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ATTORNEY GENERAL'S OFFICE
Ecology Division

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SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date:
5 Time:

6
7 **STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

8 STATE OF WASHINGTON,
9 DEPARTMENT OF ECOLOGY,
10
11 Plaintiff,
12
13 v.
14 RICHARD BOYCE, PAUL GISSELBERG,
15 and JERRY OVERTON,
16
17 Defendants.

NO. 06-2-00427-0

ORDER ENTERING CONSENT
DECREEES

EX PARTE

18 Having reviewed the Joint Motion for Entry of the Consent Decree, and being fully
19 advised in the matter, it is hereby ORDERED AND ADJUDGED that the three Consent
20 Decrees in this matter with Defendants Boyce, Gisselberg and Overton are entered and that the
21 Court shall retain jurisdiction over each of the three Consent Decrees to enforce their terms.

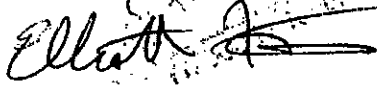
22 DATED this 10th day of March, 2008.

23 CHRISTINE A. POMEROY *for*

24 JUDGE CHRIS WICKHAM
25 Thurston County Superior Court
26

1
2 Presented by:

3 ROBERT M. MCKENNA
4 Attorney General

5 

6 Elliott S. Furst, WSBA #12026
7 Senior Counsel
8 (360) 586-3513

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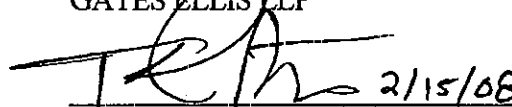
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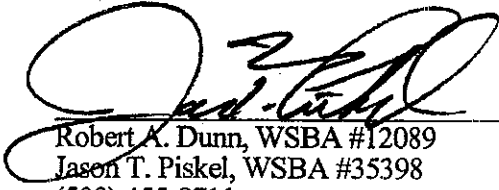
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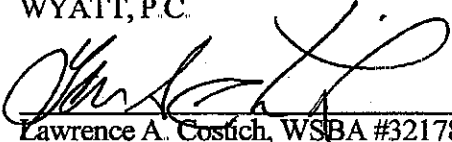
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MAR 11 2008
ATTORNEY GENERAL'S OFFICE
Ecology Division

MAR 05 2008
SUPERIOR COURT
THURSTON COUNTY WASHINGTON

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO. 06-2-00427-0

DECLARATION OF TERESITA
BALA

I, Teresita Bala, declare as follows:

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

2. I am employed by the Washington State Department of Ecology as a Site Manager in the Eastern Regional Office of Ecology's Toxics Cleanup Program. I am the designated Site Manager for, and am therefore knowledgeable about, matters relating to the City Parcel Site.

3. The City Parcel Site is located in Spokane, Washington.

4. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site.

1 5. Investigations conducted at the Site indicate that there are polychlorinated
2 biphenyls (PCBs) in soils that are above relevant Model Toxics Control Act residential and
3 industrial cleanup levels at the Site.

4 6. Ecology has determined that contamination at the Site presents a threat to
5 human health and the environment.

6 7. Ecology has given notice to all Defendants of Ecology's determination that each
7 Defendant is a potentially liable party (PLP) for the Site, as required by RCW
8 70.105D.020(21) and WAC 173-340-500.

9 8. Ecology has negotiated three draft Consent Decrees, one with each of the three
10 Defendants.

11 9. Ecology has determined that the actions to be taken pursuant to the Decree are
12 necessary to protect public health and the environment, and will lead to a more expeditious
13 cleanup of hazardous substances at the Site in compliance with cleanup standards established
14 under RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

15 10. The draft Consent Decrees were subject to public notice and comment as
16 required by RCW 70.105D.040(4)(a). The Cleanup Action Plan for this Site previously
17 underwent public notice and comment prior to the filing of this action.

18 11. Ecology received one comment during the public comment period, which
19 Ecology has reviewed and considered. It did not necessitate a change to the Consent Decrees.
20 Ecology determined that no additional public comment was required under WAC 173-340-600.

21 12. The parties have now agreed upon the final Consent Decrees.

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

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RESPECTFULLY SUBMITTED this 6th day of February, 2008, in

SPOKANE, Washington.

Teresita Bala
TERESITA BALA

MAR 17 2008
ATTORNEY GENERAL'S OFFICE
Ecology Division

FILED
MAR 10 2008
SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO. 06-2-00427-0

CONSENT DECREE BETWEEN
PLAINTIFF AND DEFENDANT
BOYCE

EX PARTE

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EXHIBIT A Site Diagram
EXHIBIT B List of Financial Information
EXHIBIT C Annual Notice of Financial Status Form
EXHIBIT D Declaration of Richard Boyce

EXHIBIT E
DECLARATION OF RICHARD BOYCE

1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Richard Boyce (Defendant) under this Decree is to avoid difficult and prolonged
4 litigation by allowing Defendant to make a cash payment to address his alleged civil liability
5 for the Site. This payment will assist in paying for remedial action at a facility where there has
6 been a release or threatened release of hazardous substances. In recognition of Defendant's
7 limited ability to pay for remedial action costs, this Decree requires Defendant to pay a sum of
8 money commensurate with his ability to pay.

9 Ecology has determined that these actions are necessary to protect human health and
10 the environment.

11 B. The Complaint in this action was filed on March 2, 2006. Defendant has not
12 filed an Answer to this Complaint. Additionally, while there have been multiple motions filed
13 in this action thus far, none of the motions have specifically adjudicated Mr. Boyce's potential
14 liability for the Site. However, the Parties now wish to resolve the issues raised by Ecology's
15 Complaint. In addition, the Parties agree that settlement of these matters without litigation is
16 reasonable and in the public interest, and that entry of this Decree is the most appropriate
17 means of resolving these matters.

18 C. By signing this Decree, Ecology and Defendant agree to its entry and agree to
19 be bound by its terms.

20 D. By entering into this Decree, Ecology and Defendant do not intend to discharge
21 non-settling parties from any liability they may have with respect to matters alleged in the
22 Complaint. Ecology and Defendant retain the right to seek reimbursement, in whole or in part,
23 from any liable persons for sums expended under this Decree.

24 E. This Decree shall not be construed as proof of liability or responsibility for any
25 releases of hazardous substances or cost for remedial action nor an admission of any facts;

26

1 provided, however, that Defendant shall not challenge the authority of the Attorney General
2 and Ecology to enforce this Decree.

3 F. Ecology and Defendant recognize that this agreement has been negotiated in
4 good faith.

5 G. The Court is fully advised of the reasons for entry of this Decree, and good
6 cause having been shown:

7 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

8 **II. JURISDICTION**

9 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
10 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

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

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

18 D. Ecology has given notice to Defendant of Ecology's determination that
19 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

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

22 F. This Decree has been subject to public notice and comment.

23 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
24 hazardous substances at the Site in compliance with the cleanup standards established under
25 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

1 H. Defendant has agreed to undertake the actions specified in this Decree and
2 consents to the entry of this Decree under MTCA.

3 **III. PARTIES BOUND**

4 This Decree shall apply to and be binding upon the Parties to this Decree, and their
5 successors and assigns. The undersigned representative of each party hereby certifies that he
6 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
7 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
8 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
9 responsibility under this Decree.

10 **IV. DEFINITIONS**

11 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
12 WAC 173-340-200 shall control the meanings of the terms in this Decree.

13 A. Site: The Site is referred to as the City Parcel Site and is generally located at
14 the intersection of North Cook Street and East Springfield Avenue in Spokane, Washington. The
15 Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a
16 Facility under RCW 70.105D.020(5)

17 B. Parties: Refers to the State of Washington, Department of Ecology and Richard
18 Boyce.

19 C. PLPs: Refers to Richard Boyce, Paul Gisselberg, and Jerry Overton

20 D. Defendant: Refers to Richard Boyce.

21 E. Consent Decree or Decree: Refers to this Consent Decree and each of the
22 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
23 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree

24 F. Financial Information: Refers to those financial documents identified in
25 Exhibit B.

1 **V. FINDINGS OF FACTS**

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

4 A. The City Parcel Site is located in the SE 1/4 Sec. 16, T.25, N., R. 42 E. in Spokane
5 County, Washington, at the intersection of North Cook Street and East Springfield Avenue, as
6 further depicted in Exhibit A (Site Diagram)

7 B. The Site was occupied by Spokane Transformer, Inc., a transformer repair and
8 recycling operation, for approximately 25 years. The Site was sold in 1980 to City Parcel
9 Delivery, Inc. City Parcel is a parcel delivery service that was owned by Paul Gisselberg and,
10 upon information and belief, Gisselberg has sold the City Parcel business. Gisselberg continues to
11 own the underlying property. The former Spokane Transformer, Inc.'s address was 2500 East
12 Springfield Avenue, Spokane, Washington 99202. City Parcel's address is 708 North Cook
13 Street, Spokane, Washington 99202.

14 C. The Site was owned by Defendant during Spokane Transformer, Inc.'s
15 transformer repair and recycling operations. Defendant operated Spokane Transformer, Inc. until
16 1974.

17 D. Jerry Overton leased the property from Defendant. Overton owned and operated
18 the Spokane Transformer, Inc. business from 1974 to 1980.

19 E. The Environmental Protection Agency (EPA) first investigated the Site in 1976.
20 Two soil samples were collected from outside of the operations building. Analytical results
21 indicated soils contained polychlorinated biphenyls (PCBs) above relevant MICA residential and
22 industrial soil cleanup levels.

23 F. In 1980, EPA and Ecology inspected the Site. The inspectors noted areas of
24 visibly oil-stained soil.

25 G. PCBs and petroleum products are hazardous substances under MICA,
26 RCW 70.105D.020(10).

1 H. In 1986, EPA collected four samples from the vicinity of the building. Two of
2 these soil samples were collected from storm drain catch basins in the vicinity of the Site.
3 Laboratory results showed a maximum concentration of PCBs well in excess of applicable
4 cleanup standards.

5 I. In 1987, Ecology and Environment, Inc., as a contractor to EPA, conducted a
6 sampling program to further characterize the extent of PCB contamination in work areas, floor
7 drains, on-site soil, and the off-site storm drains. PCBs were detected in on-site soil samples at
8 concentrations above applicable cleanup levels. Four surface scrape samples collected to examine
9 work space contamination showed results of PCB concentrations above applicable cleanup levels.
10 Sediment samples from floor drains inside the building also contained PCBs at concentrations
11 well above applicable cleanup levels. Sediment samples from storm drains in the vicinity of the
12 Site had concentrations above cleanup levels. Three samples that were analyzed for PCBs were
13 also tested for chlorinated hydrocarbons. Chlorinated hydrocarbons were detected in all three
14 samples.

15 J. In March and April 1997, George Maddox & Associates, Inc., working for
16 Gisselberg, collected soil samples from inside and outside the building from dry wells and from
17 an alley on the east side of the building. The on-site soils contained PCBs at concentrations above
18 applicable cleanup levels. The soil from a dry well contained exceedances of PCBs. PCB
19 concentrations from soil samples taken from the alleyway next to the property also exceeded
20 applicable cleanup levels for PCBs.

21 K. In November 1997, George Maddox & Associates, Inc. installed a monitoring well
22 adjacent to a dry well near the southeast portion of City Parcel's property. Soil samples were
23 taken at each 5 feet of drill penetration. The highest PCB concentration was measured at the
24 10-12 feet depth, above cleanup levels. A ground water sample taken from this monitoring well
25 contained PCBs above cleanup levels for groundwater. A second groundwater sample was
26 collected in January 1998. This sample did not detect PCBs.

1 L. In 1994, City Parcel's then-owner, Gisselberg, filed a lawsuit against Richard
2 Boyce, his wife Mary K. Boyce, Jerry Overton, and his wife Jane Doe Overton. *See City Parcel*
3 *v. Overton*, Spokane County Superior Court Cause No. 94-2-06779-1 (1999). The lawsuit was a
4 private right of action for contribution under MTCA under RCW 70.105D.080.

5 M. The lawsuit filed by City Parcel and the Gisselbergs against the Boyces and the
6 Overtons was tried in Spokane County Superior Court July 19 through 22, 1999. On
7 September 28, 1999, Judge Linda Thompkins issued Findings of Fact and Conclusions of Law
8 finding all parties liable under MTCA for the Site, and allocating liability of 37.5 percent to
9 Boyce, 37.5 percent to Overton, and 25 percent to Gisselberg as their contribution for remedial
10 action costs under MTCA.

11 N. In September 1997, Ecology conducted an initial investigation of the Site and a
12 letter was sent to Gisselberg on September 9, 1997, indicating further remedial action was needed.

13 O. In August 1998, the Spokane Regional Health District completed the site hazard
14 assessment of the City Parcel property, as required under MTCA. This Site, pursuant to the
15 requirements contained in WAC 173-340-320 and the "Washington Ranking Method Scoring
16 Manual," was given a rank of 2. A score of 1 represents the highest level of risk and 5 the lowest.

17 P. In certified correspondence dated March 21, 2001, Ecology notified each of the
18 PLPs of Ecology's preliminary finding of their potential liability under MTCA and requested
19 comment on those findings.

20 Q. On April 12, 2001, after notice and opportunity for comment, Ecology notified the
21 PLPs of Ecology's determination of their status as PLPs under RCW 70.105D.040, for the release
22 of hazardous substances at the Site.

23 R. Ecology's PLP determination for Defendant was based on a finding of credible
24 evidence that he owned and operated the Site at the time of a release or threatened release of
25 hazardous substances.
26

1 S. On July 18, 2001, Ecology initiated negotiations with the PLPs for an Agreed
2 Order that would require completion of a Remedial Investigation/Feasibility Study (RI/FS) for the
3 Site.

4 T. On September 13, 2001, Ecology ended negotiations with the PLPs in accordance
5 with WAC 173-340-530(6), based on PLPs lack of reasonable progress toward successful
6 negotiations of the Agreed Order.

7 U. Ecology thereafter conducted a RI/FS for the Site, using State funds. RI field
8 activities at the Site were conducted in 2002 by Ecology's contractor, Science Applications
9 International Corporation (SAIC). Results of the 2002 studies are presented and discussed in the
10 November 27, 2002, "Final Remedial Investigation Report for the City Parcel Site" prepared by
11 SAIC. The RI report was made available for public comment from January 16 through
12 February 18, 2003. Only one written comment was received, from Boyce, questioning the
13 necessity of the RI investigations. Ecology determined the comment did not warrant any changes
14 to the RI Report.

