

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

City of Seattle, South Park Property
Development LLC, and King County

Defendants.

NO. _____

CONSENT DECREE

[To Be Formatted By AGO]

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	JURISDICTION	4
III.	PARTIES BOUND	4
IV.	DEFINITIONS	5
V.	FINDINGS OF FACTS	6
VI.	WORK TO BE PERFORMED.....	8
VII.	DESIGNATED PROJECT COORDINATORS.....	12
VIII.	PERFORMANCE.....	13
IX.	ACCESS	14
X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY.....	15
XI.	RETENTION OF RECORDS	15
XII.	TRANSFER OF INTEREST IN PROPERTY	16
XII.	RESOLUTION OF DISPUTES	16
XIV.	AMENDMENT OF DECREE.....	18
XV.	EXTENSION OF SCHEDULE.....	19
XVI.	ENDANGERMENT	20
XVII.	COVENANT NOT TO SUE	21
XVIII.	CONTRIBUTION PROTECTION	23
XIX.	INDEMNIFICATION	23
XX.	COMPLIANCE WITH APPLICABLE LAWS	24

1	XXI.	REMEDIAL ACTION COSTS	25
	XXII.	IMPLEMENTATION OF REMEDIAL ACTION.....	26
2	XXIII.	PERIODIC REVIEW	27
	XXIV.	PUBLIC PARTICIPATION.....	27
3	XXV.	DURATION OF DECREE.....	28
	XXVI.	CLAIMS AGAINST THE STATE	28
4	XXVII.	EFFECTIVE DATE.....	29
	XXVIII.	WITHDRAWAL OF CONSENT.....	29
5			
6	EXHIBIT A	Cleanup Action Plan	
	EXHIBIT B	Site Location Diagram	
7	EXHIBIT C	Settlement Area Diagram	
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology), City of Seattle, South Park Property Development, LLC (SPPD), and King County
4 under this Decree is to provide for remedial action at a portion of the South Park Landfill Site
5 (Ecology Facility Site Identification No. 2180) where there has been a release or threatened
6 release of hazardous substances. As more fully described in the attached Cleanup Action Plan
7 (Exhibit A), this Decree requires the Defendants to carry out specified remedial action measures
8 at and near the South Park Landfill Site generally located at 8100 and 8200 2nd Avenue South,
9 Seattle.

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

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

17 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its
18 terms.

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

23 6. This Decree shall not be construed as proof of liability or responsibility for any
24 releases of hazardous substances or cost for remedial action nor an admission of any facts;
25 provided, however, that Defendants shall not challenge the authority of the Attorney General
26 and Ecology to enforce this Decree.

1 she is fully authorized to enter into this Decree and to execute and legally bind such party to
2 comply with this Decree. Defendants agree to undertake all actions required by the terms and
3 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
4 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,
5 contractors, and subcontractors retained to perform work required by this Decree, and shall
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
7 this Decree.

8 **IV. DEFINITIONS**

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

11 A. Site: The Site is referred to as South Park Landfill. The Site constitutes a facility
12 under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a
13 consumer product in consumer use, has been deposited, stored, disposed of, or placed, or
14 otherwise come to be located. Based on factors currently known to Ecology, the Site is generally
15 located at 8100 and 8200 2nd Avenue South, Seattle, Washington as shown in the Site Location
16 Diagram (Exhibit B).

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

19 C. Defendants: Refers to: the City of Seattle; SPPD; and King County.

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

23 E. Cleanup Action Plan: Refers to the Cleanup Action Plan (CAP) (Exhibit A)
24 issued by Ecology relating to the Settlement Area (which occupies a portion of the Site) and all
25 attachments to the CAP.
26

1 F. Settlement Area: The Settlement Area is limited to the area described in the
2 Settlement Area Diagram (Exhibit C). The Settlement Area is only a portion of the Site, and its
3 boundaries do not reflect the boundaries of the Site as defined by MTCA.

4 G. Hazardous Substance: As defined in RCW 70.105D.020(13), means:

- 5 a. Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (1)
6 and (7), or any dangerous or extremely dangerous waste designated by rule
7 pursuant to chapter 70.105 RCW;
- 8 b. Any hazardous substance as defined in RCW 70.105.010(10) or any hazardous
9 substance as defined by rule pursuant to chapter 70.105 RCW;
- 10 c. Any substance that, on March 1, 1989, is a hazardous substance under section
11 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- 12 d. Petroleum or petroleum products; and
- 13 e. Any substance or category of substances, including solid waste decomposition
14 products, determined by the director by rule to present a threat to human health
15 or the environment if released into the environment.

