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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

B.S.B. DIVERSIFIED COMPANY,
INC.,

Defendant.

NO.

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and BSB Diversified Company, Inc. (Defendant) under this Decree is to provide
4 for Remedial Action at a portion of a facility (the "Property" defined below) where there has
5 been a release or threatened release of hazardous substances. As more fully described in the
6 attached Cleanup Action Plan (Exhibit A), this Decree requires Defendant to: install and
7 maintain a slurry wall within the perimeter of the Property to form a containment area; install
8 and maintain a cap over the containment area; perform gradient control within the
9 containment area and treat groundwater using zero valent iron (ZVI) reactor vessels;
10 implement institutional controls on the Property; provide for compliance monitoring of the
11 Cleanup Actions implemented on the Property; and provide for financial assurance sufficient
12 to maintain institutional and engineering controls on the Property and sufficient to maintain
13 compliance monitoring of the Cleanup Actions implemented on the Property.

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

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

22 C. By signing this Decree, the Parties agree to its entry and agree to be bound by
23 its terms.

24 D. By entering into this Decree, the Parties do not intend to discharge
25 non-settling parties from any liability they may have with respect to matters alleged in the
26

1 Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any
2 liable persons for sums expended under this Decree.

3 E. The requirements of this Decree will, once incorporated into the Permit,
4 concurrently satisfy Defendant's obligations for corrective action and post-closure care
5 (including financial assurance for such obligations), as set forth in WAC 173-303-64620 and
6 WAC 173-303-610(7). Ecology will modify the Permit to incorporate the requirements of
7 the Decree following entry of the Decree.

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

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

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

16 II. JURISDICTION

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

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

25 C. Ecology has determined that a release or threatened release of hazardous
26 substances has occurred at the Site, a portion of which is the subject of this Decree.

1 D. Ecology has given notice to Defendant of Ecology's determination that
2 Defendant is a PLP for the Site, as required by RCW 70.105D.020(21) and WAC
3 173-340-500.

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

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

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

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

12 **III. PARTIES BOUND**

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

22 **IV. DEFINITIONS**

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

25 1. BSB: Refers to B.S.B. Diversified Company, Inc., a Delaware corporation.

26 2. Carr: Refers to Carr Prop II, LLC, a Washington Limited Liability Company.

1 3. Cleanup Action Plan or CAP: Refers to the Cleanup Action Plan (CAP)
2 (Exhibit A) issued by Ecology relating to the Property, which occupies a portion of the Site,
3 and all attachments to the CAP. The CAP relating to the Property will in the future be
4 followed by further cleanup action plan(s) relating to the remainder of the Site.

5 4. Consent Decree or Decree: Refers to this Consent Decree and each of the
6 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent
7 Decree. The terms “Consent Decree” or “Decree” shall include all exhibits to this Decree.

8 5. Defendant: Refers to B.S.B. Diversified Company, Inc.

9 6. Ecology: Refers to the State of Washington, Department of Ecology and the
10 Director, employees and designated agents, and representatives thereof.

11 7. EPA: Refers to the United States Environmental Protection Agency and the
12 Administrator, employees and designated agents, and representatives thereof.

13 8. Hazardous Substance: Refers to “hazardous substance” as defined in
14 RCW 70.105D.020(10) and, for purposes of this Decree only, includes “dangerous waste
15 constituents” listed in WAC 173-303-9905, the ground-water monitoring list in 40 C.F.R.
16 Part 264 Appendix IX and any constituent which caused a waste to be listed or designated as
17 dangerous under the provisions of Chapter 173-303 WAC.

18 9. Hexcel: Refers to Hexcel Corporation, a Delaware Corporation.

19 10. Hexcel Parcels: Refers to the parcels A, B, C, D, and E currently owned and
20 controlled by Hexcel Corporation, located at 19819 84th Avenue South in Kent, Washington.
21 These parcels are more particularly described in Exhibit B to this Decree, which is a detailed
22 parcel diagram.

23 11. Hytek: Refers to Hytek Finishes Company.

24 12. MTCA: Refers to the Washington State Model Toxics Control Act, Chapter
25 70.105D RCW.

1 13. Parcel F: Refers to the parcel F property currently owned and controlled by
2 Carr, located at 8311 South 200th Street in Kent, Washington. This parcel is more
3 particularly described in Exhibit B to this Decree, which is a detailed parcel diagram.

4 14. Parcel G: Refers to the parcel G property currently owned and controlled by
5 BSB, located at 8202 South 200th Street in Kent, Washington. This parcel is more
6 particularly described in Exhibit B to this Decree, which is a detailed parcel diagram.

7 15. Parties: Refers to Ecology and BSB.

8 16. Permit: Refers to the Dangerous Waste Management Permit for Remedial
9 (Corrective) Action issued by Ecology to Defendant under authority of the Washington
10 Hazardous Waste Management Act (Chapter 70.105 RCW) and RCRA and effective
11 November 10, 2005.

12 17. Property: Refers to Parcel G which is more particularly described in Exhibit
13 B to this Decree, which is a detailed parcel diagram.

14 18. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C.
15 §§ 6901-6992k.

16 19. RCW: Refers to the Revised Code of Washington.

17 20. Remedial Action: Refers to “remedial action” as defined in RCW
18 70.105D.020(21) and, for purposes of this Decree only, includes investigations, studies,
19 characterizations, corrective actions, and corrective measures undertaken in whole or in part
20 to fulfill the requirements of WAC 173-303-64610.