15 V. Results of the RI confirmed extensive contamination of PCBs in soils in the
16 parking lot and in the alleyway. In April 2002, PCBs above cleanup levels were again detected in
17 the monitoring well that was installed in 1997. PCBs were also detected at very low
18 concentrations in two other newly-installed wells. Groundwater sampling conducted in July
19 2002, February 2003, and May 2003 did not indicate measurable PCBs in the monitoring wells.
20 The RI also revealed the presence of an underground storage tank beneath the concrete floor, near
21 the southeast corner of the building. At the time of the investigation, the tank contained about two
22 inches of an unknown liquid.

23 W. EPA has determined that exposure to PCBs is associated with significant adverse
24 effects to human health and the environment. PCBs have been shown to cause cancer in animals
25 and are a probable human carcinogen. Additionally, EPA has found that exposure to PCBs in
26 animals causes significant non-cancer toxic effects on the immune system, the reproductive

1 system, the nervous system and the endocrine system, and studies in humans support the
2 correlation to toxicity in humans as well. Based on available data regarding PCBs including EPA
3 findings, Ecology has found that PCBs present a threat to human health and the environment.

4 X. In August 2003, Ecology formally requested that the City of Spokane install a
5 temporary cover over the contaminated soils in the alleyway which is a City right-of-way. The
6 City complied, covering the alleyway with gravel.

7 Y. Based on the RI results and other existing Site data, Ecology drafted a Feasibility
8 Study (FS) Report in 2004. The report evaluated cleanup alternatives for the Site. The FS Report
9 was made available for public review and comment from February 26 through March 26, 2004.
10 No comments were received during this comment period.

11 Z. After finishing the FS, Ecology prepared a Draft Cleanup Action Plan (DCAP)
12 that identified the selected remedial action for the Site. The DCAP was made available for public
13 review and comment from July 21 through August 19, 2004, and was sent to all three PLPs. No
14 comments were received during the public comment period. The Final Cleanup Action Plan
15 (FCAP) was issued in August 2004. The FCAP requires, among other details, removal of a
16 building, excavation of soils, removal of all drain lines and dry wells, and removal of an
17 underground storage tank.

18 AA. On November 22, 2004, Ecology sent letters to the PLPs calling for a meeting to
19 discuss the FCAP and its implementation. Gisselberg was given a second opportunity to provide
20 comments on the Cleanup Action Plan for an additional 30 day period, extending from
21 December 1 to December 31, 2004.

22 BB. On December 28, 2004, Gisselberg provided comments on the remedial action
23 chosen in the FCAP and proposed alternative actions that included allowing the building to
24 remain on the Site. The proposed modifications did not meet the minimum requirements of
25 MTCA, and therefore the FCAP was not revised.

1 CC. On May 24, 2005, Ecology met with the PLPs to discuss implementation of the
2 FCAP. At the meeting, Ecology outlined an alternative remedial action that would meet the
3 requirements of MTCA and allow the building to remain intact. Ecology set out the nature and
4 magnitude of modifications to the remedial action identified in the FCAP that would be necessary
5 if the building were to remain.

6 DD. On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent letters
7 to the PLPs inquiring about their intention to negotiate an Agreed Order or Consent Decree with
8 Ecology to implement the FCAP (as written or with some specific modifications as discussed
9 during the May 24, 2005, meeting). Ecology requested that the PLPs respond to Ecology's letter
10 by July 27, 2005. Boyce responded that he would not be able to contribute financially to any
11 portion of the cleanup costs. Gisselberg also responded, indicating he elected not to negotiate an
12 Agreed Order or Consent Decree with Ecology for implementation of either the FCAP, or the
13 FCAP with specific modifications that would allow the building on the Site to remain. Overton
14 did not send a response.

15 EE. On August 16, 2005, pursuant to its authority under RCW 70.105D.030(1) and
16 .050(1) and WAC 173-340-540, Ecology issued Enforcement Order No. 2691 (the Order). The
17 Order requires, among other details, that Defendants implement either the FCAP, or the FCAP
18 with specific modifications that would allow the building on the Site to remain.

19 FF. The Order required the PLPs, within fifteen (15) days of the effective date of the
20 Order, to submit to Ecology a letter of intent clearly defining the PLPs' intent to abide by the
21 Order in good faith. The effective date of the Order was October 4, 2005. None of the PLPs
22 submitted this required letter of intent by October 19, 2005 (15 days after October 4, 2005). Since
23 Ecology issued the Order, none of the PLPs have taken any steps to comply with the FCAP as
24 required by the Order.

25 GG. On March 2, 2006, Ecology then filed the above-entitled action, asking, among
26 other things, this Court to enforce the Order.

1 **VII. INTEREST**

2 If Defendant fails to make any payment in full by the required due date in accordance
3 with Section VI (Payment), interest shall accrue on the unpaid balance in the amount of twelve
4 (12) percent (annual percentage rate, compounded monthly).

5 **VIII. DESIGNATED PROJECT COORDINATORS**

6 The project coordinator for Ecology is:

7 Teresita Bala
8 Washington State Department of Ecology
9 Eastern Regional Office
10 North 4601 Monroe
11 Spokane, WA 99205-1295
12 Phone: (509) 329-3543
13 Email: tbal461@ecy.wa.gov

14 The project coordinator for Defendant is:

15 Todd Reuter
16 K&L Gates
17 618 W. Riverside, Suite 300
18 Spokane, WA 99203
19 Ph: 509-241-1561

20 Each project coordinator shall be responsible for overseeing the implementation of this
21 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
22 Any party may change its respective project coordinator. Written notification shall be given to
23 the other party at least ten (10) calendar days prior to the change.

24 **IX. REASONABLE ASSISTANCE**

25 In light of the nature of this settlement, it is important that Ecology obtains full
26 cooperation from Defendant in any future efforts Ecology may make to remediate the Site
and/or to recover costs from other potentially liable persons. Therefore, Defendant shall make
all reasonable efforts to assist Ecology in the Department's enforcement and/or cost recovery
efforts against any other potentially liable persons for the Site. This includes, but is not limited
to, timely provision of documents, witness testimony, and other evidence upon Ecology's
request.

1 actions against Defendant regarding the release or threatened release of hazardous substances
2 covered by this Decree.

3 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
4 and those hazardous substances that Ecology knows are located at the Site as of the date of
5 entry of this Decree. This Decree does not cover any other hazardous substance or area.
6 Ecology retains all of its authority relative to any substance or area not covered by this Decree

7 This Covenant Not to Sue shall have no applicability whatsoever to:

- 8 1. Criminal liability;
- 9 2. Liability for damages to natural resources; and
- 10 3. Any Ecology action, including cost recovery, against PLPs not a party to
11 this Decree.

12 If factors not known at the time of entry of the settlement agreement are discovered and
13 present a previously unknown threat to human health or the environment, the Court shall
14 amend this Covenant Not to Sue. In that event, however, Ecology requests that the Court take
15 into consideration, as appropriate, that the basis of this settlement is limited financial ability to
16 pay.

17 B. Reopeners: Ecology specifically reserves the right to institute legal or
18 administrative action against Defendant to require it to perform additional remedial actions at
19 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
20 following circumstances:

21 1. Upon Defendant's failure to meet the requirements of this Decree,
22 including, but not limited to, fulfillment of Sections VI (Payment); VII (Interest); IX
23 (Reasonable Assistance); and X (Notice of Financial Status);

24 2. Upon Ecology's determination that remedial action by Defendant
25 beyond the terms of this Decree is necessary to abate an imminent and substantial
26 endangerment to human health or the environment;

1 **XIV. CLAIMS AGAINST THE STATE**

2 Defendant hereby agrees that it will not seek to recover any costs paid under this
3 Decree, including but not limited to, payments made pursuant to Sections IV (Payment) and
4 VII (Interest) from the State of Washington or any of its agencies; and further, that Defendant
5 will make no claim against the State Toxics Control Account or any local Toxics Control
6 Account for any costs incurred in implementing its obligations under this Decree.

7 **XV. PUBLIC PARTICIPATION**

8 A Public Participation Plan is required for this Site Ecology shall update, maintain and
9 implement the Public Participation Plan, as appropriate. This includes information
10 repositories, the preparation of all press releases and fact sheets, meetings, and other outreach
11 with the interested public, local governments, and news organizations. Ecology shall notify
12 Defendant prior to the issuance of all press releases and fact sheets, and before major meetings
13 with the interested public and local governments, on issues related to this Consent Decree.

14 Defendant shall not be associated with public participation efforts. Defendant shall
15 refer any and all Site inquiries directly to Ecology's project coordinator. However, upon
16 Ecology's request, Defendant shall cooperate with Ecology on any and all public participation
17 efforts.

18 **XVI. DURATION OF DECREE**

19 The Decree shall be maintained and continued until Defendant has received written
20 notification from Ecology that the requirements of this Decree have been satisfactorily
21 completed, or until the event of Defendant's death, as described below. Ecology shall not issue
22 such a notification of satisfactory completion to Defendant until Defendant has completed all
23 the requirements of this Decree, including but not limited to the requirements of Sections VI
24 (Payment), VII (Interest), and the first six years of reporting under Section X (Notice of
25 Financial Status). This Decree shall remain in effect until dismissed by the Court. When
26 dismissed, Section IX (Reasonable Assistance), Section X (Notice of Financial Status), Section

1 XII (Covenant Not to Sue), Section XIII (Contribution Protection), and Section XIV (Claims
2 Against the State) shall survive until Defendant's death. Once both (1) Defendant has died and
3 (2) the Consent Decree has been dismissed, only Section XII (Covenant Not to Sue), Section
4 XIII (Contribution Protection), and Section XIV (Claims Against the State) shall survive.

5 Should Defendant die before the terms of this Decree have been satisfactorily
6 completed, Ecology and/or Defendant's estate may petition the Court to dismiss this Decree
7 once Ecology has received payment of all sums owing under Section VI (Payment) and Section
8 VII (Interest).

9 **XVII. CERTIFICATION**

10 In the attached Exhibit D (Declaration of Richard Boyce), Defendant certifies the
11 following under penalty of perjury under the laws of the State of Washington: That, to the best
12 of his knowledge and belief, after thorough inquiry, he has fully complied with any and all of
13 Ecology's requests for documents or information regarding the Site and Defendant's financial
14 circumstances; Further, that Defendant has submitted to Ecology Financial Information that
15 fairly, accurately, and materially sets forth its financial circumstances, and that those financial
16 circumstances have not materially increased between the time the Financial Information was
17 submitted to Ecology and the time the Defendant executes this Decree; Finally, Defendant has
18 certified that he has fully disclosed the existence of any insurance policies that may cover
19 claims relating to the cleanup of the Site.

20 **XVIII. EFFECTIVE DATE**

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

22 **XIX. WITHDRAWAL OF CONSENT**

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

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

3 



4 JAMES PENDOWSKI
5 Program Manager
6 Toxics Cleanup Program
7 (360) 407-7177

ELLIOTT FURST, WSBA # 12026
Senior Counsel

8 Date: 2/28/08



MELISSA ROURKE, WSBA # 34549
Assistant Attorney General
(360) 586-6770

9 RICHARD BOYCE

Date: 3/5/08

10 

11 RICHARD BOYCE
12 (360)-683-4626

13 Date: 12/19/07

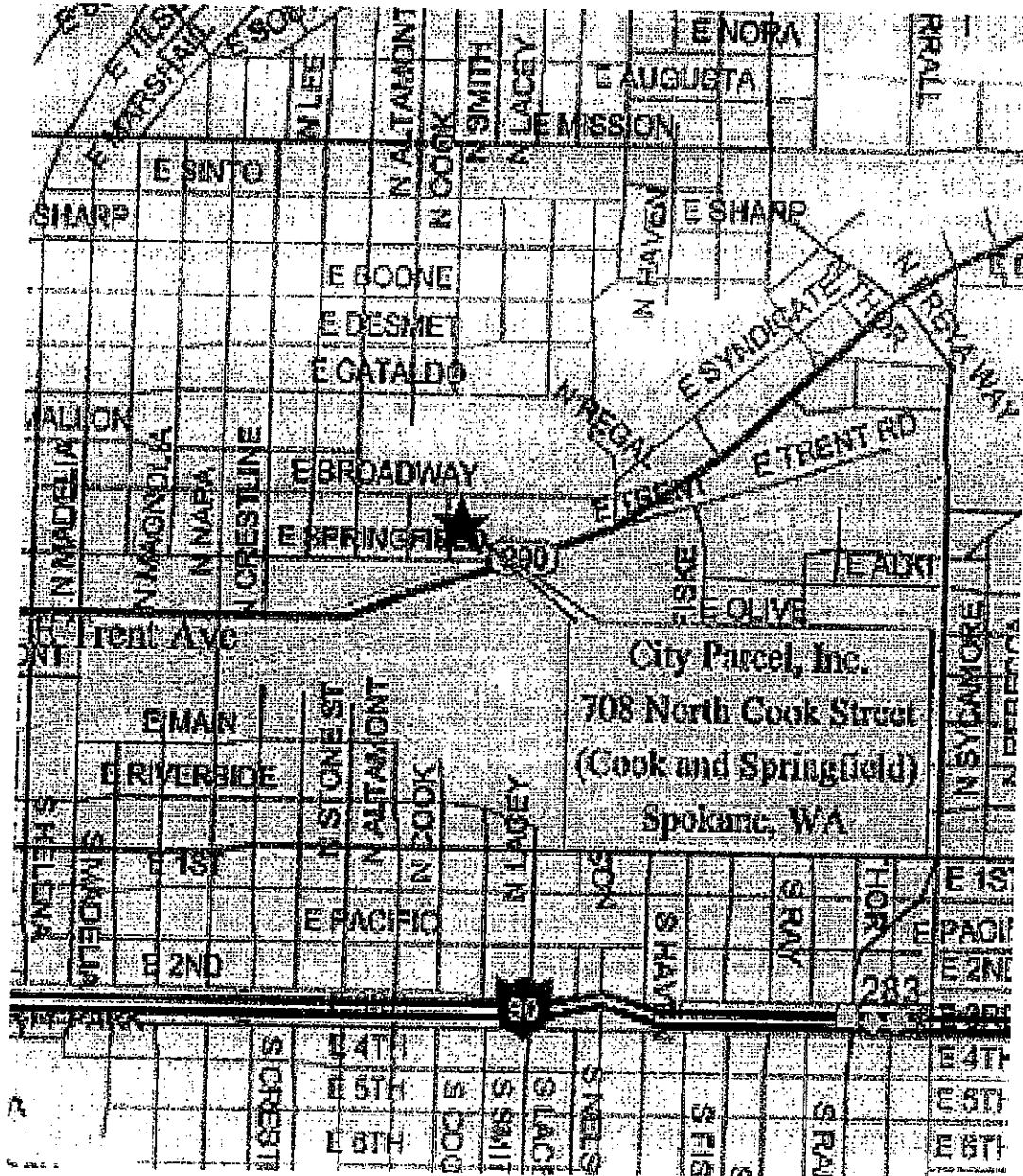
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15 ENTERED this 5th day of March 2008

