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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT
OF ECOLOGY,

Plaintiff,

v.

LEWIS COUNTY, CITY OF
CENTRALIA, CITY OF CHEHALIS,
CITY OF MORTON, CITY OF
MOSSYROCK, TOWN OF PE ELL, CITY
OF VADER, HAROLD R. VASSAR AND
MARY L. VASSAR AND THE MARITAL
COMMUNITY THEREOF; CENTRALIA
HOLDING CORP.;

Defendants.

NO. C91-5100(T)WD

CONSENT DECREE FOR A REMEDIAL
INVESTIGATION/FEASIBILITY
STUDY AT THE CENTRALIA
LANDFILL

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17

INTRODUCTION

1
2
3 A. In entering into this Consent Decree (Decree), the
4 mutual objective of the Washington State Department of Ecology
5 (Ecology), and defendants Lewis County, the City of Centralia,
6 the City of Chehalis, the City of Morton, the City of Mossyrock,
7 the Town of Pe Ell, the City of Vader, Harold R. and Mary L.
8 Vassar ("Vassar"), and Centralia Holding Corp. ("CHC")
9 (collectively "Defendants") is to conduct a remedial
10 investigation and a feasibility study ("RI/FS") and develop a
11 Cleanup Action Plan ("CAP"), as set forth in Section V, for the
12 Site as defined in Section III, where there is a continuing
13 threat of a release of hazardous substances. The public
14 defendants Lewis County, City of Centralia, City of Chehalis,
15 City of Morton, City of Mossyrock, Town of Pe Ell, and City of
16 Vader have formed, under an interlocal agreement, the Centralia
17 Landfill Closure Group ("CLCG") to oversee the remediation of the
18 Site. Pursuant to Section V, this Decree requires the CLCG to
19 undertake the RI/FS with respect to site characterization, risk
20 assessment, and the development of remedial action alternatives;
21 requires Vassar and CHC to provide property access and otherwise
22 cooperate with the RI/FS; and requires Ecology to issue a CAP
23 for the Site. Once the final CAP is issued, the parties intend
24 to negotiate another consent decree to address implementation of
25 the CAP.

26 B. An amended Complaint against the CLCG members in this
action was filed on March 22, 1991. That Complaint was subse-

1 frequently amended to include the additional defendants, Vassar and
2 CHC. Although the Defendants dispute Ecology's allegations in
3 the complaint, an answer has not been filed, and there has not
4 been a trial on any issue of fact or law in this case. While the
5 Defendants deny any liability for any environmental contamination
6 at the Site, the parties wish to resolve the issues raised by
7 Ecology's complaint. In addition, the parties agree that
8 settlement of these matters without litigation is reasonable and
9 in the public interest and that entry of this Decree is the most
10 appropriate means of resolving these matters.

11 C. On July 29, 1991, Thurston County Superior Court
12 entered a first Consent Decree in this matter. That Consent
13 Decree required members of the CLCG to undertake an interim
14 action at the Landfill, as defined in Section III. The CLCG has
15 implemented a substantial portion of the interim action. This
16 Consent Decree addresses the RI/FS and CAP phase of remediation
17 at the Site.

18 D. In signing this Decree, the parties agree to its entry
19 and agree to be bound by its terms.

20 E. By entering into this Decree, the parties do not intend
21 to discharge non-settling parties from any liability they may
22 have with respect to matters alleged in the complaint.

23 F. This Decree shall not be construed as proof of liabili-
24 ty or responsibility for any releases of hazardous substances or
25 cost for remedial action nor an admission of any facts; provided,
26 however, that the parties shall not challenge either the standing

1 of Ecology or the jurisdiction of this Court in any proceeding to
2 enforce this Decree.

3 G. The Court, being fully advised of the reasons for entry
4 of this Decree, and good cause having been shown: HEREBY ORDERS,
5 ADJUDGES, AND DECREES AS FOLLOWS:

6 I. JURISDICTION

7 A. This Court has jurisdiction over the subject matter and
8 over the parties under Section 107 of the Comprehensive
9 Environmental Response, Compensation, and Liability Act
10 ("CERCLA"), 42 U.S.C. § 9607. The Court also has jurisdiction
11 under the Water Pollution Control Act, Chapter 90.48 RCW; the
12 Model Toxics Control Act (MTCA), Chapter 70.105D RCW, based on
13 the doctrine of pendant jurisdiction. Venue is proper in this
14 district pursuant to Section 113(b) of CERCLA, 42 U.S.C. §
15 9613(b), and 28 U.S.C. § 1391(b), because the claims herein arose
16 in this district.

17 B. Authority is conferred upon the Washington State
18 Attorney General by RCW 70.105D.040(4)(a) to agree to settlement
19 with any potentially liable person if, after public notice and
20 hearing, Ecology finds the proposed settlement would lead to a
21 more expeditious cleanup of hazardous substances in compliance
22 with cleanup standards under RCW 70.105D.030(2)(d). RCW
23 70.105D.040(4)(b) requires that such a settlement be entered as a
24 Consent Decree issued by a court of competent jurisdiction.

25 C. Ecology has provided notice and opportunity for comment
26 to Vassar and CHC, as set forth in RCW 70.105D.020(8), of the

1 threat of release of hazardous substances at the Site and of
2 Ecology's determination that Vassar and CHC are potentially
3 liable persons for the Site pursuant to RCW 70.105D.020(8).
4

5 D. The members of the CLCG have voluntarily waived the
6 rights of its members to notice and comment under RCW
7 70.105D.020(8) and accepted Ecology's determination that they are
8 potentially liable persons at the Site within the meaning of RCW
9 70.105D.020(8). Acceptance by the members of the CLCG of status
10 as potentially liable persons with respect to this Site is not to
11 be construed as an admission of liability or waiver of any
12 defense that each or any member may have to any claims other than
13 those resolved by this Consent Decree.

14 E. Ecology will continue to consider additional informa-
15 tion concerning other PLPs as it becomes available and may name
16 more PLPs at a later date.

17 F. Ecology has determined that there is a continuing
18 threat of release of hazardous substances from the Source Area,
19 including the threat of a release of hazardous substances to
20 surface water and/or ground water.

21 G. The actions to be taken pursuant to this Decree are
22 necessary to protect human health and the environment and will
23 lead to a more expeditious cleanup of hazardous substances in
24 compliance with the cleanup standards RCW 70.105D.030(2)(d) and
25 the regulations adopted pursuant thereto.
26

II. PARTIES BOUND

This Decree shall apply to and be binding upon signatories to this Decree (parties), their successors and assigns. The undersigned representatives of the Defendants and Ecology hereby certify that they are fully authorized to enter into this Decree and to execute and legally bind the individuals, corporations, municipalities, and other entities they each represent to comply with the Decree. Defendants agree to undertake all actions required by the terms and conditions of this Decree in accordance with Section V. No change in ownership of the Properties, as defined in Section III, municipal status or corporate status of any Defendant shall alter the responsibility of the Defendants under this Decree. The CLCG shall provide a copy of this Decree to all contractors and subcontractors retained to perform work required by this Decree and shall ensure that all work undertaken by such contractors and subcontractors will be in compliance with this Decree.