21 21. Site: The Site is referred to as the Kent Facility and consists of Parcels A
22 through G which are generally located near the intersection of 84th Avenue South and South
23 200th Street in Kent, Washington, as well as wherever Hazardous Substances from releases
24 on Parcels A through G have come to be located. The Site is more particularly described in
25 the Site Diagram (Exhibit B). The Site constitutes a Facility under RCW 70.105D.020(5).

26 22. WAC: Refers to the Washington Administrative Code.

1 **V. FINDINGS OF FACTS**

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

4 1. BSB currently owns the Property. The Property is commonly referred to as
5 Parcel G and is bounded on the north by South 200th Street and on the east by Parcel F, a
6 contiguous but separately owned parcel. The parcel locations are indicated on Exhibit A.

7 2. Parcels A, B, C, D and E are currently owned by Hexcel. Parcel F is currently
8 owned by Carr. Parcels A through E are contiguous parcels located immediately north of,
9 and across South 200th Street from, Parcels G and F. Parcels A through E are bounded on the
10 south by South 200th Street, on the east by 84th Avenue South (East Valley Road), on the
11 north by South 196th Street and on the west by 81st Avenue South.

12 3. Before 1988, BSB owned Parcels A through G and the two divisions, Hytek
13 and Heath Tecna Aerospace Company, that were located on those parcels.

14 4. On January 25, 1988, BSB sold Heath Tecna Aerospace Company and Parcels
15 A through F to the Phoenix Washington Corporation, a wholly owned subsidiary of
16 Ciba-Geigy Corporation. BSB transferred Parcels A through D and Parcel F to Phoenix
17 Washington Corporation upon closing. The Phoenix Washington Corporation was
18 subsequently renamed the Heath Tecna Aerospace Company (Heath Tecna). In 1989, BSB
19 moved its Hytek operation from Parcel E to another location in Kent, Washington. Later, in
20 July 1989, BSB transferred Parcel E to Heath Tecna.

21 5. Heath Tecna merged into the Ciba-Geigy Corporation. By mid 1996, Hexcel
22 had acquired Parcels A through F from the Ciba-Geigy Corporation and acquired all assets
23 and assumed all liabilities of the Ciba-Geigy Corporation relating to Parcels A through F.

24 6. In 2003, Hexcel sold Parcel F to Carr.
25
26

1 7. Of the original seven parcels owned by BSB, one parcel, Parcel G, is still
2 owned by BSB, five parcels, Parcels A through E, are currently owned by Hexcel
3 (collectively, the Hexcel Parcels), and one parcel, Parcel F, is currently owned by Carr.

4 8. Before 1988, Parcels A through G housed BSB's Hytek division and BSB's
5 Heath Tecna Aerospace Company division. BSB's Hytek division provided metal finishing
6 and electroplating services. BSB's Heath Tecna Aerospace Company division manufactured
7 interior aircraft components. Parcels B, C, D, and E housed manufacturing buildings where
8 Hazardous Substances were used. Historic waste disposal may have occurred on these
9 parcels, potentially including pre-sanitary sewer connection waste disposal and waste
10 disposal in areas outside of the current manufacturing building footprint. Pipes running
11 under South 200th Street connected the manufacturing building located on Parcel E, and
12 carried Hazardous Substances, to Parcel G. Hexcel continues to pursue aircraft parts
13 manufacturing in the manufacturing buildings on Parcels B, C, D, and E.

14 9. Parcel G housed impoundments, lagoons, container storage, and similar units
15 for managing waste, including hazardous waste, through storage and disposal. The wastes
16 contained in some of these units included chlorinated compound. BSB closed the storage
17 and disposal units before 1988. Concentrations of chlorinated compounds remain in the
18 subsurface soils and groundwater under the Site.

19 10. Groundwater flow in the area generally runs in a north-northeasterly direction
20 from Parcel G (upgradient), under Parcels A-F (downgradient) and across 84th Avenue South
21 (downgradient). Groundwater beneath Parcels A through G is contaminated with chlorinated
22 compounds, including (in various locations) TCE, Vinyl Chloride, and cis-1,2-DCE.

23 11. Parcels A through G were operated as a dangerous waste management facility
24 on or after November 19, 1980, the date facilities became subject to permitting requirements
25 under RCRA, including authorized state regulations promulgated in Chapter 173-303 WAC.
26

1 12. Effective December 22, 1988, Ecology and EPA jointly issued Post Closure
2 Permit WAD 07-665-5182 (Permit) to Hytek (later BSB) under authority of the Washington
3 Hazardous Waste Management Act, Chapter 70.105 RCW, and RCRA. The Permit
4 identified the permitted facility as Parcels G and E, with recognition that Parcel E was
5 subject to a pending transfer to Heath Tecna (later Hexcel). The Permit did not name Heath
6 Tecna and did not define the permitted facility to include Parcels A, B, C, D, and F based
7 upon the agencies' acceptance of a private agreement between BSB and Heath Tecna (later
8 Hexcel). Under this private agreement, BSB agreed to be named as the sole permittee and
9 Heath Tecna (later Hexcel) agreed to reimburse BSB for certain costs of conducting
10 Remedial Action on the Hexcel Parcels and to allow BSB access to Parcels A, B, C, D, F
11 (and upon transfer, Parcel E) for conducting Remedial Action.

12 13. The Permit assigned groundwater corrective action and monitoring
13 requirements to Parcels A through G, designated a point of compliance at the downgradient
14 property boundary of Parcel G, and required the achievement of concentration limits in
15 groundwater along 84th Avenue South.

16 14. In setting forth the above-described conditions, the Permit did not identify or
17 distinguish between the possible sources of groundwater contamination on Parcel G and the
18 possible sources on the Hexcel parcels that were or may have been responsible for releases,
19 whether historic or current.

