

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PALMER COKING COAL COMPANY,
LLP; WEYERHAEUSER NR
COMPANY; BNSF RAILWAY
COMPANY; PACCAR INC; and
BROWNING-FERRIS INDUSTRIES OF
ILLINOIS, INC.,

Defendants.

NO. 17-2-28787-3 KNT

CONSENT DECREE

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I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Palmer Coking Coal Company, LLP; the Weyerhaeuser NR Company; BNSF Railway Company; PACCAR Inc; and Browning-Ferris Industries of Illinois, Inc.. (collectively, Defendants) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendants to undertake the following remedial actions, as described in detail in the Cleanup Action Plan (CAP) (Exhibit B):

1. Backfill a portion of the trenches as required for capping.
2. Allow the backfill to consolidate.
3. Place a low-permeability soil cap over the backfill of the trenches (areas 7, 8, and 9), including grading and surface water management.
4. Maintain the soil cap until residual hazardous substance concentrations no longer exceed cleanup or remediation levels under the Model Toxics Control Act (MTCA) resulting from either (1) the application of new remediation technologies currently unavailable or (2) other circumstances or conditions that affect residual concentrations such that they no longer pose a risk to human health or the environment.
5. Implement and maintain institutional controls, groundwater monitoring and any instituted contingency plan.

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

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

1 D. By signing this Decree, the Parties agree to its entry and agree to be bound by
2 its terms.

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

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

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

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

14 **II. JURISDICTION**

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

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

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

24 D. Ecology has given notice to Defendants of Ecology's determination that
25 Defendants are PLPs for the Site, as required by RCW 70.105D.020(26) and
26 WAC 173-340-500.

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

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

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

7 H. Defendants have agreed to undertake the actions specified in this Decree and
8 consent to the entry of this Decree under MTCA.

9 III. PARTIES BOUND

10 This Decree shall apply to and be binding upon the Parties to this Decree, their
11 successors and assigns. The undersigned representative of each Party hereby certifies that he or
12 she is fully authorized to enter into this Decree and to execute and legally bind such Party to
13 comply with this Decree. Defendants agree to undertake all actions required by the terms and
14 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'
15 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,
16 contractors, and subcontractors retained to perform the Work required by this Decree, and shall
17 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
18 this Decree.

19 IV. DEFINITIONS

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

22 A. Site: The Site is referred to as the Landsburg Mine Site, and is generally located
23 approximately 1.5 miles northwest of Ravensdale, Washington, in a rural area of southeast
24 King County. The Site is more particularly described in the Site Diagram (Exhibit A). For
25 purposes of the Covenant Not to Sue (Section XVIII), Contribution Protection (Section XIX),
26 and Land Use Restrictions (Section XX) only, the Site shall include the Groundwater and

1 Portal Protection Area as depicted in Exhibit A to this Decree. The Site constitutes a Facility
2 under RCW 70.105D.020(8).

3 B. Groundwater and Portal Protection Area: The Groundwater and Portal
4 Protection Area is the area in which institutional controls will be implemented to prevent
5 withdrawal of groundwater for purposes other than remediation, and to prevent access to the
6 north and south portals.

7 C. Defendants: Refers to Palmer Coking Coal Company, LLP; the Weyerhaeuser
8 NR Company; BNSF Railway Company; PACCAR Inc; and Browning-Ferris Industries of
9 Illinois, Inc..

10 D. Parties: Refers to Ecology and Defendants.

11 E. Potentially Liable Persons (PLPs): Refers collectively to Defendants and TOC
12 Holdings Co.

13 F. Consent Decree or Decree: Refers to this Consent Decree and each of the
14 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
15 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

16 G. Work or Work to Be Performed: Refers to work described in Section VI.

17 V. FINDINGS OF FACT

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

20 A. The Site consists of portions of a former underground coal mine located
21 approximately 1.5 miles northwest of Ravensdale in a rural area of southeast King County,
22 Washington. The Site is situated directly south and east of SE Summit-Landsburg Road, and
23 north of SE Kent-Kangley Road.

24 B. The Site is located within Sections 24 and 25, Township 22 North, Range 6
25 East, W.M. King County, Washington. The Site is more particularly defined in Exhibit A of
26 this Consent Decree (Site Diagram).

1 C. The Site occupies a parcel of land owned or formerly owned by Palmer Coking
2 Coal Company, LLP (PCC) and by Plum Creek Timber Company, L.P., the predecessor in
3 interest to the Weyerhaeuser NR Company. BNSF Railway Company also formerly owned
4 property within the Site. These parties are “owners” as defined by RCW 70.105D.020(22) and
5 are therefore liable under RCW 70.105D.040.

6 D. PACCAR Inc; Browning-Ferris Industries of Illinois, Inc.; and TOC Holdings
7 Co. are liable parties for generating and/or transporting hazardous substances disposed of at the
8 facility. RCW 70.105D.040(1).

9 E. PCC and several other coal companies previously operated a number of
10 underground coal mines, now collectively called the Landsburg Mine. The various mines
11 consisted of several coal seams known as the Frasier seam (furthest west), the Landsburg seam
12 (furthest east), and the Rogers seam (middle coal seam). The Frasier seam was mined
13 intermittently from the late 1800s to the mid-1940s. PCC’s mining of the Landsburg seam
14 began in the late 1930s and continued until 1959. The Rogers seam was mined from 1959 until
15 1975.