16 The term hazardous substance does not include any of the following when contained in
17 an underground storage tank from which there is not a release: crude oil or any fraction thereof
18 or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

19 V. FINDINGS OF FACTS

20 1. Ecology makes the following findings of fact without any express or implied
21 admissions of such facts by Defendants.

22 A. The Site is located in Seattle, Washington. The Site is defined by where a
23 hazardous substance, other than a consumer product in consumer use, has been deposited, stored,
24 disposed of, or placed, or otherwise come to be located. The Settlement Area is located within
25 the Site as shown in the Settlement Area Diagram (Exhibit C).

1 B. Within the Site is a historic landfill (referred to as the “Landfill Property”). From
2 the 1930s to 1966, the Landfill Property was used for landfilling activities that included disposal
3 and incineration of municipal, commercial, and industrial waste. The landfill was closed in
4 1966. By 1970, the South Recycling and Disposal Station, Kenyon Industrial Park and other
5 facilities had been built on top of the Landfill Property portion of the Site and were operating.
6 Except for King County, Defendants are current owners of parcels of property within the
7 Settlement Area. King County is not a current owner of property within the Settlement Area but
8 owned property within the Site at the time of a release of a hazardous substance.

9 C. Ecology conducted a Site Hazard Assessment at the Site in 2007. Based on the
10 releases of hazardous substances to soil and groundwater, the Site was ranked “2” on the
11 Washington State Hazardous Sites List in February, 2007. This ranking is based on a scale of 1
12 to 5. According to this scale, “1” represents the highest relative risk and “5” represents the
13 lowest relative risk. This ranking is designed to estimate the potential threat to human health
14 and/or the environment, relative to all other sites in Washington State. WAC 173-340-120(3)(b);
15 “Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites”
16 Ecology Focus No. 94-129, Nov. 2007 (revised), pg. 5.

17 D. In May 2009, Agreed Order No. DE 6706 was entered into by Ecology, City of
18 Seattle, and SPPD. Under the terms of the Agreed Order, the City and SPPD agreed to complete
19 a Remedial Investigation/Feasibility Study (RI/FS), and a preliminary draft Cleanup Action Plan
20 (DCAP). The Agreed Order was amended in 2013 to require an interim action take place on a
21 portion of the Site. SPPD was responsible for implementing the interim action, however both
22 SPPD and the City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally
23 liable for remediation of the Site. The interim action included: construction of a landfill cap,
24 installing landfill gas and surface water control systems, establishing groundwater and landfill
25 gas monitoring and implementation of institutional controls. The Agreed Order was amended a
26 second time in January 2016 to require an interim action take place on a different portion of the

1 Site. The City was responsible for implementing the interim action, however both SPPD and
2 the City (as PLP signatories to the Agreed Order) are strictly, jointly, and severally liable for
3 remediation of the Site. The interim action included: constructing a landfill cap, installing
4 landfill gas and surface water control systems, establishing groundwater and landfill gas
5 monitoring and implementation of institutional controls.

6 E. Release(s) and/or potential release(s) of hazardous substances occurred at the
7 Site, including the placement of solid waste and burned solid waste containing various hazardous
8 substances consistent with those normally found in solid waste. Hazardous substances
9 documented at the Settlement Area, and addressed as part of this Decree, are: methane, arsenic,
10 lead, iron, manganese, petroleum hydrocarbons, trichloroethene and its degradation products cis-
11 1,2-dichloroethene and vinyl chloride, phthalates and polycyclic aromatic hydrocarbons. These
12 hazardous substances have been, and may continue to be, released from the Site into the
13 environment including soil, groundwater and air.

14 VI. WORK TO BE PERFORMED

15 1. This Decree contains a plan designed to protect human health and the
16 environment from the known release, or threatened release, of hazardous substances or
17 contaminants at, on, or from the Settlement Area. All remedial action(s) conducted by
18 Defendants at the Settlement Area shall be done in accordance with WAC 173-340.