20 15. Pursuant to the Permit and the private agreement, BSB installed a groundwater
21 pump-and-treat system designed to (1) capture contaminated groundwater to prevent it from
22 migrating across South 200th Street from Parcel G, (2) capture contaminated groundwater to
23 prevent it from migrating across 84th Avenue from the Hexcel Parcels, and (3) monitor
24 groundwater conditions at various points. Recovery wells included in this system were
25 located on Parcel G and on the Hexcel Parcels. On-site treatment under this system
26

1 terminated in 1995 when the system began pumping groundwater for discharge to and
2 treatment at a King County publicly owned treatment works.

3 16. The Permit was issued for an initial ten-year term commencing December 22,
4 1988. On March 3, 1999, Ecology and EPA issued a letter in which the agencies declared,
5 pursuant to Part I.E.3.b of the Permit: “The B.S.B. Diversified Post Closure Permit issued
6 jointly by the Department of Ecology (Ecology) and the U.S. Environmental Protection
7 Agency (EPA) shall continue in force beyond the expiration date until which time the Post
8 Closure Permit is reissued.”

9 17. Effective November 10, 2005, Ecology issued to Hexcel MTCA Enforcement
10 Order No. DE 2552, pursuant to which Hexcel is required to complete a Focused Remedial
11 Investigation Report to collect and evaluate sufficient information to allow selection of a
12 cleanup action for the Hexcel Parcels; complete a Focused Feasibility Study evaluating
13 remedial alternatives for the Hexcel Parcels; maintain current Remedial Actions at the
14 Hexcel Parcels; and perform certain groundwater extraction system separation activities.

15 18. Effective November 10, 2005, Ecology, Hexcel, and Defendant entered into
16 Agreed Order No. DE 2553, pursuant to which Hexcel and Defendant are required to
17 complete investigation of chemicals found east of 84th Avenue South.

18 19. Effective November 10, 2005, Ecology and Defendant entered into Agreed
19 Order No. DE 2551, pursuant to which Defendant completed and submitted a Focused
20 Remedial Investigation/Feasibility Study Report (FRI/FS Report) to summarize existing
21 remedial investigation results and develop and evaluate remedial alternatives for the
22 Property; initiated a Deep Aquifer Investigation; maintained current Remedial Actions and
23 post-closure care at the Property; and performed certain groundwater extraction system
24 separation activities.

25 20. Effective November 10, 2005, Ecology issued to Defendant a Dangerous
26 Waste Management Permit for Remedial (Corrective) Action (the Permit) to conduct the

1 Remedial Action set forth in Agreed Order No. DE 2551. The Permit states that the
2 Remedial Action required by MTCA at the Property meets or exceeds the requirements of
3 the Washington Hazardous Waste Management Act and RCRA.

4 21. On April 16, 2006, the groundwater extraction system at the Kent facility was
5 separated. Under their respective orders, Hexcel has assumed responsibility for operation of
6 the groundwater extraction system on the Hexcel Parcels and BSB has assumed
7 responsibility for operation of the system on the Property.

8 22. Pursuant to Agreed Order No. DE 2551, Defendant has completed a draft
9 FRI/FS report to summarize existing remedial investigation results and develop and evaluate
10 remedial alternatives for the Property. In response to Ecology comments, Defendant
11 subsequently revised the preferred remedial alternative proposed in the FRI/FS Report as
12 described in the Cleanup Action Plan attached hereto (Exhibit A). The conclusions of the
13 draft FRI/FS Report as amended in the Cleanup Action Plan form the basis for the Cleanup
14 Action to be implemented under this Decree.

15 **VI. WORK TO BE PERFORMED**

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

19 A. Defendant will implement the Cleanup Action Plan (Exhibit A), and all
20 attachments to the CAP, under the schedule provided for in the CAP. As more fully
21 described in the CAP, the CAP provides for the following actions: install and maintain a
22 slurry wall within the perimeter of the Property to form a containment area; install and
23 maintain a cap over the containment area; perform gradient control within the containment
24 area and treat groundwater using zero valent iron (ZVI) reactor vessels; implement
25 institutional controls on the Property; provide for compliance monitoring of the Cleanup
26 Actions implemented on the Property; and provide for financial assurance sufficient to

1 maintain institutional and engineering controls on the Property and sufficient to maintain
2 compliance monitoring of the Cleanup Actions implemented on the Property.

3 B. Defendant agrees not to perform any Remedial Actions on the Property that
4 are outside the scope of this Decree or Agreed Order No. DE 2551 unless the Parties agree to
5 modify the Cleanup Action Plan (Exhibit A) or Agreed Order No. DE 2551 to cover these
6 actions, or is otherwise authorized by Ecology. All work conducted by Defendant under this
7 Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise provided
8 herein.

9 C. Defendant has agreed, for the purposes of the Work to be performed under this
10 Consent Decree, to accept the cleanup standards and points of compliance selected by
11 Ecology in the Cleanup Action Plan (Exhibit A). Defendant reserves all of its rights to assert
12 in the future that different cleanup standards or points of compliance are appropriate for the
13 Site or portions thereof. Ecology agrees that Defendant's acceptance of the cleanup
14 standards and points of compliance for the Remedial Action required by this Consent Decree
15 is not binding on Defendant or otherwise precedential at any other site, other work at this
16 Site beyond the Work to be Performed under this Consent Decree, or in any other
17 circumstances except the implementation of the Work to be Performed under this Consent
18 Decree.