16 F. Based on factors currently known to Ecology, the Site is located in the
17 subsidence trenches within the Rogers seam. The Rogers seam is located approximately 800
18 feet southeast of the Frasier seam and approximately 600 feet west of the Landsburg seam. The
19 mined section of the Rogers seam has a near vertical dip and consists of coal and interbedded
20 shale approximately 16 feet wide. The mined section is about a mile in length. Mining
21 occurred at depths up to 750 feet below the ground surface. Extraction was accomplished by
22 causing the coal seam to cave into mine workings (locally called “booming”) from which the
23 coal was hauled to the surface. As a result of this caving, a number of subsidence trenches
24 developed on the land surface above the mine workings. The dimensions of the trenches vary
25 from about 60 to 100 feet in width, between 20 to 60 feet in depth, and about ¾ mile in length.
26 The trenches are not continuous along the whole length of the Rogers seam, but are comprised

1 of a series of separate subsided trench segments. Each trench segment is separated by a wall of
2 intact rock and coal (called a pillar wall).

3 G. Based on available information, these trenches were used in the late 1960s to
4 the late 1970s for disposal of various industrial waste materials, construction materials, and
5 land-clearing debris. Materials were disposed of in the northern portion of the trenches from
6 the access road shown in Figure 4 of the CAP, attached as Exhibit B. Industrial wastes were
7 contained in drums or dumped directly from tanker trucks. Based on invoice and dumping
8 records from PCC, an estimated 4,500 drums of waste and about 200,000 gallons of oily
9 wastewater and sludge were disposed of in the trenches. Available documented interviews with
10 waste haulers and truck drivers indicate that wastes included paint wastes, solvents, metal
11 sludges, and oily water and sludge (Ecology 1990). It is expected that many of the drums were
12 only partially full. Disposal of land clearing debris continued until the early 1980s after which
13 all disposal activities ceased.

14 H. Today the Site and most of the immediate surrounding area is used for forestry.
15 Apart from the Site, developments in the immediate surrounding area include a junior high
16 school, King County-owned open space lands, and approximately 130 rural residential
17 dwellings. The school is located about 0.65 miles northwest of the Site. The nearest residences
18 are located approximately 800 feet southwest of the Site. Drinking water for area residences is
19 supplied by groundwater, either through private wells or small community water supply
20 systems. Domestic sewage disposal throughout the immediate surrounding area is provided by
21 residential septic systems.

22 I. The Site is situated between two surface water bodies (rivers/streams): Rock
23 Creek to the south and Cedar River to the north. An infiltration gallery adjacent to Rock Creek,
24 referred to as the Clark Springs facility, has been used by the City of Kent since 1957 as a
25 supplement to its municipal water sources. The facility is located adjacent to Kent-Kangley
26 Road and approximately 4,100 feet west-southwest of the Site's south portal.

1 J. A number of gravel roads access the Site from public thoroughfares, and trails
2 run parallel to the east and west sides of the trenches. The primary access road to the Site
3 begins near the intersection of SE 252nd Street and SE Summit-Landsburg Road and follows
4 along the northern portion of the mine trenches. The Site is also accessible from SE
5 Kent-Kangley Road and from SE 256th Street. Currently the Site is secured by a fence and
6 locked gates, which encloses the northern portion of the trenches. Locked gates secure the Site
7 at all of the access road entrances, and the portion of the trenches where waste disposal
8 occurred is currently enclosed by a six-foot-tall chain link security fence. Dense vegetation
9 covers the Site. Electrical transmission lines and a Bonneville Power Administration easement
10 cross the southern portion of the Site in an east-west direction.

11 K. Several preliminary environmental investigations were performed at the Site.
12 These have included a limited soil gas survey, sampling of area private wells, sampling of
13 surface water emanating from mine portals, and limited sampling of ponded surface water,
14 drum contents, and soils for a site hazard assessment. These investigations have detected
15 hazardous substances contained in drums, adjacent soils, and ponded surface water within the
16 trenches. Hazardous substances were not detected, however, in adjacent private or public water
17 supply wells, mine portal groundwater discharge, or soil gases.

18 L. In 1991 Ecology designated the Site a high priority for cleanup. In late 1991, at
19 Ecology's request, four of the Defendants or their predecessors implemented an Expedited
20 Response Action (ERA) involving the removal of the most accessible drums from the trenches
21 and construction of a fence to restrict access to the Site. The ERA involved the removal of over
22 one hundred 55-gallon drums.

23 M. In 1993, following implementation of the ERA, Ecology and the Defendants or
24 their predecessors negotiated and entered into Agreed Order No. DE 983TC-N273, which
25 directed the Defendants or their predecessors to conduct a Remedial Investigation/Feasibility
26 Study (RI/FS) to evaluate the need for remedial action. The Agreed Order was amended in

1 1995 and again in 2005. On September 5, 2013, Ecology advised the PLPs that they had
2 completed all actions required under the Agreed Order.

3 The scope of work for the RI was outlined in the *Landsburg Phase I Remedial*
4 *Investigation/Feasibility Study (RI/FS) Work Plan* (Golder 1992), which was incorporated by
5 reference into the Agreed Order. The RI/FS, which consisted of a comprehensive investigation
6 of the Site's environmental conditions and evaluation of potential remedial alternatives for Site
7 cleanup, was conducted by the Defendants or their predecessors over the period of mid-1993 to
8 early-1996. The 1996 RI/FS report describes contamination at the Site as follows: within the
9 trenches, chromium, lead, PCBs, bis-(2-ethylhexyl)phthalate, methylene chloride,
10 trichloroethylene (TCE) and total petroleum hydrocarbons (TPH) exceeded applicable MTCA
11 cleanup standards in an area confined to the northern portion of the trenches where waste
12 disposal is thought to have occurred in the past. Soil testing confirmed that contamination was
13 not identified outside the northern portion of the trenches. Apart from soils located within the
14 subsidence trenches in the area of known prior waste disposal activities, soil, groundwater, and
15 surface water media in the Site do not exhibit concentrations of chemical constituents above
16 naturally occurring background levels.