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17 CHRISTINE A. POMEROY *for*
18 JUDGE ANNE HIRSCH
19 Thurston County Superior Court

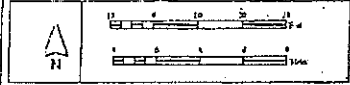
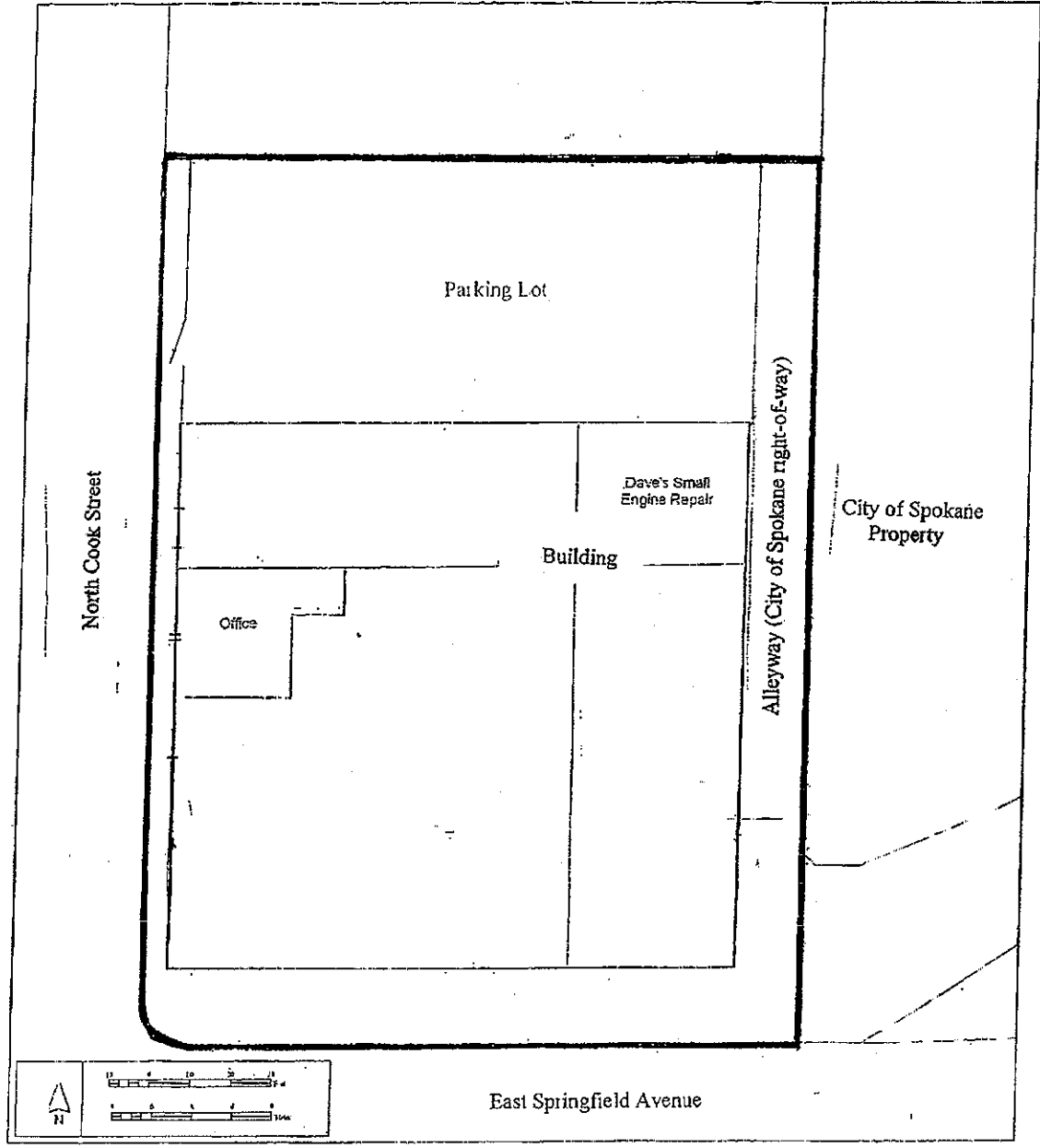
EXHIBIT A

Site Diagram

EXHIBIT A



CITY PARCEL SITE LOCATION



— Site Boundary

City Parcel Site Diagram

EXHIBIT B

List of Financial Information

LIST OF FINANCIAL INFORMATION

Ecology reviewed the following documents submitted by Mr. Boyce in making the financial hardship determination for Mr. Boyce:

- Sworn, signed, and acknowledged affidavit from Mr. Boyce dated February 7, 2007, explaining Mr. Boyce's sources of income and limited future earning potential, his age and medical condition, and his expenses
- Mr. Boyce's personal income tax returns for the years 2000 through 2005.
- Letter dated February 22, 2007, from AXA Equitable to Mr. Boyce and Ms. Melendy confirming the amount of Mr. Boyce's annuity
- Sworn declaration under penalty of perjury (Exhibit D to this Decree)

EXHIBIT C

Annual Notice Form

ANNUAL NOTICE FORM

I, Richard Boyce, declare that my combined personal assets and income have not increased by more than twenty percent (20%) from the time of entry of the Consent Decree in Thurston County Superior Court, matter number 06-2-00427-0, *Ecology v Boyce et al.*

Attached to this form is a true and correct copy of my most recent personal federal income tax return, including all schedules and attachments thereto

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge

Dated this ____ day of _____ (Month) _____ (Year) in _____ (City),
Washington

Richard Boyce

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT D

Declaration of Richard Boyce

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6 STATE OF WASHINGTON
7 THURSTON COUNTY SUPERIOR COURT

8 STATE OF WASHINGTON,
9 DEPARTMENT OF ECOLOGY,

10 Plaintiff,

11 v.

12 RICHARD BOYCE, PAUL GISSELBERG,
13 and JERRY OVERTON,

14 Defendants.

NO. 06-2-00427-0

DECLARATION OF RICHARD
BOYCE

15 I, Richard Boyce, being first duly sworn upon an oath, depose and say:

16 1. To the best of my knowledge and belief, after thorough inquiry, I have fully
17 complied with any and all of Ecology's requests for documents or information regarding the
18 Site and my financial circumstances.

19 2. The Financial Information (described in Exhibit B) that I have submitted to
20 Ecology fairly, accurately, and materially sets forth my financial circumstances. Further, my
21 financial circumstances have not materially increased between the time the Financial
22 Information was submitted to Ecology and the time I am signing this Consent Decree; and

23 3. Finally, I have fully disclosed the existence of any insurance policies that may
24 cover claims relating to the cleanup of the Site.

25 ///

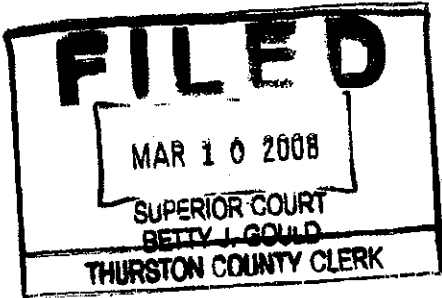
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1 I declare under penalty of perjury of the laws of the state of Washington that the
2 foregoing is true and correct to the best of my knowledge

3 Dated this 19th day of Dec. (Month), 2007 (Year), in Port Angeles,
4 (City) Washington (State).

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6 Richard Boyce
7 RICHARD BOYCE

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO. 06-2-00427-0

CONSENT DECREE BETWEEN
PLAINTIFF AND DEFENDANT
GISSELBERG

EX PARTE

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1 | **I. INTRODUCTION**

2 | A. The mutual objective of the State of Washington, Department of Ecology
3 | (Ecology) and Paul Gisselberg (Defendant) under this Decree is to avoid difficult and
4 | prolonged litigation by allowing Defendant to make a cash payment to address his alleged civil
5 | liability for the Site. This payment will assist in paying for remedial action at a facility where
6 | there has been a release or threatened release of hazardous substances. In recognition of
7 | Defendant's limited ability to pay for remedial action costs, this Decree requires Defendant to
8 | pay a sum of money commensurate with his ability to pay. This Decree is based on
9 | circumstances unique to Defendant, namely financial hardship. See RCW 70.105D 040(4)(e).

10 | Ecology has determined that these actions are necessary to protect human health and
11 | the environment.

12 | B. The Complaint in this action was filed on March 2, 2006, and Defendant
13 | subsequently filed an Answer. There have been multiple motions filed in this action thus far,
14 | including a summary judgment motion that resolved, among other issues, that Defendant is a
15 | liable person for this Site. However, the Parties now wish to resolve the remaining issues
16 | raised by Ecology's Complaint, as well as any remaining issues raised in Defendant's Answer.
17 | In addition, the Parties agree that settlement of these matters without litigation is reasonable
18 | and in the public interest, and that entry of this Decree is the most appropriate means of
19 | resolving these matters.

20 | C. By signing this Decree, Ecology and Defendant agree to its entry and agree to
21 | be bound by its terms.

22 | D. By entering into this Decree, Ecology and Defendant do not intend to discharge
23 | non-settling parties from any liability they may have with respect to matters alleged in the
24 | Complaint. Ecology and Defendant retain the right to seek reimbursement, in whole or in part,
25 | from any liable persons for sums expended under this Decree. In addition, Defendant reserves
26 | any and all rights he may have against third parties under existing law.

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

5 F. This Decree does not commit the state to contribute public funding to assist
6 potentially liable persons to pay for the costs of remedial action under
7 RCW 70.105D.070(2)(xi).

8 G. Ecology and Defendant recognize that this agreement has been negotiated in
9 good faith.

10 H. The Court is fully advised of the reasons for entry of this Decree, and good
11 cause having been shown:

12 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

13 **II. JURISDICTION**

14 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
15 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

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

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

23 D. Ecology has given notice to Defendant of Ecology's determination that
24 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

25 E. The actions to be taken pursuant to this Decree are necessary to protect public
26 health and the environment.

1 F. This Decree has been subject to public notice and comment.

2 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
3 hazardous substances at the Site in compliance with the cleanup standards established under
4 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

5 H. Defendant has agreed to undertake the actions specified in this Decree and
6 consents to the entry of this Decree under MTCA.

7 **III. PARTIES BOUND**

8 This Decree shall apply to and be binding upon the Parties to this Decree, and their
9 successors and assigns. The undersigned representative of each party hereby certifies that he
10 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
11 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
12 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
13 responsibility under this Decree.

14 **IV. DEFINITIONS**

15 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
16 WAC 173-340-200 shall control the meanings of the terms in this Decree.

17 A. Site: The Site is referred to as the City Parcel Site and is generally located at
18 the intersection of North Cook Street and East Springfield Avenue in Spokane, Washington. The
19 Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a
20 Facility under RCW 70.105D.020(5).

21 B. Parties: Refers to the State of Washington, Department of Ecology and Paul
22 Gisselberg.

23 C. PLPs: Refers to Richard Boyce, Paul Gisselberg, and Jerry Overton

24 D. Defendant: Refers to Paul Gisselberg.
25
26

1 F. In 1980, EPA and Ecology inspected the Site. The inspectors noted areas of
2 visibly oil-stained soil.

3 G PCBs and petroleum products are hazardous substances under MTCA,
4 RCW 70 105D.020(10).

5 H. In 1986, EPA collected four samples from the vicinity of the building. Two of
6 these soils samples were collected from storm drain catch basins in the vicinity of the Site.
7 Laboratory results showed a maximum concentration of PCBs well in excess of applicable
8 cleanup standards.

9 I. In 1987, Ecology and Environment, Inc., as a contractor to EPA, conducted a
10 sampling program to further characterize the extent of PCB contamination in work areas, floor
11 drains, on-site soil, and the off-site storm drains. PCBs were detected in on-site soil samples at
12 concentrations above applicable cleanup levels. Four surface scrape samples collected to examine
13 work space contamination showed results of PCB concentrations above applicable cleanup levels.
14 Sediment samples from floor drains inside the building also contained PCBs at concentrations
15 well above applicable cleanup levels. Sediment samples from storm drains in the vicinity of the
16 Site had concentrations above cleanup levels. Three samples that were analyzed for PCBs were
17 also tested for chlorinated hydrocarbons. Chlorinated hydrocarbons were detected in all three
18 samples

19 J In March and April 1997, George Maddox & Associates, Inc., working for
20 Gisselberg, collected soil samples from inside and outside the building from dry wells and from
21 an alley on the east side of the building. The on-site soils contained PCBs at concentrations above
22 applicable cleanup levels. The soil from a dry well contained exceedances of PCBs PCB
23 concentrations from soil samples taken from the alleyway next to the property also exceeded
24 applicable cleanup levels for PCBs.

25 K. In November 1997, George Maddox & Associates, Inc installed a monitoring well
26 adjacent to a dry well near the southeast portion of City Parcel's property. Soil samples were

1 taken at each 5 feet of drill penetration. The highest PCB concentration was measured at the
2 10-12 feet depth, above cleanup levels. A groundwater sample taken from this monitoring well
3 contained PCBs above cleanup levels for groundwater. A second groundwater sample was
4 collected in January 1998. This sample did not detect PCBs.

5 L. In 1994, City Parcel's then-owner, Gisselberg, filed a lawsuit against Richard
6 Boyce, his wife Mary K. Boyce, Jerry Overton, and his wife Jane Doe Overton. *See City Parcel*
7 *v. Overton*, Spokane County Superior Court Cause No. 94-2-06779-1 (1999). The lawsuit was a
8 private right of action for contribution under MTCA under RCW 70.105D.080.