19 VII. DESIGNATED PROJECT COORDINATORS

20 The project coordinator for Ecology is:

21 Hideo Fujita, P.E.
22 Department of Ecology
23 Northwest Regional Office
24 3190 – 160th Avenue SE
25 Bellevue, WA 98008-5452
26 Telephone: (425) 649-7068
FAX: (425) 649-7098
Email: hfuj461@ecy.wa.gov

1 The project coordinator for Defendant is:

2 Ronald A. Burt
3 Patterson Planning & Services, Inc.
4 4525 Harding Road, Suite 215
5 Nashville, Tennessee 37205
6 Telephone: (615) 986-2679
7 FAX: (615) 620-4510
8 E-mail: raburt_pps@yahoo.com

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

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

20 **VIII. PERFORMANCE**

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

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

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

1 of a professional engineer. The professional engineer must be registered in 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 Chapter 18.220
5 RCW or RCW 18.43.130.

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

9 IX. ACCESS

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

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

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

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

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

21 **XI. PROGRESS REPORTS**

22 A. Defendant shall submit to Ecology written Progress Reports that describe the
23 actions taken during the previous month to implement the requirements of this Decree. The
24 Progress Reports shall include the following:

- 25 1. A list of on-site activities that have taken place during the month;
- 26

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

3 3. Description of all deviations from the Cleanup Action Plan (Exhibit A)
4 during the current month and any planned deviations in the upcoming month;

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

7 5. All raw data (including laboratory analyses) received by Defendant
8 during the past month and an identification of the source of the sample; and

9 6. A list of deliverables for the upcoming month if different from the
10 schedule.

11 B. Progress reports shall be submitted to Ecology in accordance with the
12 following schedule:

13 1. Monthly, during construction of the slurry wall, cap, and gradient
14 control measures on the Property;

15 2. Quarterly, beginning in the quarter in which construction of the slurry
16 wall, cap, and gradient control measures on the Property has been completed.

17 3. No sooner than after the completion of eight (8) consecutive quarters
18 of quarterly reporting, and based on a showing that the slurry wall and gradient
19 control measures have been operating consistent with the Cleanup Action Plan
20 (Exhibit A), Defendant may request a less frequent schedule for submitting Progress
21 Reports. Ecology shall issue written notification of its determination within sixty
22 (60) days after receipt of such request. In no event shall the schedule for submitting
23 Progress Reports provide for less than annual reporting, to be submitted in June of
24 each year, and in no event shall more than twelve (12) months pass between the
25 submission of Progress Reports.
26

1 C. All Progress Reports shall be submitted by the twentieth (20th) day of the
2 month in which they are due after the effective date of this Decree. Unless otherwise
3 specified, Progress Reports and any other documents submitted pursuant to this Decree shall
4 be sent by e-mail, confirmed facsimile, or certified mail, return receipt requested, to
5 Ecology's project coordinator at the address provided in Section VII of this Decree.

6 XII. RETENTION OF RECORDS

7 During the pendency of this Decree, and for ten (10) years from the date this Decree
8 is no longer in effect as provided in Section XXVIII (Duration of Decree), Defendant shall
9 preserve all records, reports, documents, and underlying data in its possession relevant to the
10 implementation of this Decree and shall insert a similar record retention requirement into all
11 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant
12 shall make all records available to Ecology and allow access for review within a reasonable
13 time.

14 XIII. TRANSFER OF INTEREST IN PROPERTY

15 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
16 interest in any portion of the Property shall be consummated by Defendant without provision
17 for continued operation and maintenance of any containment system, treatment system,
18 and/or monitoring system installed or implemented pursuant to this Decree.

19 Prior to Defendant's transfer of any interest in all or any portion of the Property, and
20 during the effective period of this Decree, Defendant shall provide a copy of this Decree to
21 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest;
22 and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said
23 transfer.

24 When Defendant contemplates conveyance of the Property, or a portion of the
25 Property, to a proposed successor in interest that agrees to undertake compliance with the
26 terms and conditions of this Decree and to become a party to this Decree, in addition to

1 providing notice of the transfer of the Permit under WAC 173-303-830(2), Defendant may
2 request that the Decree be amended to add such successor in interest as a party to the Decree.
3 Ecology shall consent to the amendment adding the proposed successor in interest as a party
4 to the Decree concurrent with modifying the Permit, unless it finds that Defendant or the
5 proposed successor in interest are in violation or will be in violation of a material term of the
6 Decree. An amendment to make a proposed successor in interest a party to the Decree shall
7 not by itself require public notice or comment, consistent with the status of the Permit
8 transfer as a Class 1 modification under WAC 173-303-830(2)(b). In the event that a
9 successor in interest becomes a party to this Decree, Ecology will look first to such successor
10 (as the Permit holder) for performance of the requirements of this Decree and the Permit,
11 unless Ecology determines that such successor is unable to comply with the requirements of
12 this Decree.

13 **XIV. RESOLUTION OF DISPUTES**

14 A. In the event a dispute arises as to an approval, disapproval, proposed change,
15 or other decision or action by Ecology, or an itemized billing statement under Section XXIV
16 (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth
17 below.

18 1. Upon receipt of Ecology's project coordinator's written decision, or
19 the itemized billing statement, Defendant has fourteen (14) days within which to
20 notify Ecology's project coordinator in writing of its objection to the decision or
21 itemized statement.

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

25 3. Defendant may then request regional management review of the
26 decision. This request shall be submitted in writing to the Northwest Regional

1 Section Manager, Hazardous Waste and Toxics Reduction Program, within seven (7)
2 days of receipt of Ecology's project coordinator's written decision.

3 4. Ecology's Regional Section Manager shall conduct a review of the
4 dispute and shall endeavor to issue a written decision regarding the dispute within
5 thirty (30) days of Defendant's request for review.