19 2. Defendants shall implement the CAP attached to this Decree (Exhibit A) in
20 accordance with the Schedule included in the CAP. Among other remedial actions, the CAP
21 requires Defendants to:

- 22 • Maintain a **landfill cap/cover** to protect people and animals from direct contact with
23 the landfill contents.
 - 24 • Install and operate **landfill gas controls** to prevent or mitigate subsurface migration
25 of landfill gas into on-site and nearby buildings and structures.
- 26

- 1 • Install and maintain **stormwater controls** to (1) prevent stormwater from coming
2 into contact with solid waste, (2) maintain the landfill cap/cover, and (3) meet
3 regulatory requirements.
- 4 • Conduct **long-term monitoring of groundwater** to confirm that the residual vinyl
5 chloride, iron, arsenic, and manganese in the groundwater system remains at low
6 concentrations and continues to degrade over time.
- 7 • Conduct **long-term monitoring of the cap/cover, the landfill gas controls, and**
8 **groundwater** to ensure that the cleanup remedy is effective and provides long-term
9 protection of human health and the environment.
- 10 • File **environmental (restrictive) covenants** to ensure long-term compliance with
11 regulations and maintenance of the cleanup remedy.

12 3. To effectuate the work to be performed under this Decree in the most efficient
13 manner, certain parties have elected to take the lead in performing various aspects of the work
14 required under this Decree. Language in this Decree, and the exhibits attached hereto, may
15 reflect this agreement among the Defendants. However, the Defendants remain strictly, jointly,
16 and severally liable for the performance of any and all obligations under this Decree. In the event
17 the party identified as a lead should fail to timely and properly complete performance of all or
18 any portion of its work, the other party or parties must perform that remaining work, if any.

19 4. All plans or other deliverables submitted by Defendants for Ecology's review and
20 approval under the CAP (Exhibit A) shall, upon Ecology's approval, become integral and
21 enforceable parts of this Decree.

22 5. If Defendants learns of a significant change in conditions at the Settlement Area,
23 including but not limited to a statistically significant increase in contaminant and/or chemical
24 concentrations in soil, groundwater, or air, Defendants, within seven (7) days of learning of the
25 change in condition, shall notify Ecology in writing of said change and provide Ecology with
26 any reports or records (including laboratory analyses, sampling results) relating to the change in
conditions.

1 6. Pursuant to WAC 173-340-440(11), Defendant(s) shall maintain sufficient and
2 adequate financial assurance mechanisms to cover all costs associated with the operation and
3 maintenance of the remedial action at the Settlement Area, including institutional controls,
4 compliance monitoring, and corrective measures.

5 A. Within sixty (60) days of the effective date of this Decree, Defendant(s) shall
6 submit to Ecology for review and approval an estimate of the costs associated with the operation
7 and maintenance of the remedial action at the Settlement Area that it will incur in carrying out
8 the terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost
9 estimate, Defendant(s) shall provide proof of financial assurances sufficient to cover those costs
10 in a form acceptable to Ecology.

11 B. Defendant(s) shall adjust the financial assurance coverage and provide Ecology's
12 project coordinator with documentation of the updated financial assurance for:

13 i. Inflation, annually, within thirty (30) days of the anniversary date of the
14 entry of this Decree; or if applicable, the modified anniversary date established in accordance
15 with this section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if
16 the financial test or corporate guarantee is used.

17 ii. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
18 approval of a modification or revision to the CAP that result in increases to the cost or expected
19 duration of remedial actions. Any adjustments for inflation since the most recent preceding
20 anniversary date shall be made concurrent with adjustments for changes in cost estimates. The
21 issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date
22 established under this section to become the date of issuance of such revised or modified CAP.

23 8. As detailed in the CAP, institutional controls are required at the Settlement Area.
24 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

25 A. In consultation with Defendants, Ecology will prepare the Environmental
26 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or

1 procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict
2 future activities and uses of property within the Settlement Area as agreed to by Ecology and
3 Defendants.

4 B. After approval by Ecology, Defendants shall record the Environmental
5 (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor
6 as detailed in the CAP Schedule (Exhibit A). Defendants shall provide Ecology with the original
7 recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

8 9. Unless otherwise directed by Ecology, Defendants shall submit to Ecology
9 written monthly Progress Reports that describe the actions taken during the previous month to
10 implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth
11 (10th) day of the month in which they are due after the effective date of this Decree. Unless
12 otherwise specified in writing by Ecology, Progress Reports and any other documents submitted
13 pursuant to this Decree shall be sent by certified mail, return receipt requested to Ecology's
14 project coordinator. The Progress Reports shall include the following:

- 15 A. A list of activities that have taken place during the month at the Settlement Area;
 - 16 B. Description of any sample results which deviate from the norm;
 - 17 C. Detailed description of any deviations from required tasks not otherwise
18 documented in project plans or amendment requests;
 - 19 D. Description of all deviations from the CAP or Schedule (Exhibit A) during the
20 current month and any planned deviations in the upcoming month;
 - 21 E. For any deviations in schedule, a plan for recovering lost time and maintaining
22 compliance with the schedule;
 - 23 F. All raw data (including laboratory analyses) received by Defendants during the
24 past month and an identification of the source of the sample; and
 - 25 G. A list of planned activities for the upcoming month.
- 26

1 reports, approvals, and other correspondence concerning the activities performed pursuant to the
2 terms and conditions of this Decree shall be directed through Ecology's project coordinator and
3 the Defendants' Coordinator. The Ecology's project coordinator and Defendants' Coordinator
4 may designate, in writing, working level staff contacts for all or portions of the implementation
5 of the work to be performed required by this Decree.

6 8. Any party may change its respective project coordinator or the Defendants'
7 Coordinator. Written notification shall be given to the other party at least ten (10) calendar days
8 prior to the change.

9 **VIII. PERFORMANCE**

10 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
11 hydrogeologic work performed pursuant to this Decree shall be under the supervision and
12 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
13 supervision of an engineer registered by the State of Washington.

14 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
15 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
16 registered by the State of Washington.

17 3. Except as otherwise provided for by RCW 18.43.130, all construction work
18 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
19 registered by the State of Washington or a qualified technician under the direct supervision of a
20 professional engineer registered by the State of Washington.

21 4. As required by RCW 18.43 and 18.220, any documents submitted containing
22 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
23 professional.

24 5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and
25 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
26 of this Decree, in advance of their involvement at the Site.

1 **IX. ACCESS**

2 1. Ecology or any Ecology authorized representative shall have access to enter and
3 freely move about all property within the Settlement Area that Defendants either own, control,
4 or have access rights to at all reasonable times for the purposes of, inter alia: inspecting records,
5 operation logs, and contracts related to the work being performed pursuant to this Decree;
6 reviewing Defendants' progress in carrying out the terms of this Decree; conducting such tests
7 or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
8 other documentary type equipment to record work done pursuant to this Decree; and verifying
9 the data submitted to Ecology by Defendants.

10 2. Nothing in this Decree is intended by the Defendants to waive any right they may have
11 under applicable law to limit disclosure of documents protected by the attorney-work product
12 and/or attorney client privilege. If any Defendant withholds any requested records based on an
13 assertion of privilege, that Defendant shall provide Ecology with a privilege log specifying the
14 records withheld and the applicable privilege. No Site-related data collected pursuant to this
15 Decree shall be considered privileged.

16 3. Defendants shall make all reasonable efforts to secure access rights for those properties
17 within the Settlement Area not owned or controlled by Defendants where remedial activities or
18 investigations will be performed pursuant to this Decree.

19 4. Ecology or any Ecology authorized representative shall give reasonable notice before
20 entering any property owned or controlled by Defendants within the Settlement Area unless an
21 emergency prevents such notice. All Parties who access property within the Settlement Area
22 pursuant to this section shall comply with any applicable health and safety plans. Ecology
23 employees and their representatives shall not be required to sign any liability release or waiver
24 as a condition of property access within the Settlement Area.

1 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

2 1. With respect to the implementation of this Decree, Defendants shall make the
3 results of all sampling, laboratory reports, and/or test results generated by them or on their behalf
4 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
5 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in
6 accordance with Section XI (Progress Reports), Ecology’s Toxics Cleanup Program Policy 840
7 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data
8 submittal.

9 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized
10 representative to take split or duplicate samples of any samples collected by any Defendant
11 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
12 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
13 allow Defendants and/or their authorized representative to take split or duplicate samples of any
14 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing
15 so does not interfere with Ecology’s sampling. Without limitation on Ecology’s rights under
16 Section IX (Access), Ecology shall notify Defendants prior to any sample collection activity
17 unless an emergency prevents such notice.

18 3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
19 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
20 conducted, unless otherwise approved by Ecology.

21 **XI. RETENTION OF RECORDS**

22 1. During the pendency of this Decree, and for ten (10) years from the date this
23 Decree is no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants
24 shall preserve all records, reports, documents, and underlying data in their possession relevant
25 to the implementation of this Decree and shall insert a similar record retention requirement into
26

1 all contracts with project contractors and subcontractors. Upon request of Ecology, Defendants
2 shall make all records available to Ecology and allow access for review within a reasonable time.