9 M. The lawsuit filed by City Parcel and the Gisselbergs against the Boyces and the
10 Overtons was tried in Spokane County Superior Court from July 19 through July 22, 1999. On
11 September 28, 1999, Judge Linda Thompkins issued Findings of Fact and Conclusions of Law
12 finding all parties liable under MTCA for the Site, and allocating liability of 37.5 percent to
13 Boyce, 37.5 percent to Overton, and 25 percent to Gisselberg as their contribution for remedial
14 action costs under MTCA.

15 N. In September 1997, Ecology conducted an initial investigation of the Site and a
16 letter was sent to Gisselberg on September 9, 1997, indicating further remedial action was needed.

17 O. In August 1998, the Spokane Regional Health District completed the site hazard
18 assessment of the City Parcel property, as required under MTCA. This Site, pursuant to the
19 requirements contained in WAC 173-340-320 and the "Washington Ranking Method Scoring
20 Manual," was given a rank of 2. A score of 1 represents the highest level of risk and 5 the lowest.

21 P. In certified correspondence dated March 21, 2001, Ecology notified each of the
22 PLPs of Ecology's preliminary finding of their potential liability under MTCA and requested
23 comment on those findings.

24 Q. On April 12, 2001, after notice and opportunity for comment, Ecology notified the
25 PLPs of Ecology's determination of their status as PLPs under RCW 70.105D.040, for the release
26 of hazardous substances at the Site.

1 R. Ecology's PLP determination for Defendant was based on a finding of credible
2 evidence that he owned and operated the Site at the time of a release or threatened release of
3 hazardous substances.

4 S. On July 18, 2001, Ecology initiated negotiations with the PLPs for an Agreed
5 Order that would require completion of a Remedial Investigation/Feasibility Study (RI/FS) for the
6 Site.

7 T. On September 13, 2001, Ecology ended negotiations with the PLPs in accordance
8 with WAC 173-340-530(6), based on Defendants' lack of reasonable progress toward successful
9 negotiations of the Agreed Order.

10 U. Ecology thereafter conducted a RI/FS for the Site, using State funds. RI field
11 activities at the Site were conducted in 2002 by Ecology's contractor, Science Applications
12 International Corporation (SAIC). Results of the 2002 studies are presented and discussed in the
13 November 27, 2002, "Final Remedial Investigation Report for the City Parcel Site" prepared by
14 SAIC. The RI report was made available for public comment from January 16 through
15 February 18, 2003. Only one written comment was received, from Boyce, questioning the
16 necessity of the RI investigations. Ecology determined the comment did not warrant any changes
17 to the RI Report.

18 V. Results of the RI confirmed extensive contamination of PCBs in soils in the
19 parking lot and in the alleyway. In April 2002, PCBs above cleanup levels were again detected in
20 the monitoring well that was installed in 1997. PCBs were also detected at very low
21 concentrations in two other newly-installed wells. Groundwater sampling conducted in July
22 2002, February 2003, and May 2003 did not indicate measurable PCBs in the monitoring wells.
23 The RI also revealed the presence of an underground storage tank beneath the concrete floor, near
24 the southeast corner of the building. At the time of the investigation, the tank contained about two
25 inches of an unknown liquid.
26

1 W. EPA has determined that exposure to PCBs is associated with significant adverse
2 effects to human health and the environment. PCBs have been shown to cause cancer in animals
3 and are a probable human carcinogen. Additionally, EPA has found that exposure to PCBs in
4 animals causes significant non-cancer toxic effects on the immune system, the reproductive
5 system, the nervous system and the endocrine system, and studies in humans support the
6 correlation to toxicity in humans as well. Based on available data regarding PCBs including EPA
7 findings, Ecology has found that PCBs present a threat to human health and the environment.

8 X. In August 2003, Ecology formally requested that the City of Spokane install a
9 temporary cover over the contaminated soils in the alleyway which is a City right-of-way. The
10 City complied, covering the alleyway with gravel.

11 Y. Based on the RI results and other existing site data, Ecology drafted a Feasibility
12 Study (FS) Report in 2004. The report evaluated cleanup alternatives for the Site. The FS Report
13 was made available for public review and comment from February 26, 2004, through March 26,
14 2004. No comments were received during this comment period.

15 Z. After finishing the FS, Ecology prepared a Draft Cleanup Action Plan (DCAP)
16 that identified the selected remedial action for the Site. The DCAP was made available for public
17 review and comment from July 21, 2004, through August 19, 2004, and was sent to all three
18 PLPs. No comments were received during the public comment period. The Final Cleanup Action
19 Plan (FCAP) was issued in August 2004. The FCAP requires, among other details, removal of a
20 building, excavation of soils, removal of all drain lines and dry wells, and removal of an
21 underground storage tank.

22 AA. On November 22, 2004, Ecology sent letters to the PLPs calling for a meeting to
23 discuss the FCAP and its implementation. Gisselberg was given a second opportunity to provide
24 comments on the Cleanup Action Plan for an additional thirty day period, extending from
25 December 1, 2004, to December 31, 2004.

1 BB. On December 28, 2004, Gisselberg provided comments on the remedial action
2 chosen in the FCAP and proposed alternative actions that included allowing the building to
3 remain on the Site. The proposed modifications did not meet the minimum requirements of
4 MTCA, and therefore the FCAP was not revised.

5 CC. On May 24, 2005, Ecology met with the PLPs to discuss implementation of the
6 FCAP. At the meeting, Ecology outlined an alternative remedial action that would meet the
7 requirements of MTCA and allow the building to remain intact. Ecology set out the nature and
8 magnitude of modifications to the remedial action identified in the FCAP that would be necessary
9 if the building were to remain.

10 DD. On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent letters
11 to the PLPs inquiring about their intention to negotiate an Agreed Order or Consent Decree with
12 Ecology to implement the FCAP (as written or with some specific modifications as discussed
13 during the May 24, 2005, meeting). Ecology requested that the PLPs respond to Ecology's letter
14 by July 27, 2005. Boyce responded that he would not be able to contribute financially to any
15 portion of the cleanup costs. Gisselberg also responded, indicating he elected not to negotiate an
16 Agreed Order or Consent Decree with Ecology for implementation of either the FCAP, or the
17 FCAP with specific modifications that would allow the building on the Site to remain. Overton
18 did not send a response.

19 EE. On August 16, 2005, pursuant to its authority under RCW 70.105D 030(1) and
20 050(1) and WAC 173-340-540, Ecology issued Enforcement Order No. 2691 (the Order). The
21 Order requires, among other details, that Defendants implement either the FCAP, or the FCAP
22 with specific modifications that would allow the building on the Site to remain.

23 FF. The Order required the PLPs, within fifteen (15) days of the effective date of the
24 Order, to submit to Ecology a letter of intent clearly defining the PLPs' intent to abide by the
25 Order in good faith. The effective date of the Order was October 4, 2005. None of the PLPs
26 submitted this required letter of intent by October 19, 2005 (15 days after October 4, 2005). Since

1 Ecology issued the Order, none of the PLPs have taken any steps to comply with the FCAP as
2 required by the Order.

3 GG. On March 2, 2006, Ecology then filed the above-entitled action, asking, among
4 other things, this Court to enforce the Order.

5 HH. On October 17, 2007, the Honorable Ann Hirsch signed an order on partial
6 summary judgment in this action in favor of Ecology, finding that Defendant Gisselberg is a liable
7 person for the City Parcel Site.

8 II. Ecology has reviewed the Financial Information submitted by Defendant to
9 determine whether the Defendant is financially able to pay for remedial action costs incurred
10 and to be incurred at the Site. Based on this Financial Information including information as to
11 savings, assets, current income, and limited future earnings potential (taking into consideration
12 factors including but not limited to Defendant's age, life expectancy and health care/long term
13 care expenses), Ecology has determined that the Defendant has limited financial ability to pay
14 for remedial action costs incurred and to be incurred at the Site.

15 JJ. This Decree is based on circumstances unique to Defendant, namely financial
16 hardship. *See* RCW 70.105D.040(4)(e). Thus, a successor in interest to Defendant will not
17 automatically receive the benefit of this Decree. Defendant's estate is obligated to comply
18 with this Decree and also receives the benefits of this Decree.

19 VI. PAYMENT & OTHER OBLIGATIONS

20 A. Defendant shall pay a sum of \$180,000, plus a payment for the time value of
21 paying in installments (calculated at five percent (5%), annual percentage rate, simple interest)
22 according to the following schedule and conditions:

- 23 1. \$60,000 paid to Ecology within fourteen (14) days of entry of the
24 Consent Decree;
- 25 2. \$65,000 paid to Ecology by December 31, 2008 (including \$60,000
26 towards principal, and \$5,000 in accrued interest);

1 3 \$63,000 paid to Ecology by December 31, 2009 (including \$60,000
2 towards principal and \$3,000 in accrued interest);

3 4 Within ten (10) days of the entry of this Decree with the Court,
4 Defendant agrees to record a lien against his real property located at 708 North Cook
5 Street in Spokane in the amount of \$189,000 in unreimbursed remedial action costs
6 incurred by Ecology. The lien shall take the form of Exhibit C (Lien) Defendant shall
7 provide Ecology a copy of the recorded lien within thirty (30) days of entry of this
8 Decree;

9 5. If Defendant sells his ownership interest in the real property at the Site
10 before December 31, 2009, then all sums not yet paid will immediately become due and
11 payable upon the sale of the property, in accordance with the terms of the lien recorded
12 against the property (Exhibit C);

13 6 If Defendant timely pays the entire sum, including the entirety of the
14 principal (\$180,000) and the 2008 interest payment (\$6,000), before December 31,
15 2008, then the interest on the payment due in 2009 (in the amount of \$3,000) shall not
16 accrue. If, however, the full amount of the settlement has not been timely paid by the
17 end of 2008, then the full second year's interest on the principal (in the amount of
18 \$3,000) shall become due and owing according to the schedule above, in addition to
19 any sums owing in accordance with Section VII (Interest); and

20 7. Payments shall be made payable to the "Washington State Department
21 of Ecology" and sent via Federal Express to the following address:

22 ATTN: GARY ZEILER
23 DEPARTMENT OF ECOLOGY
24 300 DESMOND DRIVE SE
25 LACEY, WA 98509-5128

26 These payments are intended to go into an interim account. If the 2008 Legislature
creates a new account for environmental settlements of the type described in this

1 Decree, then the funds shall be directed from the interim account into the new
2 settlement account once the account has been created. This new account may be called
3 the Cleanup Settlement Account or equivalent. If the 2008 Legislature does not create
4 any such environmental settlement account, then the funds shall be transferred from the
5 interim account to the State Toxics Control Account

6 B. Defendant agrees not to perform any remedial actions at the Site without
7 Ecology's express written approval.

8 C. Defendant agrees to fully cooperate with Ecology's remedial efforts, including
9 but not limited to: granting full, unencumbered access to Defendant's property located at 708
10 N. Cook Street in Spokane, consistent with Section VIII (Access); agreement to demolition of
11 the building; agreement to removal of any other improvements on the property where such
12 removal is reasonably necessary to the remediation; and by April 30, 2008, Defendant agrees
13 to have fully prepared the property for demolition and cleanup. This preparation includes
14 clearing all of Defendant's personal property out of the building and off the outdoor portions of
15 the property to make way for the cleanup and demolition. "Reasonable necessity" under this
16 Section shall be determined at Ecology's sole discretion.

17 D. Defendant agrees that any and all salvageable metal resulting from the destruction
18 of the building is the property of Ecology and may be disposed of by Ecology within Ecology's
19 sole discretion.

20 E. Defendant agrees to the placement of an Environmental Covenant on his property
21 in accordance with Section XVIII (Land Use Restrictions).

22 F. Defendant shall fully comply with Ecology's periodic review efforts at the Site,
23 consistent with Section XIX (Periodic Review).

1 **VII. INTEREST**

2 If Defendant fails to make any payment in full by the required due date in accordance
3 with Section VI (Payment & Other Obligations), interest shall accrue on the unpaid balance in
4 the amount of twelve percent (12%) (annual percentage rate, compounded monthly).

5 **VIII. ACCESS**

6 Ecology or any Ecology authorized representative shall have full authority to enter and
7 freely move about all property at the Site that Defendant either owns, controls, or has access
8 rights to at all reasonable times for the purposes of, *inter alia*: conducting investigative and
9 cleanup work at the site, performing periodic reviews, inspecting records, operation logs, and
10 contracts related to the work being performed pursuant to this Decree; conducting such tests or
11 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
12 other documentary type equipment to record remedial work done at the Site; and verifying any
13 and all data submitted to Ecology for the Site. Defendant shall make all reasonable efforts to
14 secure access rights for those properties within the Site not owned or controlled by Defendant
15 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
16 or any Ecology authorized representative shall give reasonable notice before entering any Site
17 property owned or controlled by Defendant unless an emergency prevents such notice. All
18 Parties who access the Site pursuant to this Section shall comply with any applicable health
19 and safety plan(s). Ecology employees and their representatives shall not be required to sign
20 any liability release or waiver as a condition of Site property access.

21 Defendant or a representative of Defendant may be present during any remediation at
22 the Site, provided that (1) Defendant coordinate with Ecology's project coordinator in advance;
23 and (2) that Defendant comply with any and all applicable health and safety plans at the Site.
24 Defendant does not have the right to exercise control over remediation at the Site and/or to
25 exercise control over any contractors who may perform remedial work at the Site.

1 **IX. TRANSFER OF INTEREST IN PROPERTY**

2 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
3 interest in any portion of the Site shall be consummated by Defendant without provision for the
4 continued operation and maintenance of any wells, containment system, treatment system,
5 and/or monitoring system installed or implemented by Ecology or its authorized
6 representatives at the Site.

7 Prior to Defendant's transfer of any interest in all or any portion of the Site, and during
8 the effective period of this Decree, Defendant shall provide a copy of this Decree to any
9 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
10 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer.
11 Upon transfer of any interest, Defendant shall restrict uses and activities to those consistent
12 with this Consent Decree and notify all transferees of the restrictions on the use of the
13 property.

14 Because this is a settlement based on circumstances unique to Defendant, namely
15 financial hardship, Ecology reserves all rights to enforce against any and all successors in
16 interest to Defendant, and successors in interest to Defendant shall not automatically benefit
17 from the terms of this Decree. *See* RCW 70.105D 040(4)(e).