III. DEFINITIONS

Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200 apply to the terms in this Decree and without prejudice to Defendants' right to deny or otherwise challenge these findings of fact.

A. Landfill: The Centralia Landfill property as described by the legal description for the "Centralia Landfill property" contained in Exhibit A. This property includes the Centralia Landfill.

1 B. Properties: The Centralia Landfill property, Vassar
2 Property No. 2, and Centralia Holding Corporation Property ("CHC
3 Property") described in Exhibit A.

4 C. Source Area: The extent of refuse at the Properties
5 described in Exhibit A.

6 D. Site: Those portions of the Properties and any other
7 properties where hazardous substances originating from the
8 landfill operations have come to be located. The Site is a
9 "facility" as defined at RCW 70.105D.020(3). Exhibit A of this
10 Consent Decree generally illustrates, without prejudice, property
11 boundaries and immediate vicinity associated with the Site and
12 contains legal descriptions of the Properties.

13 E. Days: Refers to calendar days unless specified
14 otherwise.

15 F. Parties: Refers to the Washington State Department of
16 Ecology, the members of the CLCG, Vassar, and CHC.

17 G. Defendants: Refers to the members of the CLCG, Vassar
18 and CHC.

19 H. CLCG: Refers to Lewis County, City of Centralia, City
20 of Chehalis, City of Morton, City of Mossyrock, Town of Pe Ell,
21 and City of Vader. These local governments, by interlocal
22 agreement, have formed the Centralia Landfill Closure Group to
23 oversee the remediation of the Centralia Landfill.

24 I. Consent Decree or Decree: Refers to this Consent
25 Decree and each of the exhibits to the Decree. All exhibits are
26 integral and enforceable parts of this Consent Decree.

IV. STATEMENT OF FACTS

Ecology makes the following finding of facts without any express or implied admissions by Defendants and without prejudice to Defendants' right to deny or otherwise challenge those findings of fact.

A. The City of Centralia ("Centralia") owns the Centralia Landfill, an operating municipal solid waste landfill located at 1411 South Tower, Centralia, Washington 98531.

B. CHC owns the CHC Property described in Exhibit A. It appears that part or all of this property was once an active part of the north section of the Centralia Landfill.

C. Vassar owns the Vassar Property No. 2 described in Exhibit A. It appears that part or all of this property was once an active part of the north section of the Centralia Landfill.

D. Landfilling operations have occurred at the Properties since 1958. It appears that landfilling operations occurred on both Vassar Property No. 2 and CHC Property, described in Exhibit A, and that such operations were completed prior to 1972. By letter dated May 18, 1987 to the City of Centralia, the Lewis County Health District deemed the north end of the Centralia Landfill, described in Exhibit A, to be closed pursuant to WAC 173-301-611 for Abandoned Disposal Sites. Chapter 173-301 WAC was superseded by Chapter 173-304 WAC in 1985. Because this historical portion of the Centralia Landfill was deemed closed before ch. 173-304 WAC became effective in 1985, that portion is

1 not required to meet standards set by ch. 173-304 WAC for
2 landfill closure. WAC 173-304-400(1)(e).

3 E. From approximately 1970 to 1978, Harold LeMay
4 Enterprises, a private contractor, operated the Centralia
5 Landfill. At all other times, it has been operated by Centralia.
6

7 F. Since 1958, the Source Area has received solid waste
8 generated in Lewis County and south Thurston County. Ross
9 Electric of Washington, Inc. disposed of PCB-contaminated ash in
10 the Source Area. In addition, various other industries and/or
11 commercial enterprises may have disposed of hazardous substances
12 at the Site.

13 G. The members of the CLCG by contract, agreement, or
14 otherwise arranged for disposal of municipal solid waste owned,
15 possessed, or generated by members of the CLCG at the Source
16 Area, or otherwise generated municipal solid waste disposed of at
17 the Source Area.

18 H. On August 28, 1990, the Site was listed on the State
19 Hazardous Sites List pursuant to WAC 173-340-330, and on
20 August 30, 1990, the Site was listed on the federal National
21 Priorities List, pursuant to § 105 of CERCLA, 42 U.S.C. 9605
22 (55 Fed. Reg. 35502 (August 30, 1990)).

23 I. An interim action is being performed in compliance with
24 a Consent Decree entered in Thurston County Superior Court on
25 July 29, 1991 (Cause No. 91-2-01654-0), and Western District
26 Court (Cause No. C91-5100T) on July 8, 1991. The interim action
includes the following elements: the installation of an active

1 landfill gas control system, leachate seep collection system,
2 security fencing, stormwater collection and discharge system, and
3 a temporary geomembrane and soil cover.

4 J. The threat of a release of hazardous substances from
5 the Source Area exists.

6 V. WORK TO BE PERFORMED

7 A. This Decree provides for implementation of a RI/FS and
8 development of a CAP designed to protect human health and the
9 environment from the known or threatened release of hazardous
10 substances at, on, or from the Source Area. The scope of work
11 and schedule for the RI/FS and CAP are set forth in Exhibits B
12 and C to this Decree. Except where performance by another party
13 is expressly provided for, the CLCG and Ecology hereby commit to
14 implement the requirements assigned to each in Exhibits B and C.

15 B. CHC hereby commits to provide the CLCG and Ecology,
16 upon reasonable notice, with access to the CHC Property to
17 implement the scope of work set forth in Exhibit B. Vassar
18 hereby commits to provide the CLCG and Ecology, upon reasonable
19 notice, with access to Vassar Property No. 2 to implement the
20 scope of work set forth in Exhibit B, to the extent allowed under
21 any lease agreement pertaining to that property. In addition,
22 Vassar and CHC shall provide the CLCG and Ecology, upon request,
23 with any and all non-privileged documents and information within
24 their possession regarding operations on Vassar Property No. 2
25 and CHC Property, respectively, that is relevant to the
26 implementation of the Exhibit B scope of work. Vassar and CHC

1 shall abide by the Safety and Health Plan developed under Exhibit
2 B and otherwise cooperate with the CLCG and Ecology in good faith
3 as the CLCG and Ecology implement Exhibits B and C and shall not
4 impede such implementation. The CLCG shall provide Vassar and
5 CHC with copies of all preliminary draft documents provided to
6 the CLCG for review, draft documents provided to Ecology for
7 approval, and all other documents approved by Ecology pursuant to
8 the scope of work set forth in Exhibit B. Without limiting the
9 foregoing, the CLCG shall, upon reasonable notice, grant CHC and
10 Vassar access to any and all non-privileged documents and
11 information relevant to the implementation of the RI/FS scope of
12 work set forth in Exhibit B to this Decree, including without
13 limitation all contracts and correspondence with contractors,
14 sampling results, laboratory reports, draft and final reports,
15 and progress reports.