6 5. If Defendant finds Ecology's Regional Section Manager's decision
7 unacceptable, Defendant may then request final management review of the decision.
8 This request shall be submitted in writing to the Hazardous Waste and Toxics
9 Reduction Program Manager within seven (7) days of receipt of the Northwest
10 Regional Office Section Manager's decision.

11 6. Ecology's Hazardous Waste and Toxics Reduction Program Manager
12 shall conduct a review of the dispute and shall endeavor to issue a written decision
13 regarding the dispute within thirty (30) days of Defendant's request for review of the
14 Regional Section Manager's decision. The Hazardous Waste and Toxics Reduction
15 Program Manager's decision shall be Ecology's final decision on the disputed matter.

16 B. If Ecology's final written decision is unacceptable to Defendant, Defendant
17 has the right to submit the dispute to the Court for resolution.

18 C. The Parties agree that one judge should retain jurisdiction over this case and
19 shall, as necessary, resolve any dispute arising under this Decree. In the event Defendant
20 presents an issue to the Court for review, the Court shall review the action or decision of
21 Ecology on the basis of whether such action or decision was arbitrary and capricious and
22 render a decision based on such standard of review.

23 D. The Parties agree to only utilize the dispute resolution process in good faith
24 and agree to expedite, to the extent possible, the dispute resolution process whenever it is
25 used. Where either party utilizes the dispute resolution process in bad faith or for purposes
26 of delay, the other party may seek sanctions.

1 E. Implementation of these dispute resolution procedures shall not provide a
2 basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a
3 schedule extension, the approval of which shall not be unreasonably withheld, or the Court
4 so orders.

5 **XV. AMENDMENT OF DECREE**

6 The project coordinators may agree to minor changes to the work to be performed
7 without formally amending this Decree. Minor changes will be documented in writing by
8 Ecology.

9 Substantial changes to the work to be performed shall require formal amendment of
10 this Decree. This Decree may only be formally amended by a written stipulation among the
11 Parties that is entered by the Court, or by order of the Court pursuant to RCW
12 70.105D.040(4)(c). Such amendment shall become effective upon entry by the Court.
13 Agreement to amend the Decree shall not be unreasonably withheld by any party. Defendant
14 shall submit a written request for amendment to Ecology for approval. Ecology shall
15 indicate its approval or disapproval in writing and in a timely manner after the written
16 request for amendment is received. If the amendment to the Decree is a substantial change,
17 Ecology will provide public notice and opportunity for comment. Reasons for the
18 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology
19 does not agree to a proposed amendment, the disagreement may be addressed through the
20 dispute resolution procedures described in Section XIV (Resolution of Disputes).

21 **XVI. EXTENSION OF SCHEDULE**

22 A. An extension of schedule shall be granted only when a request for an
23 extension is submitted in a timely fashion, generally at least thirty (30) days prior to
24 expiration of the deadline for which the extension is requested, and good cause exists for
25 granting the extension. All extensions shall be requested in writing. The request shall
26 specify:

- 1 1. The deadline that is sought to be extended;
- 2 2. The length of the extension sought;
- 3 3. The reason(s) for the extension; and
- 4 4. Any related deadline or schedule that would be affected if the
- 5 extension were granted.

6 B. The burden shall be on Defendant to demonstrate that the request for such
7 extension has been submitted in a timely fashion and that good cause exists for granting the
8 extension. Good cause may include, but may not be limited to:

9 1. Circumstances beyond the reasonable control and despite the due
10 diligence of Defendant, including circumstances that, at the milestone points
11 identified in the schedule in the Cleanup Action Plan (Exhibit A), preclude
12 compliance with the schedule, including delays caused by unrelated third parties or
13 Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or
14 modifying documents submitted by Defendant;

15 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
16 storm, or other unavoidable casualty; or

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

18 However, neither increased costs of performance of the terms of this Decree nor changed
19 economic circumstances shall be considered circumstances beyond the reasonable control of
20 Defendant.

21 C. Ecology shall act upon any written request for extension in a timely fashion.
22 Ecology shall give Defendant written notification of any extensions granted pursuant to this
23 Decree. A requested extension shall not be effective until approved by Ecology or, if
24 required, by the Court. Unless the extension is a substantial change, it shall not be necessary
25 to amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule
26 extension is granted.

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

4 1. Delays in the issuance of a necessary permit which was applied for in a
5 timely manner;

6 2. Other circumstances deemed exceptional or extraordinary by Ecology;
7 including circumstances that, at the milestone points identified in the schedule in the
8 Cleanup Action Plan (Exhibit A), preclude compliance with the schedule in the 2008
9 calendar year; or

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 Property is
13 creating or has the potential to create a danger to human health or the environment, Ecology
14 may direct Defendant to cease such activities for such period of time as it deems necessary to
15 abate the danger. Defendant shall immediately comply with such direction.