17 N. Interim groundwater monitoring of Site compliance wells started in 1994 and
18 continues to the present. There have been no detections of contaminants that are attributable to
19 contamination by waste materials during any of the interim groundwater monitoring events.
20 Furthermore, the analytical results from the interim groundwater monitoring events over the
21 years indicate no significant changes in groundwater conditions from those observed during the
22 RI. The primary parameters detected in groundwater samples are metals that are naturally
23 occurring. The method reporting limits and method detection limits for all analytes are at or
24 below acceptable concentrations under the MTCA, with the exception of some metals which
25 have a natural background level that is in excess of MTCA cleanup levels due to the
26 geochemical conditions of the groundwater within the coal mine.

1 O. Ecology provided all stakeholders an opportunity to participate in its evaluation
2 of the remedial alternatives proposed in the 1996 RI/FS report, in full compliance with
3 applicable MTCA criteria. Stakeholders commented on the preferred remedial alternative in
4 the RI/FS. Ecology took all stakeholders' comments into consideration and concluded that the
5 preferred remedial alternative identified in the RI/FS report and more fully described in the
6 CAP (Exhibit B) is the most appropriate remedial alternative to address hazardous substances
7 at the Site and protect human health and the environment in the areas surrounding the Site.

8 P. Ecology published a draft Consent Decree and a draft Cleanup Action Plan for
9 public review and comment in October 2013. During the 60-day public comment period,
10 Ecology held a public meeting and received oral and written comments from residents, area
11 councils, and local government. Between 2014 and 2016 Ecology also coordinated with the
12 Washington State Department of Health in its preparation of a health consultation for the Site,
13 which was completed in November 2016. Based on the public comments and on the health
14 consultation, Ecology revised the CAP (Exhibit B) to enhance its protectiveness of human
15 health and the environment.

16 VI. WORK TO BE PERFORMED

17 This Decree contains a program designed to protect human health and the environment
18 from the known release, or threatened release, of hazardous substances or contaminants at, on,
19 or from the Site.

20 A. The Defendants shall perform the work specified in detail in the CAP
21 (Exhibit B) and the Schedule (Exhibit C). The remedy selected for the Site is to place a low-
22 permeability soil cap over backfilled soils in the northern portion of the trenches. That portion
23 of the trenches would be backfilled to approximate grade before capping. The most economical
24 local source of suitable fill will be used; the selection of the source(s) of backfill for the
25 trenches will be made during final design. The permeability of the capping soil shall be no
26

1 higher than 10^{-6} cm/sec, thereby meeting the Minimum Functional Standard specifications in
2 WAC 173-304.

3 The CAP is attached to this Consent Decree as Exhibit B and describes the work to be
4 performed in more detail and outlines the anticipated schedule for completion of the
5 construction phase. The work to be performed under the CAP generally includes:

- 6 • Backfill a portion of the trenches (areas 7, 8, and 9) as required for capping.
- 7 • Allow the backfill to consolidate.
- 8 • Place a low-permeability soil cap over the backfill of the trenches
- 9 (areas 7, 8, and 9), including grading and surface water management.
- 10 • Maintain the cap until residual hazardous substance concentrations no longer
- 11 exceed cleanup or remediation levels under MTCA as described in the CAP resulting
- 12 from either (1) the application of new remediation technologies currently unavailable or
- 13 (2) other circumstances or conditions that affect residual concentrations such that they
- 14 no longer pose a risk to human health or the environment.
- 15 • Implement and maintain institutional controls, groundwater monitoring, and any
- 16 instituted contingency plan.

17 1. Low-Permeability Soil Cap

18 a. The area that will be capped (areas 7, 8, and 9) is shown on Figure 15 of
19 the CAP. This delineation is based on the areas of documented and suspected waste
20 disposal identified in the RI/FS report. The cap will extend slightly beyond the trenches
21 on both sides to provide anchor zones and “overhang.” Fill material may extend into
22 area 6 if necessary and as appropriate to provide a buttress to the narrow pillar wall
23 separating areas 6 and 7.

24 b. Surface water runoff from the cap will be collected in drainage ditches
25 and directed away from the cap. The cap will be sloped to optimize stability and
26

1 encourage rainwater runoff so as to minimize rainwater infiltration to the maximum
2 extent possible.

3 c. The cap design is shown as Option B on Figure 14 of the CAP and will
4 include a top layer of vegetated soil to promote evapotranspiration and decrease the
5 potential for erosion. No moisture conditioning is expected, and this soil will not be
6 compacted, in order to provide a loose medium for establishing the vegetative cover.
7 To establish vegetation, the topsoil will be seeded with grasses suitable for the local
8 climate. The low-permeability soil cap will consist of 24 inches of compacted low-
9 permeability soil beneath 6 inches of vegetated topsoil. The suitability of potential
10 sources of cap material, in terms of both quality and quantity, will be identified in the
11 engineering design report. Final haul road location and source material specifications
12 will also be detailed in the engineering design report.

13 d. Installation of the cap will be performed using standard earth-moving
14 equipment. Construction quality assurance will primarily consist of verifying the soil
15 cap meets the permeability specification, as well as verifying cap thickness and
16 grading. Any settling after cap installation shall be repaired by filling, compacting, and
17 regrading in the same manner as in initial installation. The thickness of the cap will
18 provide long-term protection against erosion. The planted vegetative cover will be
19 mowed as needed.

20 2. Institutional Controls

21 a. Deed restrictions compliant with RCW 64.70 will be instituted as
22 provided in Section XX (Land Use Restrictions) of this Decree to ensure that indefinite
23 Site use restrictions remain in force regardless of the property owner, and to notify any
24 prospective purchasers of the Site that there is the presence of subsurface waste. Site
25 use restrictions will prohibit using the Site for purposes incompatible with a waste
26 disposal site. For the selected remedy, these restrictions will prohibit penetrating the

1 cap and any Site use that could damage the cap or significantly reduce its effectiveness.
2 Groundwater use restrictions will be employed, as provided in Section XX of this
3 Decree, to prevent exposure to groundwater near the Site and within and near the
4 compliance boundary shown in Figure 11 of the CAP.