16 C. Each of the Defendants agree to notify Ecology if they
17 undertake any remedial actions outside the scope of this Decree
18 at the Properties. Except in emergency situations, Defendants
19 agree to provide notice to Ecology at least five (5) days in
20 advance of such remedial actions. All work conducted under this
21 Decree shall be done in accordance with Chapter 173-340 WAC
22 unless otherwise provided herein.

23 VI. GRANT FUNDING

24 Pursuant to RCW 70.105D.070(3)(a) and Ch. 173-322 WAC,
25 Ecology has made the following determinations:
26

1 1. The members of the CLCG are local governments
2 required, pursuant to this Consent Decree, to undertake remedial
3 action at the Site;

4 2. The members of the CLCG are prepared to proceed
5 promptly to accomplish the scope of work set forth in Exhibit B;
6 and

7 3. Implementation of this Consent Decree will lead to
8 a more expeditious cleanup of hazardous substances at the Site in
9 compliance with the cleanup standards of RCW 70.105D.030(2)(d).

10 VII. DESIGNATED PROJECT COORDINATORS

11 The project coordinator for Ecology is:

12 Tina Masterson
13 7272 Cleanwater Lane, LU-11
14 Olympia, Washington 98504-6811
15 Phone: (206) 586-7310

16 The project coordinator for the CLCG is:

17 Richard Southworth
18 Centralia Landfill Closure Group
19 P.O. Box 609
20 Centralia, Washington 98531
21 Phone: (206) 736-8284

22 The project coordinator for Vassar is:

23 Harold Vassar
24 3205 Goddard Road Southwest
25 Tenino, Washington 98589
26 Phone: (206) 273-5360

 The project coordinator for CHC is:

 Mr. I. Ward Lange
 c/o John H. Harland Company
 P.O. Box 105250
 Atlanta, GA 30348
 Phone: (404) 593-5615

1 Each project coordinator shall be responsible for overseeing
2 the implementation of the parties' respective responsibilities
3 under this Decree. The Ecology project coordinator will be
4 Ecology's designated representative for the Site. To the maximum
5 extent possible, communications between Ecology and the Defen-
6 dants and all documents, including reports, approvals, and other
7 correspondence concerning the activities performed pursuant to
8 the terms and conditions of this Decree, shall be directed
9 through the project coordinators. The project coordinators may
10 designate, in writing, working level staff contacts for all or
11 portions of the implementation of the work required by this
12 Decree.

13 Any party may change its respective project coordinator.
14 Written notification shall be given to the other parties at least
15 ten (10) calendar days prior to the change. The project coordi-
16 nators may agree to minor modifications to the work to be
17 performed without a formal amendment of this Consent Decree upon
18 Ecology's written agreement that the modification is minor.

19 VIII. PERFORMANCE

20 All work performed by the CLCG pursuant to this Decree shall
21 be under the direction and supervision, as necessary, of a
22 professional engineer or hydrogeologist, or equivalent, with
23 experience and expertise in hazardous waste site investigation
24 and cleanup. The CLCG shall notify Ecology in writing as to the
25 identity of such engineer(s) or hydrogeologist(s), and of any
26 contractors and subcontractors to be used in carrying out the

1 terms of this Decree, prior to the initiation of their work under
2 this Decree.

3
4 IX. ACCESS

5 Upon giving reasonable notice to Defendants in accordance
6 with RCW 70.105D.030(1) and WAC 173-340-800, and subject to
7 Vassar's ability to provide site access under its lease agreement
8 with its tenant, as described in Section V.B., Ecology or any
9 Ecology authorized representatives shall have the authority to
10 enter and freely move about the Properties at all reasonable
11 times for the purposes of, inter alia: inspecting records,
12 operation logs, and contracts related to the work being performed
13 pursuant to this Decree; reviewing the progress in carrying out
14 the terms of this Decree; conducting such tests or collecting
15 samples as Ecology may deem necessary; using a camera, sound
16 recording, or other documentary type equipment to record work
17 done pursuant to this Decree; and verifying the data submitted to
18 Ecology by the Defendants. Without limitation on Ecology's
19 rights under this section, Ecology shall notify Defendants prior
20 to any sampling event pursuant to this section and will use best
21 efforts to provide five (5) working days advance notice including
22 a written description of planned sampling activities.

23 Upon request, Ecology shall allow Defendants to split any
24 samples taken by Ecology during an inspection, unless the
25 Defendants fail to make available a representative for the
26 purpose of splitting samples. All parties with access to the
Properties pursuant to this paragraph shall comply with safety

1 and health plans required by this Decree. Ecology shall make the
2 results of all sampling, laboratory reports, videos, and/or test
3 results generated by it or on its behalf, collected for purposes
4 of this Consent Decree, available to Defendants unless an
5 exemption from disclosure is available under ch. 42.17 RCW.

6 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

7 The CLCG shall conduct all sampling and analysis in a manner
8 consistent with the Field Sampling Plan(s) (FSP) and Quality
9 Assurance Project Plan(s) (QAPP) required by Exhibit B. With
10 respect to the implementation of this Decree, the CLCG shall
11 include in the reports prepared under Exhibit B the results of
12 all sampling, laboratory reports, and/or test results generated
13 by it, or on its behalf and which have been verified pursuant to
14 the FSP and QAPP.

15 If requested by Ecology or the other Defendants, the CLCG
16 shall allow split or duplicate samples to be taken by Ecology
17 and/or its authorized representatives or the other Defendants of
18 any samples collected by the CLCG pursuant to the implementation
19 of this Decree. The CLCG shall notify Ecology in advance of any
20 sampling event pursuant to this Decree and will use best efforts
21 to provide notice at least five (5) working days in advance of
22 such sampling. The CLCG agrees to cooperate with Ecology in
23 accordance with terms set forth in the QAPP in providing splits
24 of samples to Ecology when Ecology is unable to attend a sampling
25 event.
26

1 In accordance with WAC 173-340-840(5), the CLCG shall submit
2 validated ground water sampling data to Ecology in the format
3 specified in Appendix A to this Decree: GROUND WATER SAMPLING
4 DATA SUBMITTAL REQUIREMENTS, both in hard copy form and on
5 computer disk. These submittals shall be provided to Ecology in
6 accordance with Section XI of this Decree.

