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PIERCE COUNTY, WASHINGTON
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BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

DONALD E. OLIVE, RONALD S. OLIVE,
and JUDY D. JOHNSON.

Defendants.

NO. 97 2 09719 9

CONSENT DECREE

Table of Contents

		<u>Page</u>
I.	INTRODUCTION	3
II.	JURISDICTION	4
III.	PARTIES BOUND	5
IV.	DEFINITIONS	5
V.	STATEMENT OF FACTS	6
VI.	WORK TO BE PERFORMED	8
VII.	DESIGNATED PROJECT COORDINATORS	9
VIII.	PERFORMANCE	10
IX.	ACCESS	10
X.	SAMPLING, DATA REPORTING, AND AVAILABILITY	11
XI.	PROGRESS REPORTS	11
XII.	RETENTION OF RECORDS	12
XIII.	TRANSFER OF INTEREST IN PROPERTY	12
XIV.	RESOLUTION OF DISPUTES	13
XV.	AMENDMENT OF CONSENT DECREE	14
XVI.	EXTENSION OF SCHEDULE	14
XVII.	ENDANGERMENT	16
XVIII.	COVENANT NOT TO SUE	17
XIX.	INDEMNIFICATION	18
XX.	COMPLIANCE WITH APPLICABLE LAWS	18
XXI.	REMEDIAL AND INVESTIGATIVE COSTS	20
XXII.	IMPLEMENTATION OF REMEDIAL ACTION	20

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2
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4
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XXIII.	PUBLIC PARTICIPATION	21
XXIV.	DURATION OF DECREE	22
XXV.	CLAIMS AGAINST THE STATE	22
XXVI.	EFFECTIVE DATE	22
XXVII.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT	22
	Exhibit A - Vicinity and Site Maps	
	Exhibit B - Cleanup Action Plan	
	Exhibit C - Schedule	
	Exhibit D - Site Characterization Data	
	Exhibit E - Substantive Requirements for Complying with State and Local Permits	
	Exhibit F - Restrictive Covenant	

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Donald E. Oline, Judy D. Johnson, and Ronald S. Oline (Defendants) is to provide for remedial action at a facility where there has been a release of hazardous substances. This Decree requires the Defendant to undertake the remedial actions described in the Cleanup Action Plan attached to this Decree as Exhibit B. Ecology has determined that these actions are necessary to protect public health and the environment.

B. 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.

C. In signing this Decree, Defendants agree to its entry and agree to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the complaint. The parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree. Except as otherwise provided in this Decree, in signing this Decree, Defendant denies any and all legal and equitable liability and reserves all defenses under any federal, state, local or tribal statute, regulation or common law for any claim, endangerment,

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2 nuisance, response, removal, remedial or other costs or damages incurred or to be incurred by
3 the United States, the State, or other entities or persons or any natural resource damages as a
4 result of the release or threat of release of hazardous substances to, at, from or near the Site.
5 Entry of this Decree is not an acknowledgment by Defendant that any release or threatened
6 release of a hazardous substance constituting an imminent and substantial endangerment to
7 human health or the environment has occurred or exists at the Site. Defendant does not admit
8 and retains the right to controvert any of the factual or legal statements or determinations made
9 herein in any judicial or administrative proceeding except in an action to enforce this Decree.
10 Defendant does agree, however, to the Court's jurisdiction over this matter. This Decree shall
11 not be admissible in any judicial or administrative proceeding against Defendant, over his
12 objection, as proof of liability or an admission of any fact dealt with herein, but it shall be
13 admissible in an action to enforce this Decree.

14 F. The Court is fully advised of the reasons for entry of this Decree, and good cause
15 having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS
16 FOLLOWS:

17 II. JURISDICTION

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

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

25 C. Ecology has determined that a release of hazardous substances has occurred at
26 the site that is the subject of this Decree.

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2 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15), of
3 Ecology's determination that the Defendant is a potentially liable person for the site and that
4 there has been a release of hazardous substances at the site.

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

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

9
10 **III. PARTIES BOUND**

11 This Decree shall apply to and be binding upon the signatories to this Decree (parties),
12 their successors and assigns. The undersigned representative of each party hereby certifies that
13 he or she is fully authorized to enter into this Decree and to execute and legally bind such party
14 to comply with the Decree. Defendants agree to undertake all actions required by the terms and
15 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change
16 in ownership shall alter the responsibility of Defendant under this Decree. Defendants shall
17 provide a copy of this Decree to all agents, contractors and subcontractors retained to perform
18 work required by this Decree and shall ensure that all work undertaken by such contractors and
19 subcontractors will be in compliance with this Decree.

20 **IV. DEFINITIONS**

21 A. Except as specified herein, all definitions in WAC 173-340-200 apply to the
22 terms in this Decree.

23 B. Site: The site, referred to as the Don Oline/Marine View Drive Autofluff Site, is
24 located at 2120 Marine View Drive, Tacoma, Washington. The site is more particularly
25 described in Exhibit A to this Decree which is a detailed site diagram.