18 **X. DESIGNATED PROJECT COORDINATORS**

19 The project coordinator for Ecology is:

20
21 Teresita Bala
22 Washington State Department of Ecology
23 Eastern Regional Office
24 North 4601 Monroe
25 Spokane, WA 99205-1295
26 Phone: (509) 329-3543
Email: tbal461@ecy.wa.gov

The project coordinator for Defendant is:

Paul Gisselberg
10957 Gisselberg Lane, NW

1 **XIII. AMENDMENT OF DECREE**

2 This Decree may only be formally amended by a written stipulation among the Parties
3 that is entered by the Court, or by order of the Court. Such amendment shall become effective
4 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
5 by any party.

6 Defendant shall submit a written request for amendment to Ecology for approval.
7 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
8 written request for amendment is received. If the amendment to the Decree is a substantial
9 change, Ecology will provide public notice and opportunity for comment. Reasons for the
10 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
11 not agree to a proposed amendment, the disagreement may be addressed through the Court.

12 **XIV. ENDANGERMENT**

13 In the event Ecology determines that any activity being performed at the Site is creating
14 or has the potential to create a danger to human health or the environment, Ecology may direct
15 Defendant to cease such activities for such period of time as it deems necessary to abate the
16 danger. Defendant shall immediately comply with such direction.

17 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
18 contractors to take or require appropriate action in the event of an emergency.

19 **XV. COVENANT NOT TO SUE**

20 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
21 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
22 actions against Defendant regarding the release or threatened release of hazardous substances
23 covered by this Decree.

24 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
25 and those hazardous substances that Ecology knows are located at the Site as of the date of
26

1 entry of this Decree This Decree does not cover any other hazardous substance or area.
2 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

3 This Covenant Not to Sue shall have no applicability whatsoever to:

- 4 1. Criminal liability;
- 5 2. Liability for damages to natural resources; and
- 6 3. Any Ecology action, including cost recovery, against PLPs not a party to
7 this Decree.

8 If factors not known at the time of entry of the settlement agreement are discovered and
9 present a previously unknown threat to human health or the environment, the Court shall
10 amend this Covenant Not to Sue. In that event, however, Ecology requests that the Court take
11 into consideration, as appropriate, that the basis of this settlement is limited financial ability to
12 pay.

13 B. Reopeners: Ecology specifically reserves the right to institute legal or
14 administrative action against Defendant to require it to perform additional remedial actions at
15 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D 050 under the
16 following circumstances:

17 1. Upon Defendant's failure to meet the requirements of this Decree,
18 including, but not limited to, fulfillment of Sections VI (Payment & Other Obligations);
19 VII (Interest); XI (Reasonable Assistance); and XII (Notice of Financial Status);

20 2. Upon Ecology's determination that remedial action by Defendant
21 beyond the terms of this Decree is necessary to abate an imminent and substantial
22 endangerment to human health or the environment;

23 3. Upon Ecology's determination that the Financial Information provided
24 to Ecology by Defendant is false or in any material respect inaccurate. If Ecology
25 makes such a determination, Defendant shall forfeit all payments pursuant to this
26 agreement and the Covenant Not to Sue shall be null and void. Such forfeiture shall

1 not constitute liquidated damages and shall not in any way foreclose Ecology's right to
2 pursue any other causes of action arising from Defendant's false or materially
3 inaccurate information;

4 4. Upon Ecology's determination that Defendant's financial ability to pay
5 has materially increased from the time of entry of this Decree. Should Ecology make
6 such a determination, Defendant shall forfeit all payments pursuant to this agreement
7 and the Covenant Not to Sue shall be null and void. Such forfeiture shall not constitute
8 liquidated damages and shall not in any way foreclose Ecology's right to pursue any
9 other causes of action arising from Defendant's material change in finances; or

10 5. Upon the availability of new information regarding factors previously
11 unknown to Ecology, including the nature or quantity of hazardous substances at the
12 Site, and Ecology's determination, in light of this information, that further remedial
13 action is necessary at the Site to protect human health or the environment.

14 C. Except in the case of an emergency, prior to instituting legal or administrative
15 action against Defendant pursuant to this Section, Ecology shall provide Defendant with fifteen
16 (15) calendar days notice of such action.

17 **XVI. CONTRIBUTION PROTECTION**

18 With regard to claims for contribution against Defendant, the Parties agree that
19 Defendant is entitled to protection against claims for contribution for matters addressed in this
20 Decree as provided by RCW 70.105D.040(4)(d).

21 **XVII. CLAIMS AGAINST THE STATE**

22 Defendant hereby agrees that it will not seek to recover any costs paid under this
23 Decree, including but not limited to, payments made pursuant to Section VI (Payment & Other
24 Obligations) and Section VII (Interest) from the State of Washington or any of its agencies;
25 and further, that Defendant will make no claim against the State Toxics Control Account or
26

1 | any local Toxics Control Account for any costs incurred in implementing its obligations under
2 | this Decree.

3 | **XVIII. LAND USE RESTRICTIONS**

4 | Defendant shall record the Environmental Covenant attached as Exhibit E to this
5 | Decree with the office of the Spokane County Auditor within ten (10) days of receiving written
6 | notice from Ecology that the active remediation is complete. The Environmental Covenant
7 | shall restrict future uses of the Site. Defendant shall provide Ecology with a copy of the
8 | recorded Environmental Covenant within thirty (30) days of the recording date.

9 | **XIX. PERIODIC REVIEW**

10 | Defendant recognizes that Ecology's remediation efforts include periodic reviews
11 | consistent with WAC 173-340-420(2) and the Uniform Environmental Covenants Act (Chapter
12 | 64.70 RCW) to ensure the integrity of remedial actions completed at the Site. Defendant shall
13 | fully comply with Ecology's periodic review efforts at the Site, including but not limited to
14 | permitting access consistent with Section VIII (Access) and allowing Ecology to access any and
15 | all documents in Defendant's possession that may be relevant to the remediation at the Site.
16 | Defendant's successors in interest and assigns shall also fully comply with Ecology's periodic
17 | review efforts.

18 | **XX. PUBLIC PARTICIPATION**

19 | A Public Participation Plan is required for this Site. Ecology shall update, maintain and
20 | implement the Public Participation Plan, as appropriate. This includes information
21 | repositories, the preparation of all press releases and fact sheets, meetings, and other outreach
22 | with the interested public, local governments, and news organizations. Ecology shall notify
23 | Defendant prior to the issuance of all press releases and fact sheets, and before major meetings
24 | with the interested public and local governments, on issues related to this Consent Decree.

25 | Defendant shall not be associated with public participation efforts. Defendant shall
26 | refer any and all Site inquiries directly to Ecology's project coordinator. However, upon

1 Ecology's request, Defendant shall cooperate with Ecology on any and all public participation
2 efforts.

3 **XXI. DURATION OF DECREE**

4 The Decree shall be maintained and continued until Defendant has received written
5 notification from Ecology that the requirements of this Decree have been satisfactorily
6 completed. Ecology shall not issue such notification to Defendant until Defendant has
7 completed all the requirements of this Decree, including but not limited to the requirements of
8 Section VI (Payment & Other Obligations), Section VII (Interest), and the first six years of
9 reporting under Section XII (Notice of Financial Status). This Decree shall remain in effect
10 until dismissed by the Court. When dismissed, Section VIII (Access), Section XI (Reasonable
11 Assistance), Section XII (Notice of Financial Status), Section XV (Covenant Not to Sue),
12 Section XVI (Contribution Protection), Section XVII (Claims Against the State), and XIX
13 (Periodic Review) shall survive.

14 **XXII. CERTIFICATION**

15 In the attached Exhibit F (Declaration of Paul Gisselberg), Defendant certifies the
16 following under penalty of perjury under the laws of the State of Washington: That, to the best
17 of his knowledge and belief, after thorough inquiry, he has fully complied with any and all of
18 Ecology's requests for documents or information regarding the Site and Defendant's financial
19 circumstances; further, that Defendant has submitted to Ecology Financial Information that
20 fairly, accurately, and materially sets forth his financial circumstances, and that those financial
21 circumstances have not materially increased between the time the Financial Information was
22 submitted to Ecology and the time the Defendant executes this Decree; finally, Defendant has
23 certified that he has fully disclosed the existence of any insurance policies that may cover
24 claims relating to the cleanup of the Site.

25 **XXIII. EFFECTIVE DATE**

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

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XXIV. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

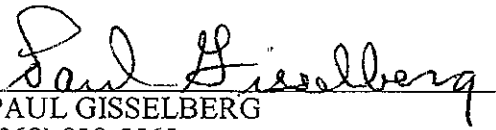
JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
360-407-7177

ELLIOTT FURST, WSBA # 12026
Senior Counsel
360-586-6770

Date: _____

Date: _____

PAUL GISSELBERG



PAUL GISSELBERG
(360) 830-5565

MELISSA ROURKE, WSBA # 34549
Assistant Attorney General
360-586-6770

Date: Feb. 23, 2008

Date: _____

ENTERED this _____ day of _____ 20____


JUDGE CHRIS WICKHAM
Thurston County Superior Court

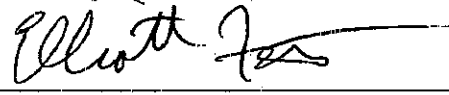
1 **XXIV. WITHDRAWAL OF CONSENT**

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

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9 STATE OF WASHINGTON
10 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General


11 
12 JAMES PENDOWSKI
13 Program Manager
14 Toxics Cleanup Program
15 360-407-7177