5 b. A locked fence surrounds areas of the Site (see Figure 4 of the CAP),
6 and warning signs shall be posted to provide notice of the presence of a waste site to
7 trespassers and recreational visitors.

8 3. Ongoing Monitoring & Maintenance

9 a. Compliance monitoring will be conducted as specified in the
10 Compliance Monitoring Plan, attached as Exhibit D, Part A, and in accordance with
11 WAC 173-340-410. Compliance monitoring consists of protection monitoring,
12 performance monitoring, and confirmational monitoring.

13 b. The CAP also requires ongoing Operations and Maintenance (O&M) for
14 completion of the remedial action, in accordance with WAC 173-340-400(4)(c). The
15 O&M plan is attached to this Consent Decree as Exhibit D, Part B.

16 4. Contingency Plan

17 The Contingent Groundwater Extraction and Treatment System Plan
18 (Exhibit D, Part C) will be implemented in the event that concentrations of mine waste
19 contaminants at compliance monitoring wells exceed remediation levels established in
20 the Compliance Monitoring Plan (Exhibit D, Part A). This contingency plan details the
21 circumstances under which the groundwater extraction and treatment system for the
22 Site must be installed and operated. If required, the contingent groundwater extraction
23 and treatment system's purpose will be to contain, treat, and safely dispose of impacted
24 groundwater in a timely manner to prevent migration beyond the conditional
25 compliance boundary for groundwater.
26

1 B. In order to implement the CAP, Defendants will prepare and submit for
2 Ecology's review and approval all documents necessary to conduct the final cleanup action.
3 All deliverables identified in the CAP (Exhibit B) and Schedule (Exhibit C), once approved by
4 Ecology, are hereby incorporated by reference and become an integral and enforceable part of
5 this Decree.

6 C. If there is an inconsistency between the Decree and any of the exhibits to the
7 Decree regarding the work to be performed, the terms and conditions of the exhibits shall
8 apply. If there is an inconsistency between the CAP and any of the other exhibits to the Decree,
9 the terms and conditions of the CAP shall apply.

10 D. Except in cases of emergency or where required by law, Defendants agree not to
11 perform any remedial actions at the Site outside the scope of this Decree unless the Parties
12 agree to modify the CAP to cover these actions. In the event of an emergency, where actions
13 are taken as required by law, Defendants must notify Ecology in writing of the event and
14 response actions planned or taken as soon as practical but no later than within 24 hours of the
15 discovery of the event. All work conducted by Defendants under this Decree shall be done in
16 accordance with WAC 173-340 unless otherwise provided herein.

17 VII. DESIGNATED PROJECT COORDINATORS

18 The project coordinator for Ecology is:

19 Jerome Cruz, Site Manager
20 Northwest Regional Office
21 Toxics Cleanup Program
22 3190 160th Avenue SE
23 Bellevue, WA 98008
24 425-649-7094
25 jerome.cruz@ecy.wa.gov
26

1 The project coordinator for Defendants is:

2 Gary Zimmerman
3 Golder Associates Inc.
4 18300 NE Union Hill Road, Suite 200
5 Redmond, WA 98052-3333
6 425-883-0777
7 425-882-5498 (fax)
8 gzimmerman@golder.com

9 Each project coordinator shall be responsible for overseeing the implementation of this
10 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
11 To the maximum extent possible, communications between Ecology and Defendants and all
12 documents, including reports, approvals, and other correspondence concerning the activities
13 performed pursuant to the terms and conditions of this Decree shall be directed through the
14 project coordinators. The project coordinators may designate, in writing, working level staff
15 contacts for all or portions of the implementation of the work to be performed required by this
16 Decree.

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

19 **VIII. PERFORMANCE**

20 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
21 the supervision and direction of a geologist or hydrogeologist licensed by the State of
22 Washington or under the direct supervision of an engineer registered by the State of
23 Washington, except as otherwise provided for by RCW 18.220 and 18.43.

24 All engineering work performed pursuant to this Decree shall be under the direct
25 supervision of a professional engineer registered by the State of Washington, except as
26 otherwise provided for by RCW 18.43.130.

27 All construction work performed pursuant to this Decree shall be under the direct
28 supervision of a professional engineer or a qualified technician under the direct supervision of

1 a professional engineer. The professional engineer must be registered by the State of
2 Washington, except as otherwise provided for by RCW 18.43.130.

3 Any documents submitted containing geologic, hydrologic, or engineering work shall
4 be under the seal of an appropriately licensed professional as required by RCW 18.220 or
5 RCW 18.43.130.

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

9 IX. ACCESS

10 Ecology or any Ecology authorized representative shall have full authority to enter and
11 freely move about all property at the Site that Defendants either own, control, or have access
12 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation
13 logs, and contracts related to the work being performed pursuant to this Decree; reviewing
14 Defendants' progress in carrying out the terms of this Decree; conducting such tests or
15 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or
16 other documentary type equipment to record work done pursuant to this Decree; and verifying
17 the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to
18 secure access rights for those properties within the Site not owned or controlled by Defendants
19 where remedial activities or investigations will be performed pursuant to this Decree. Ecology
20 or any Ecology authorized representative shall give Defendants' project coordinator reasonable
21 notice before entering any Site property owned or controlled by Defendants unless an
22 emergency prevents such notice. All Parties who access the Site pursuant to this section shall
23 comply with any applicable health and safety plan(s). Ecology employees and their
24 representatives shall not be required to sign any liability release or waiver as a condition of Site
25 property access.
26

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

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

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

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

20 **XI. PROGRESS REPORTS**

21 During the construction phase of the work to be performed described in Section VI
22 (Work to Be Performed) of this Decree, Defendants shall submit to Ecology written monthly
23 Progress Reports that describe the actions taken during the previous month to implement the
24 requirements of this Decree. After completion of the construction phase of the work to be
25 performed described in Section VI of this Decree, the frequency of Defendants' submittal of
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1 Progress Reports shall be in compliance with Exhibit D, Part A (Compliance Monitoring Plan)
2 attached to this Decree. The Progress Reports shall include the following:

3 A. A list of on-site activities that have taken place during the month.

4 B. Detailed description of any deviations from required tasks not otherwise
5 documented in project plans or amendment requests.