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

24 If Ecology concurs with or orders a work stoppage pursuant to this section,
25 Defendant's 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

1 the time for any other work dependent upon such activities, shall be extended, in accordance
2 with 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 As of the date of entry of this Decree, Remedial Action at the Site has been
8 proceeding on different schedules, with different persons undertaking different Remedial
9 Actions for different portions of the Site under three separate administrative orders. A
10 FRI/FS Report has already been completed with respect to the Property, which is a source
11 area of contamination. Similar documents have not yet been completed with respect to the
12 rest of the Site. Given this, Ecology has determined that cleanup of the Site will occur in the
13 most expeditious manner if remedy selection for, and cleanup of, the Property moves forward
14 now, rather than waiting until documentation is completed and a remedy can be selected for
15 the rest of the Site. So that Defendant may proceed with Remedial Action on the Property as
16 soon as possible, this Decree provides the following Covenant Not to Sue to Defendant only
17 for the Property portion of the Site. Ecology and Defendant anticipate amending this
18 Covenant Not to Sue to add the rest of the Site to this Covenant Not to Sue when Ecology
19 has made Cleanup Action decision(s) for the remainder of the Site. While the Covenant Not
20 to Sue does not cover any area of the Site other than the Property, Ecology intends, with the
21 exception of any Remedial Actions provided for in the Cleanup Action Plan (Exhibit A), and
22 based on the premise that the Cleanup Action on the Property will be effective, to look first
23 to Hexcel and/or financial assurance provided by Hexcel to address performance of Remedial
24 Actions (including future Cleanup Actions) required on the Hexcel Parcels and Parcel F.

25 A. Covenant Not to Sue: In consideration of Defendant's compliance with the
26 terms and conditions of this Decree, Ecology covenants not to institute legal or

1 administrative actions against Defendant regarding the release or threatened release of
2 Hazardous Substances covered by this Decree.

3 This Covenant Not to Sue covers only the Property specifically identified in the Site
4 Diagram (Exhibit B) and those Hazardous Substances that Ecology knows are located on the
5 Property as of the date of entry of this Decree, but does not cover any Remedial Actions that
6 may be necessary on the Property in the future for any deep aquifer contamination. This
7 Covenant Not to Sue does not cover the Hexcel Parcels, Parcel F, or any other Hazardous
8 Substance or area beyond the Property, with the exception of any Remedial Actions beyond
9 the Property that are provided for in the Cleanup Action Plan (Exhibit A). Ecology retains all
10 of its authority relative to any substance or area not covered by this Covenant Not to Sue.

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

- 12 1. Criminal liability;
- 13 2. Liability for damages to natural resources; and
- 14 3. Any Ecology action, including cost recovery, against PLPs not a party
15 to this Decree.

16 If factors not known at the time of entry of this settlement agreement are discovered
17 and present a previously unknown threat to human health or the environment, either Party
18 may petition the Court to amend this Covenant Not to Sue, pursuant to RCW
19 70.105D.040(4)(c).

20 B. Reopeners: Ecology specifically reserves the right to institute legal or
21 administrative action against Defendant to require it to perform additional Remedial Actions
22 at the Property and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050,
23 under the following circumstances:

- 24 1. Upon Defendant's failure to meet the requirements of this Decree,
25 including, but not limited to, failure of the Remedial Action to meet the cleanup
26 standards identified in the Cleanup Action Plan (Exhibit A);

1 2. Upon Ecology's determination that Remedial Action beyond the terms
2 of this Decree is necessary to abate an imminent and substantial endangerment to
3 human health or the environment;

4 3. Upon the availability of new information regarding factors previously
5 unknown to Ecology, including the nature or quantity of hazardous substances at the
6 Property, and Ecology's determination, in light of this information, that further
7 Remedial Action is necessary at the Property to protect human health or the
8 environment; or

9 4. Upon Ecology's determination that additional Remedial Actions are
10 necessary to achieve cleanup standards within the reasonable restoration time frame
11 set forth in the CAP.

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

15 **XIX. CONTRIBUTION PROTECTION**

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

19 **XX. LAND USE RESTRICTIONS**

20 Defendant shall record the attached Restrictive Covenant (Exhibit C) with the office
21 of the King County Auditor within ten (10) days of the completion of the Remedial Action.
22 Defendant shall provide Ecology with a copy of the recorded Restrictive Covenant within
23 thirty (30) days of the recording date.

24 **XXI. FINANCIAL ASSURANCES**

25 A. Defendant shall establish and maintain financial assurance sufficient to
26 implement the Cleanup Actions in the CAP, including maintaining institutional and

1 engineering controls on the Property and maintaining compliance monitoring of the Cleanup
2 Actions implemented on the Property.

3 1. In the absence of final regulations governing financial assurance for
4 corrective action, the Financial Assurance for Corrective Action Proposed Rule, 51
5 FR 37853 (October 24, 1986), the financial assurance provisions of Corrective Action
6 for Releases from Solid Waste Management Units Advance Notice of Proposed
7 Rulemaking, 61 FR 19432 (May 1, 1996), and the Interim Guidance on Financial
8 Assurance for Facilities Subject to RCRA Corrective Action (U.S. EPA, September
9 30, 2003), or other guidance that may be available at the time, shall be used as
10 guidance. The financial assurance provisions of the Corrective Action for Solid
11 Waste Management Units at Hazardous Waste Management Facilities, 55 FR 30798
12 (July 27, 1990), may be used as secondary guidance at the discretion of Ecology.
13 Unless otherwise specified herein, where the language of this Decree conflicts with
14 these proposed rules, notices, and guidance documents, the language of this Decree
15 shall prevail.

16 2. Acceptable financial assurance mechanisms are trust funds, surety
17 bonds guaranteeing performance, letters of credit, insurance, the financial test,
18 corporate guarantee, or other instruments if Defendant demonstrates to the
19 satisfaction of Ecology that those instruments provide an acceptable level of financial
20 assurance.

21 3. Defendant shall provide Ecology's project manager and Ecology's
22 financial assurance officer with documentation of this financial assurance within one
23 hundred twenty (120) days of the effective date of this Decree.