3 2. Nothing in this Decree is intended by Defendants to waive any right they may
4 individually or collectively have under applicable law to limit disclosure of documents protected
5 by the attorney work-product privilege and/or the attorney-client privilege. If any Defendant
6 withholds any requested record based on an assertion of privilege, that Defendant shall provide
7 Ecology with a privilege log specifying the records withheld and the applicable privilege. No
8 Site-related data collected pursuant to this Decree shall be considered privileged.

9 **XII. TRANSFER OF INTEREST IN PROPERTY**

10 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
11 interest in any portion of the Settlement Area shall be consummated by any Defendant without
12 provision for continued operation and maintenance of any containment system (including
13 engineered controls such as surface capping), treatment system, and/or monitoring system
14 installed or implemented pursuant to this Decree.

15 2. Prior to any Defendant's transfer of any interest in all or any portion of the
16 Settlement Area, and during the effective period of this Decree, that Defendant shall provide a
17 copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor
18 in said interest; and, at least thirty (30) days prior to any transfer, that Defendant shall notify
19 Ecology of said transfer. Upon transfer of any interest, the transferring Defendant shall notify
20 all transferees of the restrictions on the activities and uses of the property under this Decree and
21 incorporate any such use restrictions into the transfer documents.

22 **XIII. RESOLUTION OF DISPUTES**

23 1. In the event that any Defendant elects to invoke dispute resolution, that Defendant
24 must utilize the procedure set forth below.

1 A. Upon the triggering event (receipt of Ecology’s project coordinator’s written
2 decision or an itemized billing statement), Defendant has fourteen (14) calendar days within
3 which to notify Ecology’s project coordinator in writing of its dispute (Informal Dispute Notice).

4 B. The Parties’ project coordinators shall then confer in an effort to resolve the
5 dispute informally. The parties shall informally confer for up to fourteen (14) calendar days
6 from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the
7 dispute within those 14 calendar days, then within seven (7) calendar days Ecology’s project
8 coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the
9 dispute; the Defendant’s position with regards to the dispute; Ecology’s position with regards to
10 the dispute; and the extent of resolution reached by informal discussion.

11 C. The Defendant may then request regional management review of the dispute.
12 This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region
13 Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology’s Informal
14 Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting
15 forth: the nature of the dispute; the disputing Party’s position with respect to the dispute; and
16 the information relied upon to support its position.

17 D. The Section Manager shall conduct a review of the dispute and shall issue a
18 written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of
19 receipt of the Formal Dispute Notice.

20 E. If the Defendant finds Ecology’s Regional Section Manager’s decision
21 unacceptable, the Defendant may then request final management review of the decision. This
22 request (Final Review Request) shall be submitted in writing to the Toxics Cleanup Program
23 Manager within seven (7) calendar days of Defendant’s receipt of the Decision on Dispute. The
24 Final Review Request shall include a written statement of dispute setting forth: the nature of the
25 dispute; the disputing Party’s position with respect to the dispute; and the information relied
26 upon to support its position.

1 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of the
2 dispute and shall issue a written decision regarding the dispute (Final Decision on Dispute)
3 within thirty (30) calendar days of receipt of the Final Review Request. The Toxics Cleanup
4 Program Manager's decision shall be Ecology's final decision on the disputed matter.

5 2. If Ecology's Final Decision on Dispute is unacceptable to the Defendant, that
6 Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that
7 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute
8 arising under this Decree. Under RCW 70.105D.060, Ecology's investigative and remedial
9 decisions shall be upheld unless they are arbitrary and capricious.

10 3. The Parties agree to only utilize the dispute resolution process in good faith and
11 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
12 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
13 the other party may seek sanctions.

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

17 5. In case of a dispute, failure to either proceed with the work required by this
18 Decree or timely invoke dispute resolution may result in Ecology's determination that
19 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
20 undertaking the work under Section XXV (Implementation of Remedial Action).

21 **XIV. AMENDMENT OF DECREE**

22 1. The Parties may agree to minor changes to the work to be performed without
23 formally amending this Decree. Minor changes will be documented in writing by Ecology.