ELLIOTT FURST, WSBA # 12026
Senior Counsel
360-586-6770

16 Date: 2/28/08

17 Date: 3/5/08

18 PAUL GISSELBERG


MELISSA ROURKE, WSBA # 34549
Assistant Attorney General
360-586-6770

19 PAUL GISSELBERG
20 (360) 830-5565

21 Date: _____

22 Date: 3/5/08

23 ENTERED this 10th day of March 2008

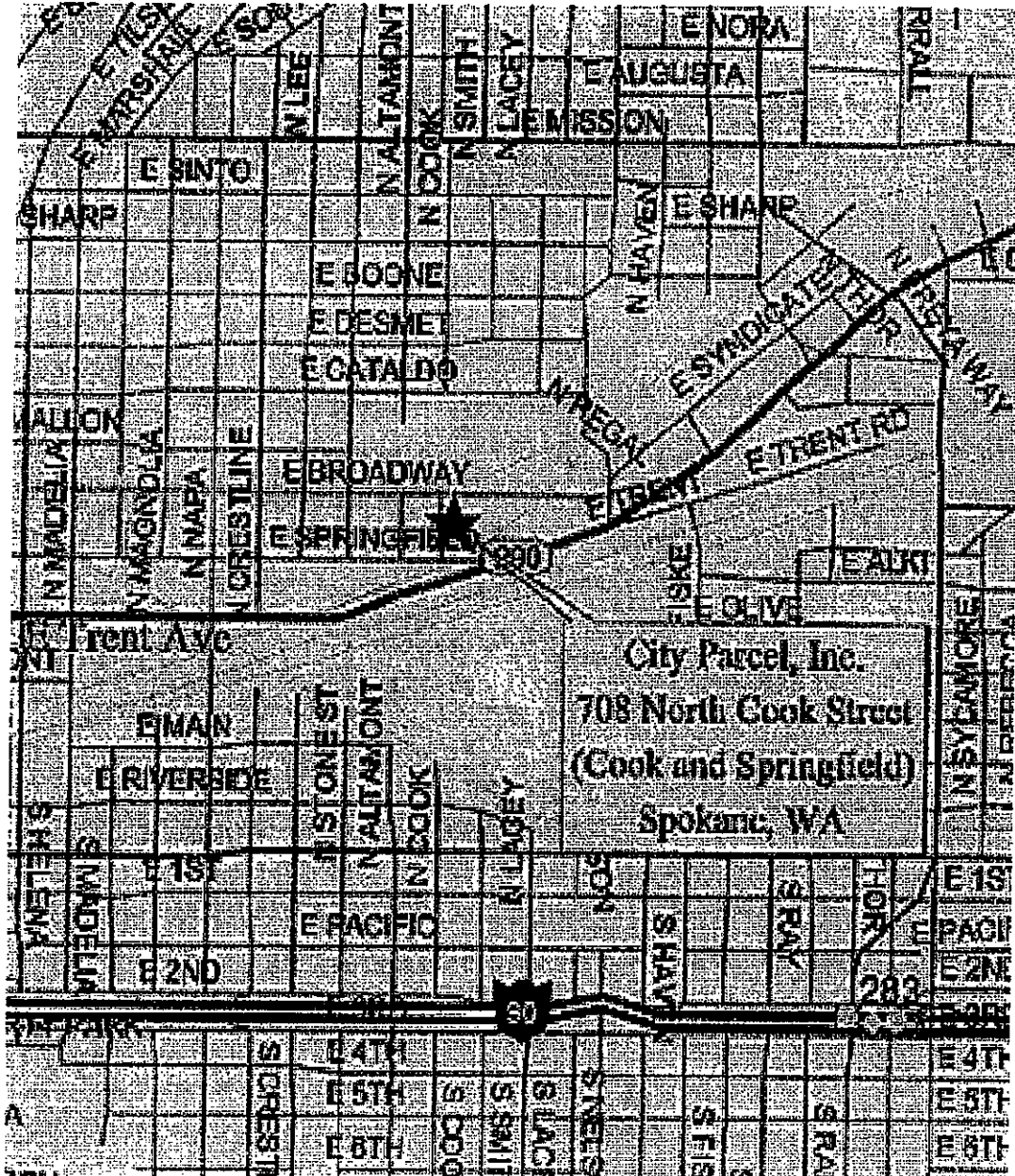
24 CHRISTINE A. POMEROY *for*

25 JUDGE CHRIS WICKHAM
26 Thurston County Superior Court

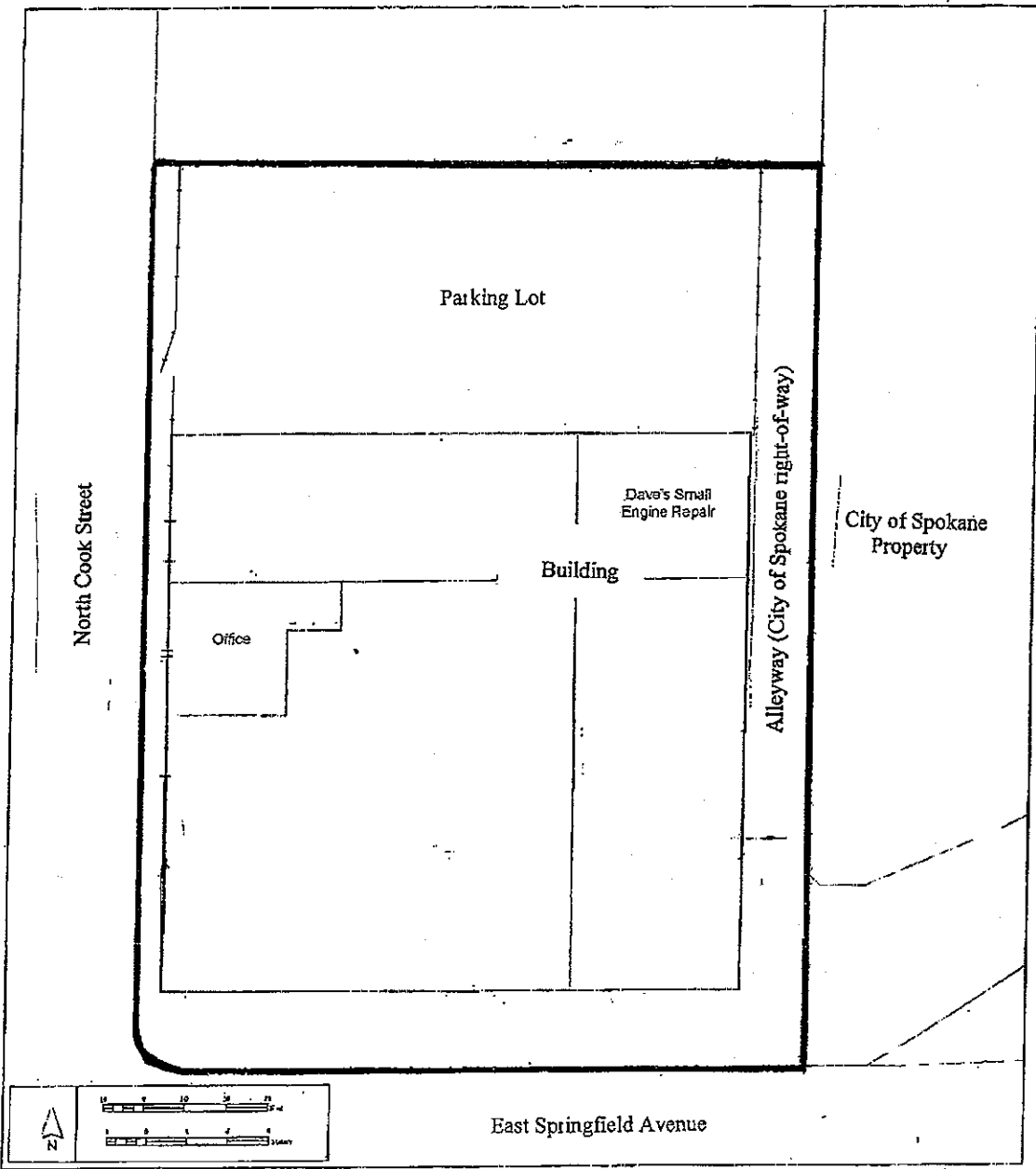
EXHIBIT A

Site Diagram

EXHIBIT A



CITY PARCEL SITE LOCATION



— Site Boundary

City Parcel Site Diagram

EXHIBIT B

List of Financial Information

LIST OF FINANCIAL INFORMATION

Ecology reviewed the following documents submitted by Mr. Gisselberg in making the financial hardship determination for Mr. Gisselberg:

- Signed statement under penalty of perjury describing Mr. Gisselberg's assets, income, and earning potential, dated March 26, 2007 (submitted to Ecology through its legal counsel by letter dated March 28, 2007).
- Mr. Gisselberg's personal federal income tax returns for the years 2004 through 2006 and attached letter to Ecology's counsel dated May 11, 2007
- Letter dated March 28, 2007, from Dr Dale Holdren, M D., describing Mr. Gisselberg's ophthalmic condition (submitted to Ecology through its legal counsel by letter dated April 11, 2007).
- Sworn declaration under penalty of perjury (Exhibit F to this Decree).

EXHIBIT C

Lien

After Recording Return to:

Department of Ecology
4601 North Monroe St.
Spokane, WA 99205-1295

Model Toxics Control Act- Statement of Lien

Grantor: Paul and Mary Ann Gisselberg
Grantee: State of Washington, Department of Ecology
Legal: Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16,
Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that
part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company;
situate in Spokane County, State of Washington
Tax Parcel Nos.: 35164.0406
Cross Reference:

Notice is hereby given that State of Washington, through the Department of Ecology, claims a lien pursuant to RCW 70.105D.055. In support of this lien the following information is given.

Legal Owner of Property: Paul and Mary Ann Gisselberg

Legal description of property subject to lien: Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16, Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company; situate in Spokane County, State of Washington

Amount of Lien: One hundred and eighty nine thousand dollars (\$ 189,000.00)

This lien supports the financial obligations set forth in that consent decree between Paul Gisselberg and State of Washington dated _____ on file with the Superior Court in Thurston County, Cause No. 06-2-00427-0.

Upon default by Paul Gisselberg in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable.

By accepting payment of any sum secured hereby after its due date, State does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

Dated this ___ day of ____, 20__.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Name: Jim Pendowski
Title: Program Manager, Toxics Cleanup Program

CONSENT

As legal owner of the property identified above, I hereby consent to the placement of this lien.

PAUL GISSELBERG

MARY ANN GISSELBERG

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) ss
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the individual(s) described in and who executed the within and foregoing instrument and acknowledged that he/she/they signed the same as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned

Given under my hand and official seal this _____ day of _____, 20__

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
)ss
COUNTY OF THURSTON)

On this _____ day of _____, 20__, personally appeared before me _____, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT D

Annual Notice of Financial Status Form

ANNUAL NOTICE OF FINANCIAL STATUS FORM

I, Paul Gisselberg, declare that my combined personal assets and income have not increased by more than twenty percent (20%) from the time of entry of the Consent Decree in Thurston County Superior Court, matter number 06-2-00427-0, *Ecology v. Boyce et. al.*

Attached to this form is a true and correct copy of my most recent personal federal income tax return, including all schedules and attachments thereto

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this ____ day of _____ (Month) _____ (Year) in _____ (City),
Washington.

Paul Gisselberg

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT E

Environmental Covenant

After Recording Return to:

Department of Ecology
4601 North Monroe St.
Spokane, WA 99205-1295

Environmental Covenant

Grantor: Mr. Paul Gisselberg and Ms. Mary Ann Gisselberg

Grantee: State of Washington, Department of Ecology

Legal: Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16, Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company; situate in Spokane County, State of Washington

Tax Parcel Nos.: 35164.0406

Grantors, Mr. Paul Gisselberg and Ms. Mary Ann Gisselberg, hereby bind Grantors, their successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this ____ day of _____, 200__ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Mr. Paul Gisselberg, Ms. Mary Ann Gisselberg, and their successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

- Final Cleanup Action Plan, August 2004
- Cleanup Action Report (to be prepared after completion of the cleanup action).

These documents are on file at Ecology's Eastern Regional Office located at 4610 N. Monroe St., Spokane, WA.

This Covenant is required because the Remedial Action resulted in residual concentrations of Polychlorinated Biphenyls (PCBs) which exceed the Model Toxics Control Act Method A Soil Cleanup Level for Unrestricted Land Uses established under WAC 173-340-740.

The undersigned, Mr. Paul Gisselberg and Ms. Mary Ann Gisselberg, are the fee owners of real property (hereafter "Property") in Spokane County, State of Washington, that is subject to this Covenant. The Property is legally described in ATTACHMENT A of this Covenant and made a part hereof by reference.

Grantors make the following declaration as to limitations, restrictions, and uses to which the Property 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 Property (hereafter "Owner").

Section 1.

1. The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(14) and defined in and allowed under the City of Spokane zoning regulations codified in the Municipal Code Title 17C.130 as of the date of this Restrictive Covenant.

2. Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2 Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3 Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial

Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

MR. PAUL GISSELBERG

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PAUL GISSELBERG

An Individual

Dated: _____

JIM PENDOWSKI

Program Manager, Toxic Cleanup Program

Dated: _____

MS. MARY ANN GISSELBERG

MARY ANN GISSELBERG

An Individual

INDIVIDUAL ACKNOWLEDGMENT
STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, I certify that _____
personally appeared before me, and acknowledged that **he/she** is the individual described
herein and who executed the within and foregoing instrument and signed the same at **his/her**
free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

Environmental Covenant - Exhibit A
Legal Description

Lots 5, 6, 7 and 8 in Block 151 of Subdivision of School Section 16, Township 25 North, Range 43 E.W.M., in the City of Spokane; Except that part of Lot 8 granted to Coeur d'Alene & Spokane Railway Company; situate in Spokane County, State of Washington

EXHIBIT F

Declaration of Paul Gisselberg

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO. 06-2-00427-0

DECLARATION OF PAUL
GISSELBERG

I, Paul Gisselberg, being first duly sworn upon an oath, depose and say:

1. To the best of my knowledge and belief, after thorough inquiry, I have fully complied with any and all of Ecology's requests for documents or information regarding the Site and my financial circumstances.

2. The Financial Information (described in Exhibit B) that I have submitted to Ecology fairly, accurately, and materially sets forth my financial circumstances. Further, my financial circumstances have not materially increased between the time the Financial Information was submitted to Ecology and the time I am signing this Consent Decree; and

3. Finally, I have fully disclosed the existence of any insurance policies that may cover claims relating to the cleanup of the Site

///

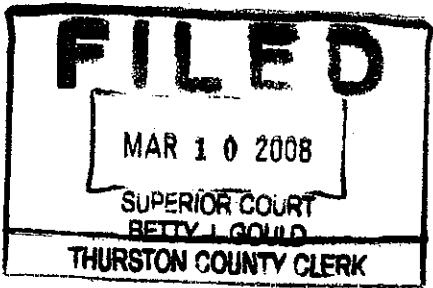
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1 I declare under penalty of perjury of the laws of the state of Washington that the
2 foregoing is true and correct to the best of my knowledge.

3 Dated this 23rd day of Feb (Month), 2008 (Year), in Spokane,
4 (City) Washington (State).

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7 PAUL GISSELBERG
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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO 06-2-00427-0

CONSENT DECREE BETWEEN
PLAINTIFF AND DEFENDANT
OVERTON

EX PARTE

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EXHIBIT A. Site Diagram
EXHIBIT B. List of Financial Information
EXHIBIT C. Annual Notice of Financial Status Form
EXHIBIT D. Declaration of Jerry Overton

EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Jerry Overton (Defendant) under this Decree is to avoid difficult and prolonged litigation by allowing Defendant to make a cash payment to address his alleged civil liability for the Site. This payment will assist in paying for remedial action at a facility where there has been a release or threatened release of hazardous substances. In recognition of Defendant's limited ability to pay for remedial action costs, this Decree requires Defendant to pay a sum of money commensurate with his ability to pay

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

B. The Complaint in this action was filed on March 2, 2006. Defendant has not filed an Answer to this Complaint. Additionally, while there have been multiple motions filed in this action thus far, none of the motions have specifically adjudicated Defendant's potential liability for the Site. However, the Parties now wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

C. By signing this Decree, Ecology and Defendant agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, Ecology and Defendant do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. Ecology and Defendant retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, that Defendant shall not challenge the authority of the Attorney General
2 and Ecology to enforce this Decree.

3 F Ecology and Defendant recognize that this agreement has been negotiated in
4 good faith.

5 G The Court is fully advised of the reasons for entry of this Decree, and good
6 cause having been shown:

7 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

8 **II. JURISDICTION**

9 A This Court has jurisdiction over the subject matter and over the Parties pursuant
10 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

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

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

18 D Ecology has given notice to Defendant of Ecology's determination that
19 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

20 E The actions to be taken pursuant to this Decree are necessary to protect public
21 health and the environment

22 F This Decree has been subject to public notice and comment.

23 G Ecology finds that this Decree will lead to a more expeditious cleanup of
24 hazardous substances at the Site in compliance with the cleanup standards established under
25 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

26

1 H. Defendant has agreed to undertake the actions specified in this Decree and
2 consents to the entry of this Decree under MTCA.

3 III. PARTIES BOUND

4 This Decree shall apply to and be binding upon the Parties to this Decree, and their
5 successors and assigns. The undersigned representative of each party hereby certifies that he
6 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
7 comply with this Decree. Defendant agrees to undertake all actions required by the terms and
8 conditions of this Decree. No change in ownership or corporate status shall alter Defendant's
9 responsibility under this Decree.

10 IV. DEFINITIONS

11 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
12 WAC 173-340-200 shall control the meanings of the terms in this Decree.

13 A. Site: The Site is referred to as the City Parcel Site and is generally located at
14 the intersection of North Cook Street and East Springfield Avenue in Spokane, Washington.
15 The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a
16 Facility under RCW 70.105D.020(5).

17 B. Parties: Refers to the State of Washington, Department of Ecology and Jerry
18 Overton.

19 C. PLPs: Refers to Richard Boyce, Paul Gisselberg, and Jerry Overton

20 C. Defendant: Refers to Jerry Overton

21 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
22 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
23 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree

24 E. Financial Information: Refers to those financial documents identified in
25 Exhibit B.

1 **V. FINDINGS OF FACTS**

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

4 A The City Parcel Site is located in the SE 1/4 Sec. 16, T.25, N., R. 42 East in
5 Spokane County, Washington, at the intersection of North Cook Street and East Springfield
6 Avenue, as further depicted in Exhibit A (Site Diagram)

7 B The Site was occupied by Spokane Transformer, Inc., a transformer repair and
8 recycling operation, for approximately 25 years. The Site was sold in 1980 to City Parcel
9 Delivery, Inc. City Parcel is a parcel delivery service that was owned by Paul Gisselberg, and,
10 upon information and belief, Gisselberg has sold the City Parcel business. Gisselberg
11 continues to own the underlying property. The former Spokane Transformer, Inc.'s address
12 was 2500 East Springfield Avenue, Spokane, Washington 99202. City Parcel's address is 708
13 North Cook Street, Spokane, Washington 99202.

14 C The Site was owned by Richard Boyce during Spokane Transformer, Inc.'s
15 transformer repair and recycling operations. Boyce operated Spokane Transformer, Inc. until
16 1974.