6 C. Description of all deviations from the Schedule (Exhibit C) during the current
7 month and any planned deviations in the upcoming month.

8 D. For any deviations in schedule, a plan for recovering lost time and maintaining
9 compliance with the schedule.

10 E. All validated data (including laboratory analyses) received by Defendants
11 during the past month and an identification of the source of the sample.

12 F. A list of deliverables for the upcoming month if different from the schedule.

13 All Progress Reports shall be submitted by the tenth (10th) day of the month in which
14 they are due after the effective date of this Decree. Unless otherwise specified, Progress
15 Reports and any other documents submitted pursuant to this Decree shall be sent by certified
16 mail, return receipt requested, to Ecology's project coordinator.

17 XII. RETENTION OF RECORDS

18 During the pendency of this Decree, and for ten (10) years from the date this Decree is
19 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall
20 preserve at least one (1) copy of records, final reports, documents, and underlying data in their
21 possession relevant to the implementation of this Decree and shall insert a similar record
22 retention requirement into all contracts with project contractors and subcontractors. The record
23 retention requirements for contractors and subcontractors shall be satisfied by the retention of
24 at least one (1) copy of the last draft or final version of any record, document, or report
25 prepared by such contractor(s) or subcontractor(s). Any records, reports, or documents retained
26 in accordance with this section shall be retained in either hard copy or electronic form. Upon

1 request of Ecology, Defendants shall make all non-privileged records available to Ecology and
2 allow access for review within a reasonable time.

3 **XIII. TRANSFER OF INTEREST IN PROPERTY**

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

8 Prior to Defendants' transfer of any interest in all or any portion of the Site, and during
9 the duration of this Decree as provided in Section XXVIII (Duration of Decree), Defendants
10 shall provide a copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or
11 other successor in said interest; and, at least thirty (30) days prior to any transfer, Defendants
12 shall notify Ecology of said transfer. Upon transfer of any interest, Defendants shall restrict
13 uses and activities to those consistent with this Consent Decree and notify all transferees of the
14 restrictions on the use of the property. Additionally, notwithstanding any sale, transfer,
15 assignment, hypothecation, or other disposition of any interest in all or any portion of the Site,
16 during the duration of this Decree as provided in Section XXVIII, Defendants shall retain a
17 right to access all or any portion of the Site, at all reasonable times, sufficient to enable such
18 Defendants to effectively comply with the requirements of this Consent Decree.

19 **XIV. RESOLUTION OF DISPUTES**

20 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
21 other decision or action by Ecology's project coordinator, or an itemized billing statement
22 under Section XXIV (Remedial Action Costs), the Parties shall utilize the dispute resolution
23 procedure set forth below.

24 1. Upon receipt of Ecology's project coordinator's written decision, or the
25 itemized billing statement, Defendants have fourteen (14) days within which to notify
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1 Ecology's project coordinator in writing of their objection to the decision or itemized
2 statement.

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

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

10 4. Ecology's Regional Section Manager or the Regional Section Manager's
11 delegatee shall conduct a review of the dispute and shall endeavor to issue a written
12 decision regarding the dispute within thirty (30) days of Defendants' request for
13 review.

14 5. If Defendants find Ecology's Regional Section Manager's decision
15 unacceptable, Defendants may then request final management review of the decision.
16 This request shall be submitted in writing to the Toxics Cleanup Program Manager
17 within seven (7) days of receipt of the Regional Section Manager's decision.

18 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
19 the dispute and shall endeavor to issue a written decision regarding the dispute within
20 thirty (30) days of Defendants' request for review of the Regional Section Manager's
21 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final
22 decision on the disputed matter.

23 B. If Ecology's final written decision is unacceptable to Defendants, Defendants
24 have the right to submit the dispute to the Court for resolution. The Parties agree that one judge
25 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
26 under this Decree. In the event Defendants present an issue to the Court for review, the Court

1 | shall review the action or decision of Ecology on the basis of whether such action or decision
2 | was arbitrary and capricious, and render a decision based on such standard of review.

3 | C. The Parties agree to only utilize the dispute resolution process in good faith and
4 | agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
5 | Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
6 | the other Party may seek sanctions.

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

10 | **XV. AMENDMENT OF DECREE**

11 | The project coordinators may agree to minor changes to the work to be performed
12 | described in Section VI (Work to Be Performed) without formally amending this Decree.
13 | Minor changes will be documented in writing by Ecology and one (1) copy shall be provided
14 | to each Defendant.

15 | Substantial changes to the work to be performed described in Section VI shall require
16 | formal amendment of this Decree. This Decree may only be formally amended by a written
17 | stipulation among the Parties that is entered by the Court, or by order of the Court. Such
18 | amendment shall become effective upon entry by the Court. Agreement to amend the Decree
19 | shall not be unreasonably withheld by any Party.