24 2. Substantial changes to the work to be performed shall require formal amendment
25 of this Decree. This Decree may only be formally amended by a written stipulation among the
26 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written

1 consent to a formal amendment only after public notice and opportunity to comment on the
2 formal amendment. Such amendment shall become effective upon entry by the Court.
3 Agreement to amend the Decree shall not be unreasonably withheld by any party.

4 3. When requesting a change to the Decree, Defendants shall submit a written
5 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing
6 and in a timely manner after the written request is received. If Ecology determines that the
7 change is substantial, then the Decree must be formally amended. Reasons for the disapproval
8 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
9 requested change, the disagreement may be addressed through the dispute resolution procedures
10 described in Section XIV (Resolution of Disputes).

11 **XV. EXTENSION OF SCHEDULE**

12 1. Defendants' request for an extension of schedule shall be granted only when a
13 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
14 to expiration of the deadline for which the extension is requested, and good cause exists for
15 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 16 A. The deadline that is sought to be extended;
- 17 B. The length of the extension sought;
- 18 C. The reason(s) for the extension; and
- 19 D. Any related deadline or schedule that would be affected if the extension were
20 granted.

21 2. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology
22 that the request for such extension has been submitted in a timely fashion and that good cause
23 exists for granting the extension. Good cause may include, but may not be limited to:

- 24 A. Circumstances beyond the reasonable control and despite the due diligence of
25 Defendants including delays caused by unrelated third parties or Ecology, such as (but not
26

1 limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by
2 Defendants;

3 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other
4 unavoidable casualty; or

5 C. Endangerment as described in Section XVII (Endangerment).

6 3. However, neither increased costs of performance of the terms of this Decree nor
7 changed economic circumstances shall be considered circumstances beyond the reasonable
8 control of Defendants.

9 4. Ecology shall act upon any Defendant's written request for extension in a timely
10 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant
11 to this Decree. A requested extension shall not be effective until approved by Ecology or, if
12 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
13 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension
14 is granted.

15 5. At any Defendant's request an extension shall only be granted for such period of
16 time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
17 extensions exceeding ninety (90) days only as a result of:

18 A. Delays in the issuance of a necessary permit which was applied for in a timely
19 manner;

20 B. Other circumstances deemed exceptional or extraordinary by Ecology; or

21 C. Endangerment as described in Section XVII (Endangerment).

22 **XVI. ENDANGERMENT**

23 1. In the event Ecology determines that any activity being performed at the
24 Settlement Area under this Decree is creating or has the potential to create a danger to human
25 health or the environment, Ecology may direct Defendants to cease such activities for such
26

1 within the Settlement Area, any hazardous substance at the Site outside the Settlement Area, or
2 the area of the Site beyond the Settlement Area. Ecology retains all of its authority relative to
3 any hazardous substance(s) or area(s) not covered by this Decree.

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

5 A. Criminal liability;

6 B. Liability for damages to natural resources; and

7 C. Any Ecology action, including cost recovery, against PLPs not a party to
8 this Decree.

9 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not
10 to Sue if factors not known at the time of entry of this Decree are discovered and present a
11 previously unknown threat to human health or the environment.

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

16 A. Upon Defendants' failure to meet the requirements of this Decree;

17 B. Failure of the remedial action to meet the cleanup standards identified in
18 the CAP (Exhibit A);

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

22 D. Upon the availability of information previously unknown to Ecology
23 regarding the Settlement Area factors including the nature, quantity, migration, pathway,
24 or mobility of hazardous substances, and Ecology's determination, in light of this
25 information, that further remedial action is necessary at the Settlement Area to protect
26 human health or the environment; or

1 **XX. COMPLIANCE WITH APPLICABLE LAWS**

2 1. All actions carried out by Defendants pursuant to this Decree shall be done in
3 accordance with all applicable federal, state, and local requirements, including requirements to
4 obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal,
5 state, or local requirements have been identified as being applicable to the actions required by
6 this Decree. Defendants have a continuing obligation to identify any applicable federal, state,
7 and local requirements which apply to actions carried out pursuant to this Decree, and to comply
8 with those requirements. As federal, state, and local requirements are identified by Ecology or
9 the Defendants, Ecology will document in writing if they are applicable to actions carried out
10 pursuant to this Decree, and the Defendants must implement those requirements..

11 2. All actions carried out by Defendants pursuant to this Decree shall be done in
12 accordance with relevant and appropriate requirements identified by Ecology. At this time, no
13 relevant and appropriate requirements have been identified as being applicable to the actions
14 required by this Decree. If relevant and appropriate requirements are identified by Ecology or
15 the Defendants, Ecology will document in writing if they are applicable to actions carried out
16 pursuant to this Decree and the Defendants must implement those requirements.