7
8 XI. PROGRESS REPORTS

9 The CLCG shall submit to Ecology written monthly progress
10 reports that describe the actions taken during the previous month
11 to implement the requirements of this Decree. The progress
12 report shall include the following:

13 A. A list of field activities that have taken place during
14 the previous month;

15 B. Detailed description of any deviations from required
16 tasks not otherwise documented in project plans or amendment
17 requests;

18 C. Description of all deviations from the schedule
19 (Exhibit C) during the previous month and any planned deviations
20 in the upcoming month;

21 D. For any deviations in schedule, a plan for recovering
22 lost time and maintaining compliance with the schedule;

23 E. A hard copy of all raw data (including laboratory
24 analysis) received by the CLCG during the past month and an
25 identification of the source of the sample; and

26 F. Computer files and hard copies of all validated ground
water sampling data, following verification.

1 G. A list of deliverables for the upcoming month if
2 different from the schedule.

3 All progress reports shall be submitted by the tenth day of
4 the month. The first progress report shall be due within ten
5 (10) days after the end of the first full month following the
6 effective date of this Decree. Unless otherwise specified,
7 progress reports and any other documents submitted pursuant to
8 this Decree shall be sent by certified mail, return receipt
9 requested, to Ecology's project coordinator.

10 XII. RETENTION OF RECORDS

11 In accordance with WAC 173-340-850, each Defendant shall
12 preserve, during the pendency of this Decree and for ten (10)
13 years from the date of issuance of Ecology's Cleanup Action Plan
14 pursuant to Section XXIV (Duration of Decree), all records,
15 reports, documents, and underlying data in their possession
16 relevant to the implementation of this Decree and shall insert in
17 contracts with project contractors a similar record retention
18 requirement. Upon reasonable request of Ecology, Defendants
19 shall make all such non-archived records available to Ecology and
20 allow access for review. All such archived records shall be made
21 available to Ecology within a reasonable period of time.

22 XIII. TRANSFER OF INTEREST IN PROPERTY

23 No voluntary conveyance or relinquishment of title,
24 easement, leasehold, or other interest in any portion of
25 the Properties shall be consummated without provision for
26 continuing the remedial action as described in this Consent

Decree, so long as the remedial action is determined by Ecology to be necessary to carry out the terms of the Decree.

Prior to transfer of any legal or equitable interest in all or any portion of the Properties during the effective period of this Decree, the transferring Defendant shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days prior to any transfer, such Defendant shall notify Ecology of said contemplated transfer.

XIV. RESOLUTION OF DISPUTES

A. Ecology and the Defendants shall resolve any dispute which arises as to a decision or action by Ecology's project coordinator during the implementation of this Decree pursuant to the dispute resolution procedures set forth below.

1. The party seeking dispute resolution shall send written notice specifying the nature of the dispute to the project coordinator(s) for the other parties, by certified mail. The Ecology project coordinator shall deliver a copy of the written notice of dispute to the Ecology section supervisor.

2. The parties, project coordinators and the Ecology section supervisor shall then confer in a good faith effort to resolve the dispute. The parties shall have ten (10) working days to resolve the dispute from the date notice of dispute is received. At the end of those ten (10) working days, Ecology's project coordinator shall issue a written decision signed by the section supervisor.

1
2 3. If the dispute remains unresolved, within seven
3 (7) working days of receipt of the section supervisor's written
4 decision, the parties seeking dispute resolution may then submit
5 a written request for review of the dispute to the Toxics Cleanup
6 Program Manager.

7 4. The Toxics Cleanup Program Manager shall conduct a
8 review of the dispute and shall issue a written decision regard-
9 ing the dispute within five (5) working days of receipt of the
10 request for review. If the Toxics Cleanup Program Manager is
11 unavailable to review the dispute within five (5) working days,
12 an extension of five (5) working days shall be allowed.

13 5. If the decision of the Toxics Cleanup Program
14 Manager is unacceptable to the parties requesting dispute resolu-
15 tion, then the parties have the right to submit the dispute to
16 the Court for resolution.

17 B. The Court shall review any action or decision of
18 Ecology within the scope of RCW 70.105D.060 on the basis of
19 whether such action or decision was arbitrary and capricious.
20 All other actions or decisions of Ecology shall be reviewed on a
21 standard to be determined by the Court.

22 C. The parties agree to only utilize the dispute resolu-
23 tion process in good faith and agree to expedite, to the extent
24 possible, the dispute resolution process whenever it is used.
25 Where a party utilized the dispute resolution process in bad
26 faith or for purposes of delay, it may be subject to sanctions.

1 D. Each party shall bear its own attorney's fees, expert
2 witness fees and other legal costs resulting from utilization of
3 the judicial review provisions of this dispute resolution
4 procedure, unless the Court finds any party has acted in bad
5 faith, in which case the Court may require the party acting in
6 bad faith to pay the other parties' attorneys' fees, expert
7 witness fees and other legal costs.

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

12 XV. AMENDMENT OF CONSENT DECREE

13 A. With the exception set forth in C below and minor
14 modification as set forth in Section VII, this Decree may only be
15 amended by a written stipulation among the parties to this
16 Decree. Such amendment shall become effective upon entry by the
17 Court. Agreement to amend shall not be unreasonably withheld by
18 any party to the Decree.

19 B. The party seeking amendment shall submit any request
20 for an amendment to all other parties (the Responding Parties)
21 for approval. The Responding Parties shall indicate their
22 approval or disapproval in a timely manner after the request for
23 amendment is received. Reasons for the disapproval shall be
24 stated in writing. If the Responding Parties do not agree to any
25 proposed amendment, the disagreement may be addressed through the
26

1 dispute resolution procedures described in Section XIV of this
2 Decree.

3 C. Written stipulation by the parties is not needed for
4 schedule extensions granted pursuant to Section XVI of this
5 Decree. Any such extension shall become effective on the date on
6 which Ecology issues its written approval.

7
8 XVI. EXTENSION OF SCHEDULE

9 A. An extension of schedule shall be granted by Ecology
10 only when a request for an extension is submitted in a timely
11 fashion and good cause exists for granting the extension. All
12 extensions shall be requested in writing. The request shall
13 specify the reason(s) the extension is needed.

14 An extension shall only be granted for such period of time
15 as is reasonable under the circumstances. A requested extension
16 shall not be effective until approved by Ecology. Ecology shall
17 act upon any written request for extension in a timely fashion
18 and, to the extent possible, within fourteen (14) days of the
19 request. It shall not be necessary to formally amend this Decree
20 pursuant to Section XV when a schedule extension is granted
21 pursuant to this section of the Decree.

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

- (1) Circumstances beyond the reasonable control and despite the due diligence of the Defendant including delays caused by unrelated third parties or Ecology, as well as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Defendants; or
- (2) Delays resulting from changes in permit terms or conditions, or a delay in issuing or refusal to grant a permit needed to implement the requirements of this Decree, provided the Defendant filed a timely application for the permit; or
- (3) Judicial review of the issuance, nonissuance, or reissuance of a permit necessary for the continuation of work; or
- (4) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, wave or water conditions, or other unavoidable casualty; or
- (5) Other circumstances deemed in written notice to be exceptional or extraordinary by Ecology; or
- (6) Endangerment as described in Section XVII.

However, neither increased costs of performance nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Defendants.