26 C. Parties: Refers to the Washington State Department of Ecology and Donald E.
Oline, Ronald S. Oline, and Judy D. Johnson.

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D. Defendant: Refers to Donald E. Oline, Ronald S. Oline, and Judy D. Johnson

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

V. STATEMENT OF FACTS

Ecology makes the following findings of fact without any admission of such facts by Donald E. Oline:

- 1. Ronald S. Oline and Judy D. Johnson are "owners" as defined at RCW 70.105D.020(11) of a "facility" as defined in 70.105D.020(4).
- 2. Donald E. Oline (Mr. Oline) is an "operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).
- 3. The facility is known as the Don Oline/Marine View Drive "Autofluff" site and is located at 2120 Marine View Drive, Tacoma, Washington. (The site is more particularly described in Exhibit A, which is a site diagram).
- 4. The Site is located within the boundaries of the Commencement Bay Nearshore/Tideflats ("CBN/T") Superfund site. The Department of Ecology ("Ecology") and the U.S. Environmental Protection Agency ("EPA") have completed the CBN/T remedial investigation (August 1985) and the feasibility study (February 1989). The remedial actions for contaminated sediments and upland source control within the CBN/T site are documented in a Record of Decision, which was signed on September 30, 1989 ("CBN/T ROD"). The 2120 Marine View Drive site is located within the drainage basin of, and is adjacent to, the Head of Hylebos Waterway Problem Area in the CBN/T site. The Record of Decision designated certain "problem chemicals" for the Head of Hylebos Problem Area. These are chemicals which were found to be present in the sediments at toxic concentrations.

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3 5. The "problem chemicals" PCBs, zinc, copper, lead, nickel, cadmium and mercury
4 have been detected at the site at concentrations above the CBN/T sediment quality objectives.
5 A fill material consisting of "automobile shredder residue" (ASR) is present on the site. ASR is
6 a by-product of the metal recycling industry, and consists of ground up non-recyclable parts of
7 cars or other equipment that is processed through the hammermill. Cadmium, lead, mercury,
8 and total PCBs exceed MTCA Method A industrial soil cleanup levels. See Exhibit D, Table 1.

9 6. A site investigation was conducted at the site. The report of this investigation is
10 entitled "Oline/Mather Auctioneers Site Preliminary Investigation", dated January 26, 1995. The
11 investigation concluded that the site contains approximately 1,230 cubic yards of ASR on the
12 uplands, covering an area of about .25 acre at an average of three feet thick. The thickness of
13 ASR varied from trace levels to 6.5'. The ASR is covered with between 1/2 foot to several feet
14 of soils. The investigation further concluded that the ASR is present in the intertidal area over
15 an area of about .11 acre at a depth of approximately 2-6 inches. In one of the intertidal
16 borings, the ASR layer was found below 2.5 feet of sediments. The estimated total volume of
17 ASR in the tidelands is 90 cubic yards. Contaminated sediments associated with the ASR may
18 exceed the estimated 90 cubic yards ASR in the intertidal region. ASR was detected in twenty
19 four of thirty four test pits on the uplands of the site. Test pits revealed a gray clayey silt layer
20 at the base of the ASR. Two monitoring wells were installed to depths of 7' (upgradient) and
21 10.5 feet (downgradient). Wells were drilled to a depth where they intersected with the
22 confining silt/clay layer, but did not penetrate that layer. Two attempts were made to install a
23 third well, but neither boring encountered groundwater above the clay layer. The borings
24 installed for the investigation found that groundwater above the silt layer is encountered
25 sporadically at the site (in November, 1994). ASR from three upland test pits and four tidal test
26 holes was sampled for the investigation. Additionally, soils below the ASR were sampled, as
was groundwater in the two monitoring wells. Samples of the upland ASR fill exceeded MTCA

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Method A cleanup levels for industrial soil for cadmium, lead, mercury and PCBs. This study also revealed that ASR and bank soils in contact with the Hylebos Waterway exceeded the CERCLA Commencement Bay Nearshore/Tideflats Sediment Quality Objectives (SQO) for cadmium, copper lead, mercury, zinc and PCBs. This material is in direct contact with the Hylebos Waterway and is subject to erosion from tidal action, infiltration of rainwater, and infiltration of tidal waters which may carry contaminants into the waterway. Intertidal samples exceeded SQOs for cadmium, copper, lead, mercury, zinc and PCBs. Samples of upland soils below the ASR did not exceed MTCA cleanup levels, and do not appear to be contaminated from the ASR. Unfiltered groundwater on the site is contaminated at concentrations exceeding Marine Chronic and Acute Water Quality Criteria where it is in contact with the ASR.