17 D In 1974, Defendant became president of Spokane Transformer, Inc. Defendant
18 operated the Facility from 1974 to 1979.

19 E The Environmental Protection Agency (EPA) first investigated the Site in 1976.
20 Two soil samples were collected from outside of the operations building. Analytical results
21 indicated soils contained polychlorinated biphenyls (PCBs) above relevant MTCA residential
22 and industrial soil cleanup levels.

23 F In 1980, EPA and Ecology inspected the Site. The inspectors noted areas of
24 visibly oil-stained soil.

25 G PCBs and petroleum products are hazardous substances under MTCA,
26 RCW 70.105D.020(10).

1 H. In 1986, EPA collected four samples from the vicinity of the building. Two of
2 these soils samples were collected from storm drain catch basins in the vicinity of the Site.
3 Laboratory results showed a maximum concentration of PCBs well in excess of applicable
4 cleanup standards.

5 I. In 1987, Ecology and Environment, Inc., as a contractor to EPA, conducted a
6 sampling program to further characterize the extent of PCB contamination in work areas, floor
7 drains, on-site soil, and the off-site storm drains. PCBs were detected in on-site soil samples at
8 concentrations above applicable cleanup levels. Four surface scrape samples collected to
9 examine work space contamination showed results of PCB concentrations above applicable
10 cleanup levels. Sediment samples from floor drains inside the building also contained PCBs at
11 concentrations well above applicable cleanup levels. Sediment samples from storm drains in
12 the vicinity of the Site had concentrations above cleanup levels. Three samples that were
13 analyzed for PCBs were also tested for chlorinated hydrocarbons. Chlorinated hydrocarbons
14 were detected in all three samples.

15 J. In March and April 1997, George Maddox & Associates, Inc., working for
16 Gisselberg, collected soil samples from inside and outside the building, from dry wells, and
17 from an alley on the east side of the building. The on-site soils contained PCBs at
18 concentrations above applicable cleanup levels. The soil from a dry well contained
19 exceedances of PCBs. PCB concentrations from soil samples taken from the alleyway next to
20 the property also exceeded applicable cleanup levels for PCBs.

21 K. In November 1997, George Maddox & Associates, Inc. installed a monitoring
22 well adjacent to a dry well near the southeast portion of City Parcel's property. Soil samples
23 were taken at each 5 feet of drill penetration. The highest PCB concentration was measured at
24 the 10-12 feet depth, above cleanup levels. A ground water sample taken from this monitoring
25 well contained PCBs above cleanup levels for groundwater. A second groundwater sample
26 was collected in January 1998. This sample did not detect PCBs.

1 L. In 1994, City Parcel's then-owner, Gisselberg, filed a lawsuit against Richard
2 Boyce, his wife Mary K. Boyce, Jerry Overton, and his wife Jane Doe Overton. *See City*
3 *Parcel v. Overton*, Spokane County Superior Court Cause No. 94-2-06779-1 (1999). The
4 lawsuit was a private right of action for contribution under MTCA under RCW 70.105D.080.

5 M. The lawsuit filed by City Parcel and the Gisselbergs against the Boyces and the
6 Overtons was tried in Spokane County Superior Court from July 19 through July 22, 1999. On
7 September 28, 1999, Judge Linda Thompkins issued Findings of Fact and Conclusions of Law
8 finding Gisselberg, Overton, and Boyce liable under MTCA for the Site. On September 29,
9 2003, following the trial, but before full resolution of attorney's fees and other issues not
10 related to liability, Boyce, Overton and Gisselberg voluntarily dismissed the case by
11 stipulation, without prejudice, and without waiving the right to seek attorneys fees. In a signed
12 order dated October 17, 2007, which incorporates a letter opinion dated July 19, 2007, Judge
13 Hirsch ruled that there was no final judgment in this case because it was dismissed by
14 stipulation of the parties.

15 N. In September 1997, Ecology conducted an initial investigation of the Site and a
16 letter was sent to Gisselberg on September 9, 1997, indicating further remedial action was
17 needed.

18 O. In August 1998, the Spokane Regional Health District completed the site hazard
19 assessment of the City Parcel property, as required under MTCA. This site, pursuant to the
20 requirements contained in WAC 173-340-320 and the "Washington Ranking Method Scoring
21 Manual," was given a rank of 2. A score of 1 represents the highest level of risk and 5 the
22 lowest.

23 P. In certified correspondence dated March 21, 2001, Ecology notified each of the
24 PLPs of Ecology's preliminary finding of their potential liability under MTCA and requested
25 comment on those findings.
26

1 Q. On April 12, 2001, after notice and opportunity for comment, Ecology notified
2 the PLPs of Ecology's determination of their status as PLPs under RCW 70.105D.040, for the
3 release of hazardous substances at the Site.

4 R. Ecology's PLP determination for Defendant was based on a finding of credible
5 evidence that he owned and operated the Site at the time of a release or threatened release of
6 hazardous substances.

7 S. On July 18, 2001, Ecology initiated negotiations with the PLPs for an Agreed
8 Order that would require completion of a Remedial Investigation/Feasibility Study (RI/FS) for
9 the Site

10 I. On September 13, 2001, Ecology ended negotiations with the PLPs in
11 accordance with WAC 173-340-530(6), based on PLPs' lack of reasonable progress toward
12 successful negotiations of the Agreed Order.

13 U. Ecology thereafter conducted a RI/FS for the Site, using State funds. RI field
14 activities at the Site were conducted in 2002 by Ecology's contractor, Science Applications
15 International Corporation (SAIC). Results of the 2002 studies are presented and discussed in
16 the November 27, 2002, "Final Remedial Investigation Report for the City Parcel Site"
17 prepared by SAIC. The RI report was made available for public comment from January 16
18 through February 18, 2003. Only one written comment was received, from Boyce, questioning
19 the necessity of the RI investigations. Ecology determined the comment did not warrant any
20 changes to the RI Report.

21 V. Results of the RI confirmed extensive contamination of PCBs in soils in the
22 parking lot and in the alleyway. In April 2002, PCBs above cleanup levels were again detected
23 in the monitoring well that was installed in 1997. PCBs were also detected at very low
24 concentrations in two other newly-installed wells. Groundwater sampling conducted in July
25 2002, February 2003, and May 2003 did not indicate measurable PCBs in the monitoring
26 wells. The RI also revealed the presence of an underground storage tank beneath the concrete

1 floor, near the southeast corner of the building. At the time of the investigation, the tank
2 contained about two inches of an unknown liquid.

3 W. EPA has determined that exposure to PCBs is associated with significant
4 adverse effects to human health and the environment. PCBs have been shown to cause cancer
5 in animals and are a probable human carcinogen. Additionally, EPA has found that exposure
6 to PCBs in animals causes significant non-cancer toxic effects on the immune system, the
7 reproductive system, the nervous system and the endocrine system, and studies in humans
8 support the correlation to toxicity in humans as well. Based on available data regarding PCBs
9 including EPA findings, Ecology has found that PCBs present a threat to human health and the
10 environment.

11 X. In August 2003, Ecology formally requested that the City of Spokane install a
12 temporary cover over the contaminated soils in the alleyway which is a City right-of-way. The
13 City complied, covering the alleyway with gravel.

14 Y. Based on the RI results and other existing site data, Ecology drafted a
15 Feasibility Study (FS) Report in 2004. The report evaluated cleanup alternatives for the Site.
16 The FS Report was made available for public review and comment from February 26, 2004,
17 through March 26, 2004. No comments were received during this comment period.

18 Z. After finishing the FS, Ecology prepared a Draft Cleanup Action Plan (DCAP)
19 that identified the selected remedial action for the Site. The DCAP was made available for
20 public review and comment from July 21 through August 19, 2004, and was sent to all three
21 PLPs. No comments were received during the public comment period. The Final Cleanup
22 Action Plan (FCAP) was issued in August 2004. The FCAP requires, among other details,
23 removal of a building, excavation of soils, removal of all drain lines and dry wells, and
24 removal of an underground storage tank.

25 AA. On November 22, 2004, Ecology sent letters to the PLPs calling for a meeting
26 to discuss the FCAP and its implementation. Gisselberg was given a second opportunity to

1 provide comments on the Cleanup Action Plan for an additional 30 day period, extending from
2 December 1 to December 31, 2004.

3 BB. On December 28, 2004, Gisselberg provided comments on the remedial action
4 chosen in the FCAP and proposed alternative actions that included allowing the building to
5 remain on the Site. The proposed modifications did not meet the minimum requirements of
6 MTCA, and therefore the FCAP was not revised

7 CC On May 24, 2005, Ecology met with the PLPs to discuss implementation of the
8 FCAP. At the meeting, Ecology outlined an alternative remedial action that would meet the
9 requirements of MTCA and allow the building to remain intact. Ecology set out the nature and
10 magnitude of modifications to the remedial action identified in the FCAP that would be
11 necessary if the building were to remain.

12 DD. On May 27, 2005, the Attorney General's Office, on behalf of Ecology, sent
13 letters to the PLPs inquiring about their intention to negotiate an Agreed Order or Consent
14 Decree with Ecology to implement the FCAP (as written or with some specific modifications
15 as discussed during the May 24, 2005, meeting). Ecology requested that the PLPs respond to
16 Ecology's letter by July 27, 2005. Boyce responded that he would not be able to contribute
17 financially to any portion of the cleanup costs. Gisselberg also responded, indicating he
18 elected not to negotiate an Agreed Order or Consent Decree with Ecology for implementation
19 of either the FCAP, or the FCAP with specific modifications that would allow the building on
20 the Site to remain. Overton did not send a response.

21 EE On August 16, 2005, pursuant to its authority under RCW 70.105D 030(1) and
22 050(1) and WAC 173-340-540, Ecology issued Enforcement Order No. 2691 (the Order). The
23 Order requires, among other details, that PLPs implement either the FCAP, or the FCAP with
24 specific modifications that would allow the building on the Site to remain.

25 FF. The Order required the PLPs, within fifteen (15) days of the effective date of
26 the Order, to submit to Ecology a letter of intent clearly defining the PLPs' intent to abide by

1 the Order in good faith. The effective date of the Order was October 4, 2005. None of the
2 PLPs submitted this required letter of intent by October 19, 2005 (15 days after October 4,
3 2005). Since Ecology issued the Order, none of the PLPs have taken any steps to comply with
4 the FCAP as required by the Order

5 GG. On March 2, 2006, Ecology then filed the above-entitled action, asking, among
6 other things, this Court to enforce the Order.

7 HH Ecology has reviewed the Financial Information submitted by Defendant to
8 determine whether the Defendant is financially able to pay for remedial action costs incurred
9 and to be incurred at the Site. Based on this Financial Information including information as to
10 savings, assets, current income, and limited future earnings potential (taking into consideration
11 factors including but not limited to Defendant's age, life expectancy and health care/long term
12 care expenses), Ecology has determined that the Defendant has limited financial ability to pay
13 for remedial action costs incurred and to be incurred at the Site

14 II. This Decree is based on circumstances unique to Defendant, namely financial
15 hardship. See RCW 70.105D.040(4)(e).

16 **VI. PAYMENT**

17 As consideration for Ecology's agreement to this Decree and in exchange for settlement
18 of Ecology's claim for remedial action costs under MTCA, and in light of Defendant's limited
19 ability to pay for the costs associated with the remediation of the Site, this Decree requires
20 Defendant to pay a sum totaling \$87,500 plus interest (calculated at five percent (5%), annual
21 percentage rate, simple interest) on payments not made at the time of entry of the settlement,
22 according to the following schedule:

- 23 • \$35,000 paid to Ecology within fourteen (14) days of entry of the Consent Decree;
- 24 • \$28,437.50 paid to Ecology by December 31, 2008 (including \$26,250 towards
25 principal, and \$2,187.50 in accrued interest); and

- 1 • \$27,562.50 paid to Ecology by December 31, 2009 (including \$26,250 towards
2 principal and \$1,312.50 in accrued interest).

3 If Defendant timely pays the entire sum, including the entirety of the principal (\$87,500) and
4 the 2008 interest payment (\$2,625), before December 31, 2008, then the interest on the
5 payment due in 2009 (in the amount of \$1,312.50) shall not accrue. If, however, the full
6 amount of the settlement has not been timely paid by the end of 2008, then the full second
7 year's interest on the principal (in the amount of \$1,312.50) shall become due and owing
8 according to the schedule above, in addition to any sums owing in accordance with Section VII
9 (Interest)

10 Payments shall be made payable to the "Washington State Department of Ecology" and
11 sent via Federal Express to the following address:

12 ATTN: GARY ZEILER
13 DEPARTMENT OF ECOLOGY
300 DESMOND DRIVE SE
LACEY, WA 98509-5128

14 These payments are intended to go into an interim account. If the 2008 Legislature creates a
15 new account for environmental settlements of the type described in this Decree, then the funds
16 shall be directed from the interim account into the new settlement account once the account has
17 been created. This new account may be called the Cleanup Settlement Account or equivalent.
18 If the 2008 Legislature does not create any such environmental settlement account, then the
19 funds shall be transferred from the interim account to the State Toxics Control Account

20 VII. INTEREST

21 If Defendant fails to make any payment in full by the required due date in accordance
22 with Section VI (Payment), interest shall accrue on the unpaid balance in the amount of twelve
23 percent (12%) (annual percentage rate, compounded monthly).

24 VIII. DESIGNATED PROJECT COORDINATORS

25 The project coordinator for Ecology is:
26 Teresita Bala

1 Washington State Department of Ecology
2 Eastern Regional Office
3 North 4601 Monroe
4 Spokane, WA 99205-1295
5 Phone: (509) 329-3543
6 Email: tbal461@ecy.wa.gov

7 The project coordinator for Defendant is:

8 Jerry Overton
9 21606 Yellowstone Circle
10 Sun City West, AZ 85375
11 (623) 556-1267

12 With copy to:

13 Lawrence Costich
14 Schwabe, Williamson & Wyatt, P.C
15 1420 Fifth Avenue, Suite 3010
16 Seattle, WA 98101
17 (206) 622-1711

18 Each project coordinator shall be responsible for overseeing the implementation of this
19 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
20 Any party may change its respective project coordinator. Written notification shall be given to
21 the other party at least ten (10) calendar days prior to the change.