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

XVII. ENDANGERMENT

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

In the event the Defendants determine that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Properties or in the surrounding area or to the environment, the Defendants may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether the Defendants should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. The Defendants

1 shall notify Ecology's project coordinator as soon as is
2 possible, but no later than one business day after such stoppage
3 of work, and thereafter provide Ecology with documentation of the
4 basis for the work stoppage. If Ecology disagrees with the
5 Defendants' determination, it may order the Defendants to resume
6 implementation of this Decree. If Ecology concurs in the work
7 stoppage, the Defendants' obligations shall be suspended and the
8 time period for performance of that work, as well as the time
9 period for any other work dependent upon the work which was
10 stopped, shall be extended, pursuant to Section XVI of this
11 Decree, for such period of time as Ecology determines is
12 reasonable under the circumstances. Any disagreements pursuant
13 to the clause shall be resolved through the dispute resolution
14 procedures in Section XIV.

15 XVIII. OTHER ACTIONS

16 A. Ecology reserves its right to institute remedial
17 action(s) at the Site and subsequently pursue cost recovery, and
18 Ecology reserves its right to issue orders and/or impose penal-
19 ties or take any other enforcement action pursuant to available
20 statutory authority under the following circumstances:

- 21 (1) Where Defendants fail to comply with any material
22 requirement of this Decree;
23
24 (2) In the event or upon the discovery of a release or
25 threatened release of hazardous substances not
26 addressed by this Decree, which Defendants, after
notice, fail to address;

- 1 (3) Upon Ecology's determination that action beyond the
2 terms of this Decree is necessary to abate an emergency
3 situation which threatens human health or the
4 environment; however, Ecology will first give the
5 Defendants notice and opportunity to perform such
6 remedial action unless the threat is so immediate as to
7 not permit the giving of notice;
- 8 (4) Upon the occurrence or discovery of a situation beyond
9 the scope of this Decree as to which Ecology would be
10 empowered to perform any remedial action or to issue an
11 order and/or penalty, or to take any other enforcement
12 action, given that this Decree is limited in scope to
13 the Site as defined in Section III; or
- 14 (5) In the event or upon the discovery of a release or
15 threatened release of hazardous substances resulting
16 from or related to non-landfill operations, including
17 but not limited to activities at the Vassar or CHC
18 Properties.

19 B. With the exceptions set forth in paragraph A, in
20 consideration of the Defendants' performance of the terms and
21 conditions of this Decree, Ecology agrees that, during the period
22 of performance of the terms and conditions of this Decree,
23 compliance with this Decree shall stand in lieu of any and all
24 administrative, legal, and equitable remedies available to
25 Ecology to respond to the release or threatened release of
26 hazardous substances addressed by this Consent Decree.

1 C. Ecology reserves the right to take any enforcement
2 action whatsoever against additional potentially liable persons
3 not party to this Consent Decree, including a cost recovery
4 action.

5 XIX. INDEMNIFICATION

6 To the extent permitted by law, the CLCG agrees to
7 indemnify and save and hold the State of Washington, its
8 employees, and agents harmless from any and all claims or causes
9 of action for death or injuries to persons or for loss or damage
10 to property arising from or on account of acts or omissions of
11 the CLCG, their officers, employees, agents, or contractors in
12 entering into and implementing this Decree. However, the CLCG
13 shall not indemnify the State of Washington nor save nor hold its
14 employees and agents harmless from any claims or causes of action
15 arising out of the negligent or intentional acts or omissions of
16 the State of Washington, or the employees or agents of the State,
17 in implementing the activities pursuant to this Decree.

18 To the extent permitted by law, CHC and Vassar agree to
19 indemnify and save and hold the State of Washington, its
20 employees, and agents harmless from any and all claims or causes
21 of action for death or injuries to persons or for loss or damage
22 to property arising from or on account of acts or omissions of
23 CHC or the Vassars, respectively, or their officers, employees or
24 agents in entering into and implementing this Decree. However,
25 CHC and the Vassars shall not indemnify the State of Washington
26 nor save nor hold its employees and agents harmless from any

1 claims or causes of action arising out of the negligent or
2 intentional acts or omissions of the State of Washington, or the
3 employees or agents of the State, in implementing the activities
4 pursuant to this Decree.

5 Ecology agrees to indemnify and save and hold the Defen-
6 dants, their agents and employees harmless from any and all
7 claims or causes of action for death or injuries to persons or
8 for loss or damage to property arising from or on account of acts
9 or omissions of Ecology, its employees, agents, or contractors in
10 entering into and implementing this Decree. However, Ecology
11 shall not indemnify the Defendants nor save nor hold their
12 employees and agents harmless from any claims or causes of action
13 arising out of the negligent or intentional acts or omissions of
14 the Defendants, or the employees and agents of the Defendants in
15 implementing the activities pursuant to this Decree.

16 XX. COMPLIANCE WITH APPLICABLE LAWS

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

21 XXI. REMEDIAL AND INVESTIGATIVE COSTS

22 The CLCG agrees to pay costs incurred by Ecology pursuant to
23 this Decree. These costs shall include work performed by Ecology
24 or its contractors for remedial actions, Decree preparation and
25 negotiations, site investigation, and oversight or administration
26 of this Decree. Ecology costs shall include costs of direct

1 activities; e.g., employee salary, laboratory costs, contractor
2 fees, and employee benefit packages; and Ecology indirect costs
3 of direct activities. Within ninety (90) days of the end of each
4 fiscal quarter, Ecology will submit to the CLCG a summary
5 statement of Ecology's expenses for the previous quarter. The
6 CLCG agrees to pay the required amount within ninety (90) days of
7 receiving a summary statement of Ecology expenses, payable to the
8 State Toxics Control Account. Failure to pay Ecology's costs
9 within ninety (90) days of receipt of the itemized statement may
10 result in interest charges. Any disputes regarding remedial and
11 investigative (oversight) costs shall be subject to dispute
12 resolution pursuant to Section XIV of this Decree.

13 XXII. IMPLEMENTATION OF REMEDIAL ACTION

14 If Ecology determines that any Defendant has failed without
15 good cause to implement any material obligation of such Defendant
16 under this Decree, Ecology may, after notice to the Defendants
17 order Defendants to suspend implementation of this Consent
18 Decree. The Parties shall then attempt in good faith to resolve
19 any dispute pursuant to Section XIV. If the dispute remains
20 unresolved and is submitted to court for resolution, Ecology may,
21 after notice to Defendants, perform any or all portions of the
22 work required under this Decree that remain incomplete. If
23 Ecology's position is upheld by the court and Ecology performs
24 all or portions of the remedial action because of one or more of
25 the Defendants' failure to comply with such Defendant's
26 respective obligations under this Decree, any such Defendant(s)

1 refusing to comply with the Decree shall reimburse Ecology for
2 the costs of doing such work within forty-five (45) days of
3 receipt of demand for payment of such costs, provided that such
4 Defendant(s) is not obligated under this section to reimburse
5 Ecology for costs incurred for work inconsistent with or beyond
6 the scope of this Consent Decree.