20 | Defendants shall submit a written request for amendment to Ecology for approval.
21 | Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
22 | written request for amendment is received. If the amendment to the Decree is a substantial
23 | change, Ecology will provide public notice and opportunity for comment. Reasons for the
24 | disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
25 | not agree to a proposed amendment, the disagreement may be addressed through the dispute
26 | resolution procedures described in Section XIV (Resolution of Disputes).

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1 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
2 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
3 granted.

4 D. An extension shall only be granted for such period of time as Ecology
5 determines is reasonable under the circumstances. Ecology may grant schedule extensions
6 exceeding ninety (90) days only as a result of:

7 1. Delays in the issuance of a necessary permit which was applied for in a
8 timely manner.

9 2. Other circumstances deemed exceptional or extraordinary by Ecology.

10 3. Endangerment as described in Section XVII (Endangerment).

11 **XVII. ENDANGERMENT**

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

16 In the event Defendants determine that any activity being performed at the Site is
17 creating or has the potential to create a danger to human health or the environment, Defendants
18 may cease such activities. Defendants shall notify Ecology's project coordinator as soon as
19 possible, but no later than twenty-four (24) hours after making such determination or ceasing
20 such activities. Upon Ecology's direction, Defendants shall provide Ecology with
21 documentation of the basis for the determination or cessation of such activities. If Ecology
22 disagrees with Defendants' cessation of activities, it may direct Defendants to resume such
23 activities.

24 If Ecology concurs with or orders a work stoppage pursuant to this Section,
25 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology
26 determines the danger is abated, and the time for performance of such activities, as well as the

1 time for any other work dependent upon such activities, shall be extended, in accordance with
2 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
3 reasonable under the circumstances.

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

6 **XVIII. COVENANT NOT TO SUE**

7 A. Covenant Not to Sue: In consideration of Defendants' compliance with the
8 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative
9 actions against Defendants regarding the release or threatened release of hazardous substances
10 covered by this Decree. This covenant shall be effective on the date this Decree is entered by
11 the Court.

12 This Decree covers only the Site, as defined in Section IV.A, and those hazardous
13 substances, as described in the RI/FS, subsequent supplemental investigations, and CAP, that
14 Ecology knows or suspects are located at the Site as of the date of entry of this Decree. This
15 Decree does not cover any other hazardous substance or area. Ecology retains all of its
16 authority relative to any substance or area not covered by this Decree.

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

- 18 1. Criminal liability.
- 19 2. Liability for damages to natural resources.
- 20 3. Any Ecology action, including cost recovery, against PLPs not a party to
21 this Decree.

22 If factors not known at the time of entry of the settlement agreement are discovered and
23 present a previously unknown threat to human health or the environment, Ecology may petition
24 the Court to amend this Covenant Not to Sue.

25 B. Reopeners: Ecology specifically reserves the right to institute legal or
26 administrative action against Defendants to require them to perform additional remedial

1 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050
2 under the following circumstances:

3 1. Upon Defendants' failure to meet the requirements of this Decree,
4 including, but not limited to, failure of the remedial action to meet the cleanup
5 standards identified in the CAP (Exhibit B).

6 2. Upon Ecology's determination that remedial action beyond the terms of
7 this Decree is necessary to abate an imminent and substantial endangerment to human
8 health or the environment.

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

13 4. Upon Ecology's determination that additional remedial actions are
14 necessary to achieve cleanup standards within the reasonable restoration time frame set
15 forth in the CAP.

16 C. Except in the case of an emergency, prior to instituting legal or administrative
17 action against Defendants pursuant to this Section, Ecology shall provide Defendants with
18 thirty (30) calendar days' notice of such action.

19 **XIX. CONTRIBUTION PROTECTION**

20 With regard to claims for contribution against Defendants, the Parties agree that
21 Defendants are entitled to protection against claims for contribution for matters addressed in
22 this Decree as provided by RCW 70.105D.040(4)(d). The matters addressed in this Decree are
23 all remedial actions taken or to be taken and all remedial costs, including Ecology's oversight
24 costs, incurred or to be incurred by Ecology or any other person with respect to the Site, as
25 defined in Section IV.A and with respect to those hazardous substances, as described in the
26

1 RI/FS, subsequent supplemental investigations, and CAP, that Ecology knows or suspects are
2 located at the Site as of the date of entry of this Decree.

3 **XX. LAND USE RESTRICTIONS**

4 In consultation with Ecology, Defendants will prepare an Environmental (Restrictive)
5 Covenant substantially in the form of Exhibit E-1 and consistent with WAC 173-340-440 and
6 RCW 64.70. After approval by Ecology, Defendants shall record the Environmental
7 (Restrictive) Covenant with the office of the King County Auditor within ten (10) days of
8 Ecology's written approval of the As-Built Drawings for the low-permeability soil cap. The
9 Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as
10 agreed to by Ecology and Defendants and shall include the following:

- 11 • A legal description of the final locations of the "Cap Protection Area," the
12 "Groundwater and Portal Protection Area," and, to the extent not already
13 encompassed by the Groundwater and Portal Protection Area, the No-Build
14 Buffer Areas, depicted in Figures 1, 2, 3, and 4 attached to Exhibit E-1.
- 15 • Restriction of future uses of the Site (as defined in Section IV.A) within the
16 "Cap Protection Area," the "Groundwater and Portal Protection Area," and, to
17 the extent not already encompassed by use restrictions for the Groundwater and
18 Portal Protection Area, restriction of future uses within the No-Build Buffer
19 Areas, according to the terms of Exhibit E-1.

20 Defendants shall provide Ecology with a copy of the recorded Environmental
21 (Restrictive) Covenant within thirty (30) days of the recording date.