22 IX. REASONABLE ASSISTANCE

23 In light of the nature of this settlement, it is important that Ecology obtains full
24 cooperation from Defendant in any future efforts Ecology may make to remediate the Site
25 and/or to recover costs from other potentially liable persons. Therefore, Defendant shall make
26 all reasonable efforts to assist Ecology in the Department's enforcement and/or cost recovery
27 efforts against any other potentially liable persons for the Site. This includes, but is not limited
28 to, timely provision of documents, witness testimony, and other evidence upon Ecology's
29 request

30 X. NOTICE OF FINANCIAL STATUS

31 Because this settlement is based on a finding that Defendant has a limited ability to pay
32 for cleanup costs, it is required that Ecology be notified of substantial increases in Defendant's

1 financial status. Therefore, for the first six years following the entry of this Decree (for the
2 years 2008 through 2013), Defendant shall notify Ecology annually of his overall financial
3 status, on or before the first (1st) day of August each year. In this submittal, Defendant shall
4 include: (1) a fully completed, signed, sworn and acknowledged statement in the form of
5 Exhibit C; and (2) a complete and accurate copy of Defendant's most recent personal federal
6 income tax return, including all schedules and attachments thereto. After the first six years
7 following the entry of this Decree, Defendant shall provide Ecology updated notices of his
8 financial status within sixty (60) days of a written request from Ecology for such information.

9 **XI. AMENDMENT OF DECREE**

10 This Decree may only be formally amended by a written stipulation among the Parties
11 that is entered by the Court, or by order of the Court. Such amendment shall become effective
12 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld
13 by any party.

14 Defendant shall submit a written request for amendment to Ecology for approval
15 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
16 written request for amendment is received. If the amendment to the Decree is a substantial
17 change, Ecology will provide public notice and opportunity for comment. Reasons for the
18 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
19 not agree to a proposed amendment, the disagreement may be addressed through the Court.

20 **XII. COVENANT NOT TO SUE**

21 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
22 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
23 actions against Defendant regarding the release or threatened release of hazardous substances
24 covered by this Decree.

25 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
26 and those hazardous substances that Ecology knows are located at the Site as of the date of

1 entry of this Decree. This Decree does not cover any other hazardous substance or area.
2 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

3 This Covenant Not to Sue shall have no applicability whatsoever to:

- 4 1. Criminal liability;
- 5 2. Liability for damages to natural resources; and
- 6 3. Any Ecology action, including cost recovery, against PLPs not a party to
7 this Decree.

8 If factors not known at the time of entry of the settlement agreement are discovered and
9 present a previously unknown threat to human health or the environment, the Court shall
10 amend this Covenant Not to Sue. In that event, however, Ecology requests that the Court take
11 into consideration, as appropriate, that the basis of this settlement is limited financial ability to
12 pay.

13 B. Reopeners: Ecology specifically reserves the right to institute legal or
14 administrative action against Defendant to require it to perform additional remedial actions at
15 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
16 following circumstances:

17 1. Upon Defendant's failure to meet the requirements of this Decree,
18 including, but not limited to, fulfillment of Sections VI (Payment), VII (INTEREST),
19 IX (Reasonable Assistance), and X (Notice of Financial Status);

20 2. Upon Ecology's determination that the Financial Information provided
21 to Ecology by Defendant is false or in any material respect inaccurate. If Ecology
22 makes such a determination, Defendant shall forfeit all payments pursuant to this
23 agreement and the covenant not to sue shall be null and void. Such forfeiture shall not
24 constitute liquidated damages and shall not in any way foreclose Ecology's right to
25 pursue any other causes of action arising from Defendant's false or materially
26 inaccurate information;

1 **XV. PUBLIC PARTICIPATION**

2 A Public Participation Plan is required for this Site. Ecology shall update, maintain and
3 implement the Public Participation Plan, as appropriate. This includes information
4 repositories, the preparation of all press releases and fact sheets, meetings, and other outreach
5 with the interested public, local governments, and news organizations. Ecology shall notify
6 Defendant prior to the issuance of all press releases and fact sheets, and before major meetings
7 with the interested public and local governments, on issues related to this Consent Decree.

8 Defendant shall not be associated with public participation efforts. Defendant shall
9 refer any and all Site enquiries directly to Ecology's project coordinator. However, upon
10 Ecology's request, Defendant shall cooperate with Ecology on any and all public participation
11 efforts

12 **XVI. DURATION OF DECREE**

13 The Decree shall be maintained and continued until Defendant has received written
14 notification from Ecology that the requirements of this Decree have been satisfactorily
15 completed, or until the event of Defendant's death, as described below. Ecology shall not issue
16 such a notification of satisfactory completion to Defendant until Defendant has completed all
17 the requirements of this Decree, including but not limited to the requirements of Sections VI
18 (Payment), VII (Interest), and the first six years of reporting under Section X (Notice of
19 Financial Status). This Decree shall remain in effect until dismissed by the Court. When
20 dismissed, Section IX (Reasonable Assistance), Section X (Notice of Financial Status), Section
21 XII (Covenant Not to Sue), Section XIII (Contribution Protection), and Section XIV (Claims
22 Against the State) shall survive until Defendant's death. Once both (1) Defendant has died and
23 (2) the Consent Decree has been dismissed, only Section XII (Covenant Not to Sue), Section
24 XIII (Contribution Protection), and Section XIV (Claims Against the State) shall survive.

25 Should Defendant die before the terms of this Decree have been satisfactorily
26 completed, Ecology and/or Defendant's estate may petition the Court to dismiss this Decree

1 once Ecology has received payment of all sums owing under Section VI (Payment) and Section
2 VII (Interest).

3 **XVII. CERTIFICATION**

4 In the attached Exhibit D (Declaration of Jerry Overton), Defendant certifies the
5 following under penalty of perjury under the laws of the State of Washington: That, to the best
6 of his knowledge and belief, after thorough inquiry, he has fully complied with any and all of
7 Ecology's requests for documents or information regarding the Site and Defendant's financial
8 circumstances; That Defendant does not have access to any trust accounts or other financial
9 instruments beyond those explicitly listed in his submittals to Ecology regarding his finances;
10 Further, that Defendant has submitted to Ecology Financial Information that fairly, accurately,
11 and materially sets forth its financial circumstances, and that those financial circumstances
12 have not materially increased between the time the Financial Information was submitted to
13 Ecology and the time the Defendant executes this Decree; Finally, Defendant has certified that
14 he has fully disclosed the existence of any insurance policies that may cover claims relating to
15 the cleanup of the Site.

16 **XVIII. EFFECTIVE DATE**

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

18 **XIX. WITHDRAWAL OF CONSENT**

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

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT M MCKENNA
Attorney General

JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

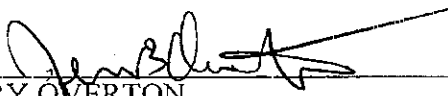
ELLIOTT FURST, WSBA # 12026
Senior Counsel

Date: _____

MELISSA ROURKE, WSBA # 34549
Assistant Attorney General
(360) 586-6770

JERRY OVERTON

Date: _____


JERRY OVERTON
(623) 556-267

Date: 2/28/08

ENTERED this _____ day of _____ 20____

JUDGE CHRIS WICKHAM
Thurston County Superior Court

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

3 

4 JAMES PENDOWSKI
5 Program Manager
6 Toxics Cleanup Program
7 (360) 407-7177

8 Date: 2/28/08

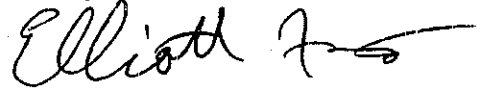
9 JERRY OVERTON

10
11 JERRY OVERTON
12 (623) 556-1267

13 Date: _____

14 ENTERED this 16th day of March 2008

ROBERT M. MCKENNA
Attorney General

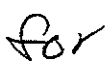


ELLIOTT FURST, WSBA # 12026
Senior Counsel



MELISSA ROURKE, WSBA # 34549
Assistant Attorney General
(360) 586-6770

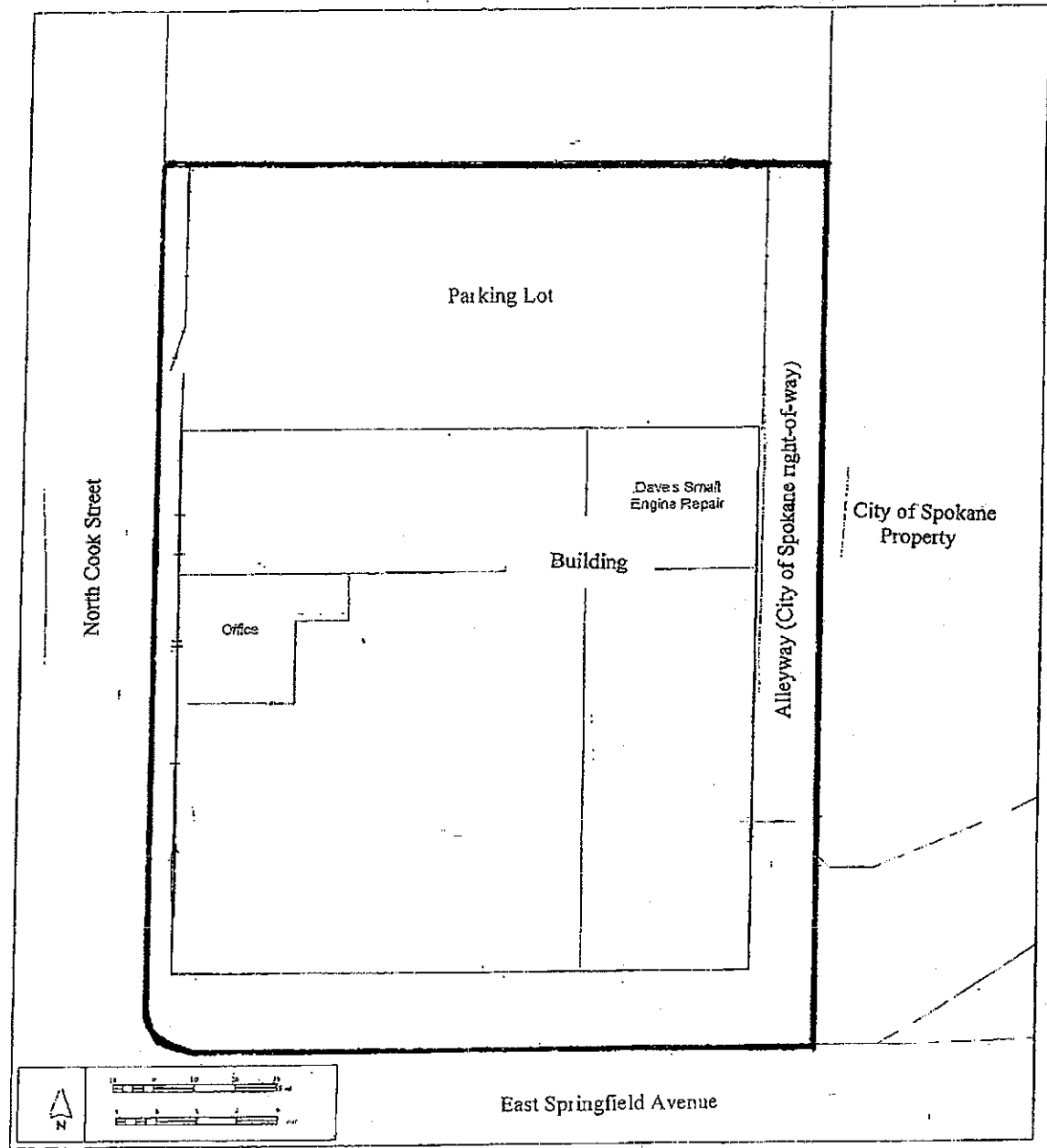
Date: 3/5/08

CHRISTINE A FOMEROY 

JUDGE CHRIS WICKHAM
Thurston County Superior Court

EXHIBIT A

Site Diagram



— Site Boundary

City Parcel Site Diagram

EXHIBIT B

List of Financial Information

LIST OF FINANCIAL INFORMATION

Ecology reviewed the following documents submitted by Mr. Overton in making the financial hardship determination for Mr. Overton:

- Signed statement under penalty of perjury describing Mr. Overton's assets, income, and earning potential, dated November 6, 2006 (submitted to Ecology through its legal counsel by letter dated November 9, 2006).
- Mr. Overton's personal federal income tax returns for the years 2002 through 2006 (submitted to Ecology through its legal counsel by letter dated February 8, 2007).
- Mr. Overton's loan application for purchase of home at 21808 North Yellowstone Cr , in Sun City West, Arizona.
- Sworn declaration under penalty of perjury (Exhibit D to this Decree)

EXHIBIT C

Annual Notice of Financial Status Form

ANNUAL NOTICE FORM

I, Jerry Overton, declare that my combined personal assets and income have not increased by more than twenty percent (20%) from the time of entry of the Consent Decree in Thurston County Superior Court, matter number 06-2-00427-0, *Ecology v. Boyce et. al.*

Attached to this form is a true and correct copy of my most recent personal federal income tax return, including all schedules and attachments thereto.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge

Dated this ____ day of _____ (Month) _____ (Year) in _____ (City),
Washington

Jerry Overton

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned

Notary Public in and for the State of
Washington, residing at _____
My appointment expires _____

EXHIBIT D

Declaration of Jerry Overton

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STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v

RICHARD BOYCE, PAUL GISSELBERG,
and JERRY OVERTON,

Defendants.

NO 06-2-00427-0

DECLARATION OF JERRY
OVERTON

I, Jerry Overton, being first duly sworn upon an oath, depose and say:

1. To the best of my knowledge and belief, after thorough inquiry, I have fully complied with any and all of Ecology's requests for documents or information regarding the Site and my financial circumstances.


2. I do not have access to any trust accounts or other financial instruments beyond those explicitly listed in my submittals to Ecology regarding my finances.

3. The Financial Information (described in Exhibit B) that I have submitted to Ecology fairly, accurately, and materially sets forth my financial circumstances. Further, my financial circumstances have not materially increased between the time the Financial Information was submitted to Ecology and the time I am signing this Consent Decree; and

4. Finally, I have fully disclosed the existence of any insurance policies that may cover claims relating to the cleanup of the Site.

1 I declare under penalty of perjury of the laws of the state of Washington that the
2 foregoing is true and correct to the best of my knowledge

3 Dated this 28 day of Feb (Month), 2008 (Year), in Sun City West
4 (City) WA (State).

5
6 
7 JERRY OVERTON