7
8 XXIII. PUBLIC PARTICIPATION

9 Ecology shall maintain the responsibility for public
10 participation at the Site. However, the Defendants shall
11 cooperate with Ecology and shall do the following:

12 A. The CLCG shall prepare drafts of public notices and
13 fact sheets upon request by Ecology at important stages of the
14 remedial action, such as the submission of work plans and the
15 completion of draft RI. Ecology will finalize (including editing
16 if necessary) and distribute such fact sheets and prepare and
17 distribute public notices of Ecology's presentations and
18 meetings;

19 B. The Defendants shall notify Ecology's project
20 coordinator prior to the issuance of all press releases and fact
21 sheets, and before major meetings with the interested public and
22 local governments. Likewise, Ecology shall notify the Defendants
23 prior to the issuance of all press releases and fact sheets, and
24 before major meetings with the interested public and local
25 governments;

26 C. The CLCG shall participate in public presentations on
the progress of remedial action at the Site. Participation may

1 be through attendance at public meetings to assist in answering
2 questions or as a presenter;

3 D. In cooperation with Ecology, the CLCG shall arrange
4 and/or continue information repositories to be located at:

5 Public Works Department
6 City of Centralia
7 118 West Maple
8 Centralia, Washington 98531

9 Southwest Regional Office
10 Department of Ecology
11 LU-11
12 P.O. Box 47775
13 Olympia, Washington 98504-7775

14 At a minimum, copies of all public notices, fact sheets, and
15 press releases, and technical and procedural reports prepared
16 pursuant to Exhibit B shall be promptly placed in these reposi-
17 tories.

18 XXIV. DURATION OF THE DECREE

19 This Decree shall remain in effect and the remedial action
20 (RI/FS) program described in the Decree shall be maintained and
21 continued until Ecology issues the final Cleanup Action Plan
22 (CAP) required pursuant to Exhibit B.

23 XXV. CLAIMS AGAINST THIRD PARTIES

24 The Defendants expressly reserve their right to recover any
25 costs incurred in implementing this Decree from any other
26 potentially liable person not a party to this Consent Decree.

XXVI. CLAIMS BETWEEN THE DEFENDANTS

The CLCG expressly reserves its right to recover costs
incurred by the CLCG in implementing this Decree from Vassar and

1 CHC. CHC and Vassar likewise expressly reserve their right to
2 recover from the CLCG costs incurred by CHC or Vassar in
3 implementing this Decree.

4 XXVII. CLAIMS AGAINST THE STATE

5 The Defendants hereby agree that they will not seek to
6 recover any costs accrued in implementing this Decree from the
7 State of Washington or any of its agencies on the ground that it
8 is an owner or operator of the Site, as defined in WAC
9 173-340-200(29). Further, the Defendants agree not to file a
10 claim under RCW 70.105D.070 against the State Toxics Control
11 Account or the Local Toxics Control Account for any costs
12 incurred in implementing this Decree. Excluded from this
13 provision are costs incurred by Defendants under direction of
14 Ecology which are later found, through the dispute resolution
15 procedures in Section XIV, to be inconsistent with or beyond the
16 scope of this Decree.

17 Nothing in this Decree shall impair the right of the members
18 of the CLCG to obtain for grant funding from the Local Toxics
19 Control Account under RCW 70.105D.070(3) and ch. 173-322 WAC for
20 any eligible portion of the work required by this Decree. The
21 submission of an application for such grant funding shall not be
22 deemed to be the filing of a "claim" for the purposes of this
23 section.

24 XXVIII. EFFECTIVE DATE

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

XXIX. COVENANT NOT TO SUE

Subject to the terms and conditions of this Decree, including Section XIV governing resolution of disputes, and upon Ecology's issuance of the final Cleanup Action Plan described in Section XXIV, Ecology covenants not to sue the Defendants for matters covered by this Decree. Matters covered by this Decree do not include factors discovered after entry of the Decree which present a previously unknown threat to human health and the environment.

XXX. CONTRIBUTION PROTECTION

The Defendants shall not be liable for claims of contribution by other PLPs not signatories to the Decree regarding matters addressed in this Decree. The percentage of response costs paid by the Defendants under this Decree shall in no way constitute an admission as to an appropriate allocation of liability, if any, at the Site.

XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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.

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

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

DATED this 17th day of March, 1993.

William L. Ayer
UNITED STATES DISTRICT COURT JUDGE

STATE OF WASHINGTON

Date: 2/8/93 By: Carol L. Fleskes
CAROL FLESKES
Washington Department of
Ecology
Program Manager
Toxics Cleanup Program

Date: 2/14/93 By: Jay J. Manning
JAY J. MANNING
Assistant Attorney General
State of Washington
Office of Attorney General

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Date:

January 13, 1993

By:

Ceston L. McFarland

CESTON L. MCFARLAND
Preston Thorgrimson Shidler
Gates & Ellis
Attorneys for Centralia
Landfill Closure Group

LEWIS COUNTY

Date: 11-23-87

By: Jay Winter

Printed Name: Jay Winter

Title: Chairman, Board of County Comm.

CITY OF CENTRALIA

Date: December 2, 1972

By: JOAN M. BUZZARD

Mayor

CITY OF CHEHALIS

Date: _____

By: _____

David M. Campbell
DAVID M. CAMPBELL
City Manager

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CITY OF MORTON

Date: 12-2-1992

By:

Printed Name: Dayle F. Claycamp

Title: Mayor

CITY OF MOSSYROCK

Date: 12/31/92

By: Harold N. Williams

Printed Name: HAROLD N. WILLIAMS

Title: Mayor

CENTRALIA LANDFILL RI/FS
CONSENT DECREE - 41

PRESTON THORGRIMSON SHIDLER GATES & ELLIS

5000 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7078
TELEPHONE: (206) 623-7580

TOWN OF PE ELL

Date: 11-30-72

By:

[Signature]

Printed Name: JOHN A. LEE

Title: CHAIRMAN

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CITY OF VADER

Date: 1/13/93

By: *Yvonne Johnston*
Printed Name: Yvonne Johnston
Title: Mayor

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HAROLD R. VASSAR

Date: June 10, 1978

By: [Signature]

HAROLD R. VASSAR

MARY L. VASSAR

Date: June 10, 1978

By: [Signature]

MARY L. VASSAR

By: [Signature]

STEVEN R. BUZZARD

Buzzard & Tripp

Attorneys for Harold R. and
Mary L. Vassar

CENTRALIA HOLDING CORPORATION

Date: Dec 18, 1992

By:

Printed Name: J. D. Stahl

Title: President

By:

J.D. STAHL

Mundt, MacGregor, Happel,
Falconer, Zulauf & Hall

Attorneys for Centralia Holding
Corporation

ED
JUL 20 1991
THURSTON COUNTY WASH.

91 JUL 20 10:10

LETTER CLERK

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LEWIS COUNTY, CITY OF
CENTRALIA, CITY OF CHEHALIS,
CITY OF MORTON, CITY OF
MOSSYROCK, TOWN OF PE ELL,
CITY OF VADER,

Defendants.