22 Defendants shall also make good faith efforts to cause an Environmental (Restrictive)
23 Covenant substantially in the form of Exhibit E-2 to be recorded concurrent with the recording
24 of the covenant substantially in the form of Exhibit E-1. The Environmental (Restrictive)
25 Covenant shall restrict future uses of the property designated in Exhibit E-2 according to the
26 terms of Exhibit E-2. Defendants shall provide Ecology with a copy of the recorded

1 Environmental (Restrictive) Covenant within thirty (30) days of the recording date. If
2 Defendants are unable to secure such covenant, Defendants shall provide notice to Ecology of
3 their inability to secure such covenant within ten (10) days of Ecology's written approval of
4 the As-Built Drawings for the low-permeability soil cap, together with a description of their
5 good faith efforts to secure such covenant.

6 **XXI. FINANCIAL ASSURANCES**

7 Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and adequate
8 financial assurance mechanisms to cover all costs associated with the operation and
9 maintenance of the remedial action at the Site, including institutional controls, compliance
10 monitoring, and corrective measures.

11 Defendants have submitted to Ecology for review and approval an estimate of the costs
12 that they will incur in carrying out the terms of this Decree, including operation and
13 maintenance, and compliance monitoring. Ecology approves the initial estimate dated
14 September 17, 2012, which is in the amount of \$775,000 for purposes of establishing an initial
15 financial assurance amount. Within sixty (60) days of the effective date of this Decree,
16 Defendants shall provide proof of financial assurances sufficient to cover all such costs in a
17 form reasonably acceptable to Ecology.

18 Defendants shall adjust the financial assurance coverage and provide Ecology's project
19 coordinator with documentation of the updated financial assurance for:

20 A. Inflation, annually, within thirty (30) days of the close of the calendar year; or if
21 applicable, ninety (90) days after the close of Defendants' fiscal year if the financial test or
22 corporate guarantee is used.

23 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
24 approval of a modification or revision to the CAP that result in increases to the cost or
25 expected duration of this Decree as provided in Section XXVIII (Duration of Decree). Any
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1 | adjustments for inflation since the most recent preceding close of the calendar year shall be
2 | made concurrent with adjustments for changes in cost estimates.

3 | **XXII. INDEMNIFICATION**

4 | Defendants agree to indemnify and save and hold the State of Washington, its
5 | employees, and agents harmless from any and all claims or causes of action for death or
6 | injuries to persons or for loss or damage to property to the extent arising from or on account of
7 | acts or omissions of Defendants, their officers, employees, agents, or contractors in entering
8 | into and implementing this Decree. However, Defendants shall not indemnify the State of
9 | Washington nor save nor hold its employees and agents harmless from any claims or causes of
10 | action to the extent arising out of the negligent acts or omissions of the State of Washington, or
11 | the employees or agents of the State, in entering into or implementing this Decree.

12 | **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

13 | A. All actions carried out by Defendants pursuant to this Decree shall be done in
14 | compliance with all applicable federal, state, and local requirements, including requirements to
15 | obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
16 | federal, state, or local requirements that the agency has determined may be applicable and that
17 | are known at the time of entry of this Decree are identified in the Technical Memorandum
18 | dated June 7, 2017, prepared by Golder Associates Inc., attached to this Decree as Exhibit F.

19 | B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural
20 | requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
21 | or authorizing local government permits or approvals. However, Defendants shall comply with
22 | the substantive requirements of such permits or approvals. The exempt permits or approvals
23 | and the applicable substantive requirements of those permits or approvals, as they are known at
24 | the time of entry of this Decree, have been identified in the Technical Memorandum dated June
25 | 7, 2017, prepared by Golder Associates Inc. attached to this Decree as Exhibit F.

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

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

23 **XXIV. REMEDIAL ACTION COSTS**

24 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
25 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
26 or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and

1 Decree preparation, negotiation, oversight, and administration. These costs shall include work
2 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
3 include costs of direct activities and support costs of direct activities as defined in
4 WAC 173-340-550(2). Ecology has accumulated \$224,089.53 in remedial action costs related
5 to this Site as of March 31, 2017. Payment for this amount shall be submitted within thirty (30)
6 days of the effective date of this Decree. For all costs incurred subsequent to March 31, 2017,
7 Defendants shall pay the required amount within thirty (30) days of receiving from Ecology an
8 itemized statement of costs that includes a summary of costs incurred, an identification of
9 involved staff, and the amount of time spent by involved staff members on the project. A
10 general statement of work performed will be provided with each statement. Itemized
11 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
12 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
13 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

14 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
15 authority to recover unreimbursed remedial action costs by filing a lien against real property
16 subject to the remedial actions.

17 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

18 If Ecology determines that Defendants have failed without good cause to implement the
19 remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or
20 all portions of the remedial action that remain incomplete. If Ecology performs all or portions
21 of the remedial action because of Defendants' failure to comply with their obligations under
22 this Decree, Defendants shall reimburse Ecology for the costs of doing such work in
23 accordance with Section XXIV (Remedial Action Costs), provided that Defendants are not
24 obligated under this section to reimburse Ecology for costs incurred for work inconsistent with
25 or beyond the scope of this Decree.
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1 Except where necessary to abate an emergency situation, Defendants shall not perform
2 any remedial actions at the Site outside those remedial actions required by this Decree, unless
3 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
4 (Amendment of Decree).

5 **XXVI. PERIODIC REVIEW**

6 As remedial action, including groundwater monitoring, continues at the Site, the Parties
7 agree to review the progress of remedial action at the Site, and to review the data accumulated
8 as a result of monitoring the Site as often as is necessary and appropriate under the
9 circumstances. At least every five (5) years after the initiation of remedial action at the Site the
10 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial
11 action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall
12 submit a report to Ecology that documents whether human health and the environment are
13 being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the
14 right to require further remedial action at the Site under appropriate circumstances by
15 following the provisions of Section XV (Amendment of Decree). This provision shall remain
16 in effect for the duration of this Decree as provided in Section XXVIII (Duration of Decree).