24 4. Defendant will maintain financial assurance under the terms of Agreed
25 Order No. DE 2551 until such time as Ecology approves the new financial assurance
26 documentation submitted in accordance with paragraph A.3 above. Upon Ecology's

1 approval of the new financial assurance documentation, Defendant's financial
2 assurance obligations under the terms of Agreed Order No. DE 2551 will no longer
3 be applicable, except for the obligation to provide financial assurance for the deep
4 aquifer investigation required under Section VII.2 of the Agreed Order. If Ecology
5 does not issue a decision on the new financial assurance documentation within ninety
6 (90) days of submission, either Party may declare that a dispute exists and pursue
7 dispute resolution pursuant to this Decree on the subject of Ecology's inaction.

8 5. If Defendant elects to use the financial test or corporate guarantee
9 mechanism to fulfill its financial assurance obligation, Defendant will submit annual
10 updated financial assurance documentation within ninety (90) days after the close of
11 Defendant's fiscal year. If Defendant elects to use any method other than the
12 financial test or corporate guarantee, the date that final original financial assurance
13 documentation is received by Ecology's financial assurance officer will be the new
14 "financial assurance anniversary date."

15 B. Defendant shall adjust the financial assurance coverage and provide Ecology's
16 Project Coordinator and Ecology's financial assurance officer with documentation of the
17 updated financial assurance for:

18 1. Inflation, annually, within thirty (30) days of the financial assurance
19 anniversary date, as defined in paragraph A.5 above; and

20 2. Changes in cost estimates which shall be submitted to Ecology within
21 thirty (30) days of Ecology's approval of an amendment to the Cleanup Action Plan
22 (Exhibit A) that results in changes to the cost or expected duration of the Remedial
23 Action under this Decree. Within one hundred twenty (120) days of Ecology's
24 approval of the change in cost estimate, Defendant shall adjust the financial assurance
25 coverage and provide Ecology's project manager and Ecology's financial assurance
26 officer with documentation of the updated financial assurance. This submission of

1 updated financial assurance shall not change either the Defendant's financial
2 test/corporate guarantee due date nor the financial assurance anniversary date, as
3 applicable.

4 C. Defendant shall notify Ecology's project manager and Ecology's financial
5 assurance officer by certified mail of the commencement of a voluntary or involuntary
6 bankruptcy proceeding under Title 7 or Title 11, United States Code, naming Defendant as
7 debtor, within ten (10) days after commencement of the proceeding. A guarantor of a
8 corporate guarantee must make such a notification if he is named as debtor as required under
9 the terms of the corporate guarantee.

10 D. Once Defendant has established financial assurance with an acceptable
11 mechanism as mentioned above, Defendant will be deemed to be without the required
12 financial assurance:

13 1. In the event of bankruptcy of the trustee or issuing institution; or

14 2. If the authority of the trustee institution to act as trustee has been
15 suspended or revoked; or

16 3. If the authority of the institution issuing the surety bond, letter or
17 credit, or insurance policy has been suspended or revoked.

18 In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the
19 trustee institution to act as a trustee, Defendant must establish financial assurance pursuant to
20 this Section within one hundred twenty (120) days after such an event.

21 Ecology's financial assurance officer is:

22 Kimberly Goetz
23 Department of Ecology
24 Hazardous Waste and Toxics Reduction Program
25 P.O. Box 47600
26 Olympia, Washington 98504-7600
Telephone: (360) 407-6754
FAX: (360) 407-6715
E-mail: kgoe461ecy.wa.gov

1 **XXII. INDEMNIFICATION**

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

10 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

11 A. All actions carried out by Defendant pursuant to this Decree shall be done in
12 accordance with all applicable federal, state, and local requirements, including requirements
13 to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
14 federal, state, or local requirements that the agency has determined are applicable and that
15 are known at the time of entry of this Decree have been identified in the CAP (Exhibit A).

16 B. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural
17 requirements of Chapters 70.94, 70.95, 77.55, 90.48, and 90.58 RCW and of any laws
18 requiring or authorizing local government permits or approvals. However, Defendant shall
19 comply with the substantive requirements of such permits or approvals. The exempt permits
20 or approvals and the applicable substantive requirements of those permits or approvals, as
21 they are known at the time of entry of this Decree, have been identified in the CAP
22 (Exhibit A).

23 Defendant has a continuing obligation to determine whether additional permits or
24 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the Remedial
25 Action under this Decree. In the event either Ecology or Defendant determines that
26 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be

1 required for the Remedial Action under this Decree, it shall promptly notify the other party
2 of this determination. Ecology shall determine whether Ecology or Defendant shall be
3 responsible to contact the appropriate state and/or local agencies. If Ecology so requires,
4 Defendant shall promptly consult with the appropriate state and/or local agencies and provide
5 Ecology with written documentation from those agencies of the substantive requirements
6 those agencies believe are applicable to the Remedial Action. Ecology shall make the final
7 determination on the additional substantive requirements that must be met by Defendant and
8 on how Defendant must meet those requirements. Ecology shall inform Defendant in writing
9 of these requirements. Once established by Ecology, the additional requirements shall be
10 enforceable requirements of this Decree. Defendant shall not begin or continue the Remedial
11 Action potentially subject to the additional requirements until Ecology makes its final
12 determination.

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

19 **XXIV. REMEDIAL ACTION COSTS**

20 Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
21 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
22 or its contractors for, or on, the Property under Chapter 70.105D RCW, including Remedial
23 Actions and Decree preparation, negotiation, oversight, and administration. Ecology's costs
24 shall include costs of direct activities and support costs of direct activities as defined in WAC
25 173-340-550(2). Defendant shall pay the required amount within ninety (90) days of
26 receiving from Ecology an itemized statement of costs that includes a summary of costs

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

7 Department of Ecology
8 Cashiering Unit
9 P.O. Box 47611
10 Olympia, WA 98504-7611

11 Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed
12 Remedial Action costs by filing a lien against real property subject to the Remedial Actions.