No. 91 2 01654 0

ORDER ENTERING
CONSENT DECREE

Having reviewed the Consent Decree signed by the parties to this matter, the Motion for Entry of the Consent Decree, the Affidavit of Lucy E. Phillips, and the file herein, it is hereby

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

SIGNED this 24th day of July, 1991.


SUPERIOR COURT JUDGE

T4:lewis.ord

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SUPERIOR COURT CLERK
THURSTON COUNTY CLERK

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

LEWIS COUNTY, CITY OF
CENTRALIA, CITY OF CHEHALIS,
CITY OF MORTON, CITY OF
MOSSYROCK, TOWN OF PE ELL,
CITY OF VADER,

Defendants.

No. 91 2 1654 0

COMPLAINT

Plaintiff, State of Washington, Department of Ecology,
for cause of action, alleges as follows:

I. JURISDICTION

1. This court has jurisdiction under the Model Toxics
Control Act ("MTCA"), Chapter 70.105D RCW and the Water
Pollution Control Act, Chapter 90.48 RCW.

II. PARTIES

2. Plaintiff, State of Washington, Department of
Ecology ("Ecology"), is an agency of the State of Washington
responsible for the regulation and abatement of releases or

COMPLAINT

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1 threatened releases of hazardous substances and for the
2 regulation of surface and ground water contamination in the
3 State.

4 3. Ecology is empowered to bring any appropriate action
5 at law or in equity, including an action for injunctive
6 relief, as may be necessary to protect human health and the
7 environment under Chapter 70.105D RCW and to abate surface or
8 groundwater contamination under Chapter 90.48 RCW.

9 4. Defendants Lewis County, City of Centralia, City of
10 Chehalis, City of Morton, City of Mossyrock, Town of Pe Ell
11 and City of Vader (hereinafter "Centralia Landfill Closure
12 Group" or "CLCG") are each municipal corporations created
13 under the laws of the State of Washington.

14 5. Defendant, City of Centralia ("Centralia"), owns the
15 Centralia Landfill. The members of the CLCG by contract,
16 agreement, or otherwise arranged for disposal of municipal
17 solid waste owned, possessed, or controlled by the members of
18 the CLCG at the Centralia Landfill. Centralia Landfill (the
19 Site) is the subject of this Complaint.

20 **III. FACTUAL ALLEGATIONS**

21 6. Centralia owns the Site, an approximately 55 acre
22 municipal solid waste landfill located at 1411 S. Tower,
23 Centralia, Washington.

24 7. The Centralia Landfill has been operated as a
25 landfill since 1958. From approximately 1970 to 1978, the

26

COMPLAINT

1 Site was operated by Harold LeMay Enterprises, a private
2 contractor. At all other times, it has been operated by
3 Centralia.

4 8. Since 1958, the Site has received solid waste
5 generated at least in Lewis County and south Thurston County.
6 In addition, various industries have disposed of hazardous
7 substances at the Site.

8 9. The members of the CLCG by contract, agreement, or
9 otherwise arranged for disposal of municipal solid waste
10 owned, controlled or possessed by the members of the CLCG at
11 the Centralia Landfill.

12 10. In 1986, EPA observed leachate from the landfill
13 entering floodwaters of Salzer Creek. The leachate tested by
14 the EPA contained cadmium (18 ppb), chromium (146 ppb), iron
15 (67,100 ppb), manganese (28,700 ppb), and zinc (6,750 ppb) at
16 levels that exceeded federal primary or secondary drinking
17 water standards. There is a continuing threat of releases of
18 hazardous substances, pollutants, and contaminants at the
19 Site.

20 11. On August 28, 1990 the Site was listed on the State
21 Hazardous Sites List pursuant to WAC 173-340-330, and on
22 August 30, 1990 the Site was listed on the federal National
23 Priorities List, pursuant to Section 105 of CERCLA, 42 U.S.C.
24 9605 (55 Fed. Reg. 35502 [August 30, 1990]).
25
26

1 12. On the basis of the foregoing facts and information,
2 Ecology determined that there is a continuing threat of
3 releases of hazardous substances, pollutants and contaminants
4 at the Site. Ecology has determined that the release or
5 threat of release of hazardous substances from the Site
6 requires remedial action to protect the human health and the
7 environment.

8 13. The interim action described in the Consent Decree
9 filed with the Court at the time this Complaint is filed is
10 consistent with the Comprehensive Environmental Response,
11 Compensation and Liability Act, 42 U.S.C. § 9601, et seq., and
12 the MTCA. This interim action, as described in the Consent
13 Decree, has been agreed upon by the members of the CLCG and by
14 Ecology as reasonable and in the public interest. It is
15 designed to reduce the threat to human health and the
16 environment by substantially reducing the surface water
17 pathway for exposure to landfill leachate. In addition, the
18 interim action is necessary to restrict public access to the
19 landfill. The Consent Decree has been the subject of public
20 notice and comment. Revisions to the proposed Consent Decree
21 that resulted from public comment are discussed in the
22 Affidavit of Lucy E. Phillips, attached to the Motion for
23 Entry of Consent Decree.

24 14. Ecology has incurred costs to identify, eliminate,
25 or minimize the threat or potential threat posed by hazardous

1 substances at the Site. In addition, Ecology will continue to
2 incur costs associated with oversight and implementation of
3 remedial action at the Site. Ecology's expenditures to date
4 are not inconsistent with the National Contingency Plan, 40
5 C.F.R., Part 300.

6 15. Without making any admissions as to the factual or
7 legal allegations contained in this Complaint, the members of
8 the CLCG have consented to entry of the Consent Decree for
9 interim action attached to this Complaint (the "Decree").

10 IV. FIRST CLAIM FOR RELIEF

11 16. The allegations of paragraphs 1 through 15 are
12 realleged and incorporated herein by reference.

13 17. RCW 70.105D.040 provides in pertinent part:

14 (1) Except as provided in subsection (3) of this section,
15 the following persons are liable with respect to a
facility:

16 (a) The owner or operator of the facility;

17 (b) Any person who owned or operated the
18 facility at the time of disposal or release
of the hazardous substance;

19 (c) Any person who owned or possessed a
20 hazardous substance and who by contract,
21 agreement, or otherwise arranged for disposal
22 or treatment of the hazardous substance at
the facility, or arranged with a transporter
23 for transport for disposal or treatment of
the hazardous substance at the facility, or
otherwise generated hazardous waste disposed
of or treated at the facility;

24 (2) Each person who is liable under this section is
25 strictly liable, jointly and severally, for all remedial
action costs and for all natural resource damages

1 resulting from the releases or threatened releases of
2 hazardous substances. The attorney general, at the
3 request of the department, may recover all costs and
4 damages from persons liable for them.