17 **XXVII. PUBLIC PARTICIPATION**

18 A Public Participation Plan is required for this Site. Ecology shall review any existing
19 Public Participation Plan to determine its continued appropriateness and whether it requires
20 amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in
21 conjunction with Defendants.

22 Ecology shall maintain the responsibility for public participation at the Site. However,
23 Defendants shall cooperate with Ecology, and shall:

24 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of
25 public notices and fact sheets at important stages of the remedial action, such as the submission
26 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and

1 engineering design reports. As appropriate, Ecology will edit, submit to Defendants for
2 comment, finalize, and distribute such fact sheets and prepare and distribute public notices of
3 Ecology's presentations and meetings.

4 B. Notify Ecology's project coordinator prior to the preparation of all press
5 releases and fact sheets, and before major meetings with the interested public and local
6 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press
7 releases and fact sheets, and before major meetings with the interested public and local
8 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
9 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to
10 their audience that the press release, fact sheet, meeting, or other outreach effort was not
11 sponsored or endorsed by Ecology.

12 C. When requested by Ecology, participate in public presentations on the progress
13 of the remedial action at the Site. Participation may be through attendance at public meetings
14 to assist in answering questions, or as a presenter.

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

17 1. Black Diamond Library, 24301 Roberts Drive, Black Diamond,
18 Washington 98010

19 2. Ecology's Northwest Regional Office, 3190 160th Avenue SE,
20 Bellevue, Washington 98008

21 At a minimum, copies of all public notices and fact sheets shall be promptly placed in these
22 repositories. A copy of all documents related to this Site shall be maintained in the repository
23 at Ecology's Northwest Regional Office in Bellevue, Washington.
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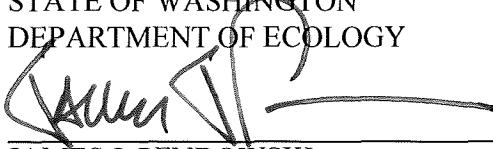
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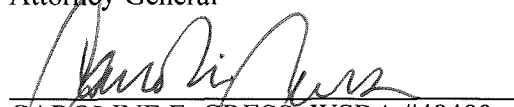
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1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

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

ROBERT W. FERGUSON
Attorney General


CAROLINE E. CRESS, WSBA #48488
Assistant Attorney General
(360) 586-4613

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12 Date: 10/24/17

Date: 10/24/17

13 PALMER COKING COAL COMPANY, LLP

14
15 By: _____
16 Its: _____

17 Date: _____

18 WEYERHAEUSER NR COMPANY

19 By: _____
20 Its: _____

21 Date: _____

22 BNSF RAILWAY COMPANY

23 By: _____
24 Its: _____

25 Date: _____

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CONSENT DECREE

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

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

CAROLINE E. CRESS, WSBA #48488
Assistant Attorney General
(360) 586-4613

Date: _____

Date: _____

PALMER COKING COAL COMPANY, LLP

By: WILLIAM J. KOMBOL
Its: Manager

Date: September 11, 2017

WEYERHAEUSER NR COMPANY

By: _____
Its: _____

Date: _____

BNSF RAILWAY COMPANY

By: _____
Its: _____

Date: _____

CONSENT DECREE

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ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
(360) 586-6770

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

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

CAROLINE E. CRESS, WSBA #48488
Assistant Attorney General
(360) 586-4613

Date: _____


Date: _____

PALMER COKING COAL COMPANY, LLP

By: _____
Its: _____

Date: _____

WEYERHAEUSER NR COMPANY


By: VP, Government Affairs, Environment + Safety
Its: _____

Date: 10/2/17

BNSF RAILWAY COMPANY

By: _____
Its: _____

Date: _____

1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

3
4 JAMES J. PENDOWSKI
5 Program Manager
6 Toxics Cleanup Program
7 (360) 407-7177

CAROLINE E. CRESS, WSBA #48488
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(360) 586-4613

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9 Date: _____

Date: _____

10 PALMER COKING COAL COMPANY, LLP

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12 By: _____
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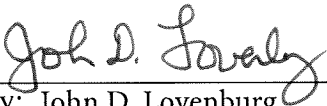
14 Date: _____

15 WEYERHAEUSER NR COMPANY

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21 BNSF RAILWAY COMPANY

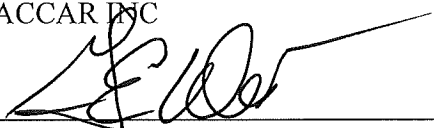
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24 By: John D. Lovenburg
25 Its: Vice President Environmental

26 Date: September 11, 2017

CONSENT DECREE

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PACCAR INC


By: G. E. West
Its: Vice President of Manufacturing
Date: 10/2/2017

BROWNING-FERRIS INDUSTRIES OF ILLINOIS, INC.

By: _____
Its: _____
Date: _____

ENTERED this _____ day of _____ 2017.


JUDGE
King County Superior Court

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PACCAR INC

By: _____
Its: _____
Date: _____

BROWNING-FERRIS INDUSTRIES OF ILLINOIS, INC.


By: Sakina Mizrahi
Its: Vice President
Date: September 15, 2017

ENTERED this _____ day of _____ 2017.

JUDGE
King County Superior Court

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-28787-3
Case Title: Not available at this time

Document Title: AGREED ORDER

Signed by: Commissioner Henry Judson
Date: 11/6/2017 9:46:11 AM

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'H. Judson' written in a cursive style.

Judge/Commissioner: Commissioner Henry Judson

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 252A2613AD1DF6F184ADD5EFD5753C76D53A5CB8
Certificate effective date: 7/16/2014 12:09:30 PM
Certificate expiry date: 7/16/2019 12:09:30 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Henry Judson:
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