: *Charles J. Jorgensen*

Its: VP + CFO

9508250708

STATE OF CALIFORNIA

COUNTY OF ORANGE

)
) S.S.
)

On AUGUST 22, 1994⁵, before me, SHARON K. HOUGH,
a Notary Public in and for said State, personally appeared
CHARLES P. GALLUPO
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/~~she~~/they executed the same in his/~~her~~/~~their~~ authorized
capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Sh K. Hough

(Seal)

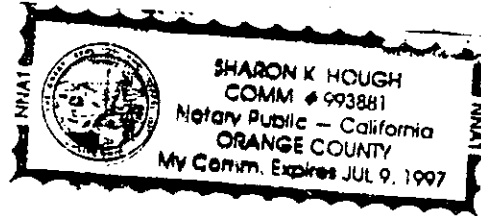


EXHIBIT A

Legal Description of the Land

TRACTS 26 AND 31, SHINNS CLOVERDALE ADDITION TO KENT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE(S) 52, IN KING COUNTY, WASHINGTON, LYING EAST OF PRIMARY STATE HIGHWAY NO. 5, AS CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 5320168 AND SOUTH OF SOUTH 218TH STREET AS CONVEYED TO THE CITY OF KENT BY DEED RECORDED UNDER RECORDING NUMBER 8101130005;
EXCEPT THAT PORTION OF TRACT 31 KNOWN AS VALLEY VIEW SHORT SUBDIVISION SPC-8-78 RECORDED UNDER RECORDING NUMBER 7906261130.

9508250708