5 18. RCW 70.105D.030 provides in pertinent part:

6 (1) The department may exercise the following powers in
7 addition to any other powers granted by law:

8 (a) Investigate, provide for investigating,
9 or require potentially liable persons to
10 investigate any releases or threatened releases
11 of hazardous substances, including but not
12 limited to inspecting, sampling, or testing to
13 determine the nature or extent of any release
14 or threatened release.

15 (b) Conduct, provide for conducting, or require
16 potentially liable persons to conduct remedial
17 actions (including investigations under (a)
18 of this subsection) to remedy releases or
19 threatened releases of hazardous sub-
20 stances. . . .

21 19. RCW 70.105D.020(3) defines "facility" as:

22 (3) "Facility" means (a) any building, structure,
23 installation, equipment, pipe or pipeline (including
24 any pipe into a sewer or publicly owned treatment works),
25 well, pit, pond, lagoon, impoundment, ditch, landfill,
26 storage container, motor vehicle, rolling stock, vessel,
or aircraft, or (b) any site or area where a hazardous
substance, other than a consumer product in consumer use,
has been deposited, stored, disposed of, or placed, or
otherwise come to be located.

20 20. RCW 70.105D.020(5) defines hazardous sub-
stances to include:

21 (a) Any dangerous or extremely hazardous waste
22 as defined in RCW 70.105.010(5) and (6), or any
23 dangerous or extremely hazardous waste designated
24 by rule pursuant to chapter 70.105 RCW;

25 (b) Any hazardous substance as defined in RCW
26 70.105.010(14) or any hazardous substance as
defined by rule pursuant to chapter 70.105 RCW;

1 (c) Any substance that, on October 16, 1987, is
2 a hazardous substance under section 101(14) of
CERCLA.

3 21. RCW 70.105D.020(10) defines a release as:

4 any intentional or unintentional entry of any hazardous
5 substance into the environment, including but not limited
6 to the abandonment or disposal of containers of hazardous
substances.

7 22. Hazardous substances within the meaning of 70.105D
8 .020(5) RCW have been or are being "released" into the
9 environment, or future releases are threatened within the
10 meaning of RCW 70.105D.020(10).

11 23. The site is a "facility" within the meaning of
12 70.105D.020(3) RCW.

13 24. Ecology has determined that remedial action is
14 necessary to identify, eliminate or mitigate any threat or
15 potential threat to human health or the environment with
16 respect to the Site and is in the public interest.

17 25. The defendants have received notice of their
18 potential liability and have waived their opportunity to
19 comment as provided by 70.105D.020 RCW providing for remedial
20 action.

21 26. The defendants are liable persons within the terms
22 of 70.105D.040 RCW.

23 27. The defendants are liable for conducting remedial
24 action for releases from the Site.
25
26

V. SECOND CLAIM FOR RELIEF

28. The allegations of paragraph 1 through 27 are realleged and incorporated herein by reference.

29. The releases of hazardous substances into groundwaters and surface waters as set forth in paragraph 10 constitute pollution as defined by RCW 90.48.020.

30. RCW 90.48.080 prohibits the discharge of material which causes or tends to cause pollution of waters of the state.

31. Underground waters are waters of the state as defined by RCW 90.48.020.

32. The defendants have violated RCW 90.48.080 by causing or tending to cause pollution of waters of the state of Washington.

33. Pursuant to RCW 90.48.037, the Department of Ecology is authorized, with the assistance of the attorney general, to bring any appropriate action of law or in equity, including action for injunctive relief, in the name of the people of the state of Washington to remedy situations causing pollution of waters of the state.

1 VI. PRAYER FOR RELIEF

2 WHEREAS Ecology and the CLCG have voluntarily entered
3 into the Decree, Ecology requests that the Court enter the
4 Consent Decree and retain jurisdiction to enforce its terms.

5 DATED this 3rd day of July 1991.

6 KENNETH O. EIKENBERRY
7 Attorney General

8 *Lucy E. Phillips*
9 LUCY E. PHILLIPS
10 Assistant Attorney General
11 WSBA #19251

12 Office of the Attorney General
13 Ecology Division, QA-44
14 4407 Woodview Drive S.E.
15 Olympia, WA 98504-8077
16 (206) 459-6800

17 T4:lewis.cpt

IN AND FOR THURSTON COUNTY

State of Washington
 Department of Ecology
Plaintiff/Petitioner

vs.

Lewis County, City of Centralia,
 City of Defendant/Respondent

91 2 1654 0

of Vader TO: Cassion McFarland NO. NOTICE
Attorney(s) for Defendants

Please take notice that the issue set forth below will be called
 for hearing on the 28th day of July, 1991. At the hour of 9
 o'clock a.m. or as soon thereafter as same can be heard, the Clerk of
 Court being requested to note this matter on the docket for:

MONDAY, the 28th day of July, 1991
 (Civil Motions at 9:00 a.m.)
 (Probate, Adoption, and Change of Name at 9:00 a.m.)

TUESDAY, the day of , 19
 (Domestic, Mediation, Criminal Calendar at 9:00 a.m.)

WEDNESDAY, the day of , 19
 (Criminal: Sentencings, Omnibus, and Revocation
 Hearings at 9:00 a.m.)

FRIDAY, the day of , 19 AT 8:30
 (ProSe Dissolutions)

Presiding Judge ☐Department No. ☐Court Commissioner ☐

By Lucy E. Phillips
Attorney(s) for Plaintiff
 WSBA 19251

NATURE OF ACTION - BELOW

CIVIL:

MOTION FOR DEFAULT OR/TRIAL SETTING ☐ MOTION FOR DEFAULT ☐ MOTION TO COMPEL ☐ MOTION TO DISMISS ☐ MOTION FOR SUM. JUDG. ☐

MOTION FOR CHANGE OF VENUE ☐ ADOPTION ☐ UNLAWFUL DETAINER ☐ SHOW CAUSE ☐ CHANGE OF NAME ☐

DOMESTIC:

MOTION FOR DEFAULT OR/TRIAL SETTING ☐ MOTION FOR DEFAULT ☐ DEFAULT DISS. ☐ NOMINAL DISS. ☐ SHOW CAUSE ☐ MEDIATION ☐

PROBATE:

PETITION FOR LETTERS OF ADMINISTRATION & GUARDIANSHIP-----☐
 PETITION FOR PROBATE OF WILL AND LETTERS TESTAMENTARY-----☐
 PETITION TO SET ASIDE PROPERTY IN LIEU OF HOMESTEAD-----☐
 ANNUAL REPORT OF GUARDIANSHIP ☐ FINAL ACCOUNT ☐

MISC. MOTIONS: Motion for Entry of Consent Decree
 CIVIL ☒ DOMESTIC ☐ PROBATE ☐ CRIMINAL ☐

Copy received this day
 of , 19 .

I certify that on 7-10-91 I deposited
 in the mails of the United States a
 properly stamped & addressed envelope
 directed to the attorney(s) of record
 for Plaintiff/Defendant containing
 a copy of this document.

Attorney(s) for

Lucy E. Phillips
 Attorney(s) for Wa. State Dept. of Ecology