17 3. Pursuant to RCW 70.105D.090(1), Defendants may be exempt from the
18 procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws
19 requiring or authorizing local government permits or approvals. However, Defendants shall
20 comply with the substantive requirements of such permits or approvals. For permits and
21 approvals covered under RCW 70.105D.090(1) that have been issued by local government, the
22 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local
23 government permits and/or approvals. At this time, no state or local permits or approvals have
24 been identified as being applicable but procedurally exempt under this section.

25 4. Defendants have a continuing obligation to determine whether additional permits
26 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

1 action under this Decree. In the event either Ecology or Defendants determine that additional
2 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
3 remedial action under this Decree, it shall promptly notify the other party of its determination.
4 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the
5 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult
6 with the appropriate state and/or local agencies and provide Ecology with written documentation
7 from those agencies of the substantive requirements those agencies believe are applicable to the
8 remedial action. Ecology shall make the final determination on the additional substantive
9 requirements that must be met by Defendants and on how Defendants must meet those
10 requirements. Ecology shall inform Defendants in writing of these requirements. Once
11 established by Ecology, the additional requirements shall be enforceable requirements of this
12 Decree. Defendants shall not begin or continue the remedial action potentially subject to the
13 additional requirements until Ecology makes its final determination.

14 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
15 exemption from complying with the procedural requirements of the laws referenced in RCW
16 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for
17 the state to administer any federal law, the exemption shall not apply and Defendants shall
18 comply with both the procedural and substantive requirements of the laws referenced in RCW
19 70.105D.090(1), including any requirements to obtain permits or approvals.

20 **XXI. REMEDIAL ACTION COSTS**

21 1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this
22 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by
23 Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions
24 and Decree preparation, negotiation, oversight, and administration. These costs shall include
25 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
26 include costs of direct activities and support costs of direct activities as defined in WAC 173 340

1 550(2). For all costs incurred, Defendants shall pay the required amount within thirty (30) days
2 of receiving from Ecology an itemized statement of costs that includes a summary of costs
3 incurred, an identification of involved staff, and the amount of time spent by involved staff
4 members on the project. A general statement of work performed will be provided upon request.
5 Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to
6 pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will
7 result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

8 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may
9 utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property
10 subject to the remedial actions to recover unreimbursed remedial action costs.

11 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

12 1. If Ecology determines that the Defendants have failed to make sufficient progress
13 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
14 Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow
15 the Defendants opportunity to correct. In an emergency, Ecology is not required to provide
16 notice to Defendants, or an opportunity for dispute resolution. The Defendants shall reimburse
17 Ecology for the costs of doing such work in accordance with Section XXIV (Remedial Action
18 Costs).

19 2. Except where necessary to abate an emergency situation or where required by
20 law, the Defendants shall not perform any remedial actions at the Settlement Area outside those
21 remedial actions required by this Decree to address the contamination that is the subject of this
22 Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to
23 Section XV (Amendment of Decree). In the event of an emergency, or where actions are taken
24 as required by law, Defendants must notify Ecology in writing of the event and remedial action(s)
25 planned or taken as soon as practical but no later than within 24 hours of the discovery of the
26 event.

1 **XXIII. PERIODIC REVIEW**

2 1. So long as remedial action continues at the Settlement Area, the Parties agree to
3 review the progress of remedial action at the Settlement Area, and to review the data accumulated
4 as a result of monitoring the Settlement Area as often as is necessary and appropriate under the
5 circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the
6 initiation of cleanup action at the Settlement Area the Parties shall confer regarding the status of
7 the Settlement Area and the need, if any, for further remedial action at the Settlement Area. At
8 least ninety (90) days prior to each periodic review, Defendants shall submit a report to Ecology
9 that documents whether human health and the environment are being protected based on the
10 factors set forth in WAC 173-340-420(4). Under Section XVIII (Covenant Not to Sue), Ecology
11 reserves the right to require further remedial action at the Settlement Area under appropriate
12 circumstances. This provision shall remain in effect for the duration of this Decree.

13 **XXIV. PUBLIC PARTICIPATION**

14 1. Ecology shall maintain the responsibility for public participation at the Settlement
15 Area. However, Defendants shall cooperate with Ecology, and shall:

16 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public
17 notices and fact sheets at important stages of the remedial action, such as the submission of work
18 plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering
19 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and
20 prepare and distribute public notices of Ecology’s presentations and meetings.