13 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

14 If Ecology determines that Defendant has failed without good cause to implement the
15 Remedial Action, in whole or in part, Ecology may, after notice to Defendant, perform any
16 or all portions of the Remedial Action that remain incomplete. If Ecology performs all or
17 portions of the Remedial Action because of Defendant's failure to comply with its
18 obligations under this Decree, Defendant shall reimburse Ecology for the costs of doing such
19 work in accordance with Section XXIV (Remedial Action Costs), provided that Defendant is
20 not obligated under this Section to reimburse Ecology for costs incurred for work
21 inconsistent with or beyond the scope of this Decree.

22 Except where necessary to abate an emergency situation, Defendant shall not perform
23 any Remedial Actions at the Property outside those Remedial Actions required by this
24 Decree or Agreed Order No. DE 2551, unless Ecology concurs, in writing, with such
25 additional Remedial Actions pursuant to Section XV (Amendment of Decree).
26

1 **XXVI. PERIODIC REVIEW**

2 As Remedial Action, including groundwater monitoring, continues at the Property,
3 the Parties agree to review the progress of Remedial Action at the Property, and to review the
4 data accumulated as a result of monitoring the Property as often as is necessary and
5 appropriate under the circumstances. At least every five (5) years after the initiation of
6 cleanup action at the Property the Parties shall meet to discuss the status of the Property and
7 the need, if any, for further Remedial Action at the Property. At least ninety (90) days prior
8 to each periodic review, Defendant shall submit a report to Ecology that documents whether
9 human health and the environment are being protected based on the factors set forth in WAC
10 173-340-420(4). Ecology reserves the right to require further Remedial Action at the
11 Property under the circumstances described in the reopens paragraph of this Decree,
12 Subsection XVIII.B. This provision shall remain in effect for the duration of this Decree.

13 **XXVII. PUBLIC PARTICIPATION**

14 A Public Participation Plan (Exhibit D) is required for this Property. Ecology shall
15 review any existing Public Participation Plan to determine its continued appropriateness and
16 whether it requires amendment, or if no plan exists, Ecology shall develop a Public
17 Participation Plan alone or in conjunction with Defendant.

18 Ecology shall maintain the responsibility for public participation at the Property.
19 However, Defendant shall cooperate with Ecology, and shall:

20 A. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of
21 public notices and fact sheets at important stages of the Remedial Action, such as the
22 submission of work plans, remedial investigation/feasibility study reports, cleanup action
23 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
24 distribute such fact sheets and prepare and distribute public notices of Ecology's
25 presentations and meetings.
26

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

9 C. When requested by Ecology, participate in public presentations on the
10 progress of the Remedial Action at the Property. Participation may be through attendance at
11 public meetings to assist in answering questions, or as a presenter.

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

- 14 1. Kent Regional Library
15 212 2nd Avenue North
16 Kent, Washington 98032
- 17 2. Department of Ecology
18 Northwest Regional Office
19 3190 160th Avenue SE
20 Bellevue, Washington 98008-5452

21 At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured
22 monitoring data; Remedial Actions plans and reports, supplemental remedial planning
23 documents, and all other similar documents relating to performance of the Remedial Action
24 required by this Decree shall be promptly placed in these repositories.

25 **XXVIII. DURATION OF DECREE**

26 The remedial program required pursuant to this Decree shall be maintained and
continued until Defendant has received written notification from Ecology that the
requirements of this Decree have been satisfactorily completed. Defendant may request such

1 determination at any time, and Ecology shall issue its written notification of its determination
2 within sixty (60) days after receipt of such request. This Decree shall remain in effect until
3 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section
4 XIX (Contribution Protection) shall survive.

5 **XXIX. CLAIMS AGAINST THE STATE**

6 Defendant hereby agrees that it will not seek to recover any costs accrued in
7 implementing the Remedial Action required by this Decree from the State of Washington or
8 any of its agencies; and further, that Defendant will make no claim against the State Toxics
9 Control Account or any local Toxics Control Account for any costs incurred in implementing
10 this Decree. Except as provided above, however, Defendant expressly reserves its right to
11 seek to recover any costs incurred in implementing this Decree from any other person or
12 entity. This Section does not limit or address funding that may be provided under Chapter
13 173-322 WAC.

14 **XXX. EFFECTIVE DATE**

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

16 **XXXI. WITHDRAWAL OF CONSENT**

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

21 **XXXII. PRIOR AGREEMENTS**

22 Entry of this Decree by the Court will satisfy and replace Defendant's obligations
23 under Agreed Order No. DE 2551, with the exception of: (1) initiating and completing a
24 Deep Aquifer Investigation as provided under Section VII.2 of the Agreed Order; and (2) the
25 payment of any outstanding costs under the Agreed Order. The terms and conditions of
26

1 Agreed Order No. DE 2551 will continue in force with respect to these two obligations,
2 except where inconsistent with the terms and conditions of this Decree.

3 STATE OF WASHINGTON
4 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

5 _____
6 Darin Rice, Program Manager
7 Hazardous Waste & Toxics Reduction
Program
(360) 407-6702

Andrew A. Fitz, WSBA #22169
Assistant Attorney General
(360) 586-6752

8 Date: _____

Date: _____

9
10 B.S.B. DIVERSIFIED COMPANY, INC.

11 _____
12 John FitzSimons
13 Vice President
(212) 885-1651

14 Date: _____

15
16 ENTERED this ____ day of _____ 20____.

17
18 _____
19 JUDGE
20 King County Superior Court
21
22
23
24
25
26