21 B. Notify Ecology’s project coordinator prior to the preparation of all press releases
22 and fact sheets, and before meetings related to remedial action work to be performed at the
23 Settlement Area with the interested public and/or local governments. Likewise, Ecology shall
24 notify Defendants prior to the issuance of all press releases and fact sheets related to remedial
25 action work to be performed at the Settlement Area, and before meetings related to remedial
26 action work to be performed at the Settlement Area with the interested public and/or local

1 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
2 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to its
3 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored
4 or endorsed by Ecology.

5 C. When requested by Ecology, participate in public presentations on the progress
6 of the remedial action at the Settlement Area. Participation may be through attendance at public
7 meetings to assist in answering questions, or as a presenter.

8 D. When requested by Ecology, arrange and/or continue information repositories at
9 the following locations:

- 10 i. Ecology's Northwest Regional Office
11 3190 160th Avenue SE
12 Bellevue, WA 98008

13 At a minimum, copies of all public notices, fact sheets, and documents relating to public
14 comment periods shall be promptly placed in this repository. A copy of all documents related
15 to the Settlement Area shall be maintained in the repository at Ecology's Northwest Regional
16 Office in Bellevue, Washington.

17 **XXV. DURATION OF DECREE**

18 1. The remedial program required pursuant to this Decree shall be maintained and
19 continued until Defendants have received written notification from Ecology that the
20 requirements of this Decree have been satisfactorily completed. This Decree shall remain in
21 effect until dismissed by the Court. When dismissed, Section XII (Retention of Records),
22 Section XVIII (Covenant Not to Sue) and Section XIX (Contribution Protection) shall survive.

23 **XXVI. CLAIMS AGAINST THE STATE**

24 1. Defendants hereby agree that they will not seek to recover any costs accrued in
25 implementing the remedial action required by this Decree from the State of Washington or any
26 of its agencies; and further, that Defendants will make no claim against the State Toxics Control

1 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,
2 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.
3 Except as provided above, however, Defendants expressly reserve their individual and collective
4 rights to seek to recover any costs incurred in implementing this Decree from any other PLP not
5 party to this Decree. This section does not limit or address funding that may be provided under
6 WAC 173-322A.

7 **XXVII. EFFECTIVE DATE**

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

9 **XXVIII. WITHDRAWAL OF CONSENT**

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

14 //

15 //

16 //

17 STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

18
19 _____
[NAME OF SIGNATORY]
Program Manager
20 Toxics Cleanup Program
[Telephone]

[NAME OF SIGNATORY, WSBA #]
Assistant Attorney General
[Telephone]

21 Date: _____

Date: _____

22
23 [DEFENDANTS]

24
25 _____
[NAME OF SIGNATORY]
[Title of signatory]
26 [Telephone]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Date: _____

[DEFENDANTS]

[NAME OF SIGNATORY]
[Title of signatory]
[Telephone]

Date: _____

ENTERED this ____ day of _____ 20____.

JUDGE
King County Superior Court

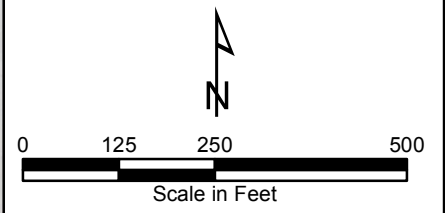
Legend

- Landfill Property Boundary
- Landfill Parcel



Notes:

- Tax parcels provided by King County Geographic Information Systems Center.
- Orthoimagery provided by NearMap, September 27, 2015.



**South Park Landfill
Seattle, Washington**

**Exhibit B
Site Location**

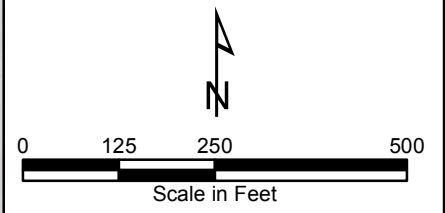
Legend

-  Landfill Property Boundary
-  Settlement Area
-  Landfill Parcel



Notes:

- Tax parcels provided by King County Geographic Information Systems Center.
- Orthomimagery provided by NearMap, September 27, 2015.



**South Park Landfill
Seattle, Washington**

**Exhibit C
Settlement Area**