7. Upland ASR was tested for TCLP metals to determine if the waste is considered "dangerous waste" under the state Dangerous Waste Regulations, Chapter 173-303 WAC. The waste did not designate as dangerous waste under the TCLP testing procedure for cadmium or lead. Results of samples from the site investigation are summarized on Tables 1-4, attached hereto in Exhibit D.

8. Additional intertidal sampling of sediments at this site was recently conducted by the Hylebos Cleanup Committee. This data is reported in "Hylebos Waterway Pre-remedial Design Program - Event 1A and 1B Data Report, Revised Draft" dated December 21, 1995. Two composited intertidal sediment samples were analyzed and exceedences of SQOs were observed for the contaminants summarized on Table 5, attached hereto in Exhibit D.

VI. WORK TO BE PERFORMED

A. This Decree contains a program designed to protect public health, welfare and the environment from the known release of hazardous substances or contaminants at, on, or from the site.

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B. Based on the foregoing Facts and Determinations, Mr. Oline will implement the Cleanup Action Plan attached to this Decree as Exhibit B, and will do so in accordance with the Schedule attached to this Decree as Exhibit C.

C. Defendant agrees not to perform any remedial actions beyond the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Decree shall be done in accordance with ch. 173-340 WAC unless otherwise provided herein.

D. If industrial cleanup standards are used Defendant shall record the restrictive covenant shown in Exhibit F with the Pierce County Auditor's Office within 30 days of the date on which the cleanup action is completed, and shall provide Ecology with proof of such recording.

VII. DESIGNATED PROJECT COORDINATORS

A. The project coordinator for Ecology is:

Russell McMillan
Washington State Department of Ecology
Southwest Regional Office
Post Office Box 47775
Olympia, WA 98504-7775
Telephone (360) 407-6254

B. The project coordinator for Defendant is:

Tom Morin
Kennedy/Jenks Consultants
530 South 336th St.
Federal Way, WA 98003
Telephone (260) 874-0555

C. Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the site. To the maximum extent possible, communications between Ecology and the Defendant

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and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

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

VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Any construction work must be under the supervision of a professional engineer. Construction work includes excavation. Defendant shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the site.

IX. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by the Defendant. All parties with

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access to the site pursuant to this paragraph shall comply with approved health and safety plans.

X. SAMPLING, DATA REPORTING, AND AVAILABILITY

A. With respect to the implementation of this Decree, Defendant shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology and shall submit these results in accordance with Section XI of this Decree.

B. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Appendix E: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology in accordance with Section XI of this Decree.

C. If requested by Ecology, Defendant shall allow Ecology and/or its authorized representatives to take splits or duplicates of any samples collected by Defendant pursuant to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of any sample collection or work activity at the site. Ecology shall, upon request, allow split or duplicate samples to be taken by Defendant or its authorized representatives of any samples collected by Ecology pursuant to the implementation of this Decree provided it does not interfere with the Department's sampling. Without limitation on Ecology's rights under Section IX, Ecology shall endeavor to notify Defendant prior to any sample collection activity.

XI. PROGRESS REPORTS

A. Defendant shall submit to Ecology written monthly progress reports that describe the actions taken during the previous month to implement the requirements of this Decree. The progress shall include the following:

- (1) A list of on-site activities that have taken place during the month;
- (2) Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;

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2 (3) Description of all deviations from the schedule (Exhibit C) during the
3 current month and any planned deviations in the upcoming month;

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

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

8 (6) A list of deliverables for the upcoming month if different from the schedule.

9 B. All progress reports shall be submitted by the tenth day of the month in which
10 they are due after the effective date of this Decree. Unless otherwise specified, progress reports
11 and any other documents submitted pursuant to this Decree shall be sent by certified mail, return
12 receipt requested, to Ecology's project coordinator.

13 XII. RETENTION OF RECORDS

14 Defendant shall preserve, during the pendency of this Decree and for ten (10) years from
15 the date this Decree is no longer in effect as provided in Section XXIV, all records, reports,
16 documents, and underlying data in its possession relevant to the implementation of this Decree
17 and shall insert in contracts with project contractors and subcontractors a similar record
18 retention requirement. Upon request of Ecology, Defendant shall make all non-archived records
19 available to Ecology and allow access for review. All archived records shall be made available
20 to Ecology within a reasonable period of time.

21 XIII. TRANSFER OF INTEREST IN PROPERTY

22 A. Prior to any voluntary or involuntary conveyance or relinquishment of title,
23 easement, leasehold, or other interest in any portion of the site, Defendant shall provide for
24 continued operation and maintenance of any containment system, treatment system, and
25 monitoring system installed or implemented pursuant to this Decree.

26 B. Prior to transfer of any legal or equitable interest in all or any portion of the

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2 property, and during the effective period of this Decree, Defendant shall serve a copy of this
3 Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in
4 interest of the property; and, at least thirty (30) days prior to any transfer, Defendant shall notify
5 Ecology of said contemplated transfer.

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7 XIV. RESOLUTION OF DISPUTES

8 A. In the event a dispute arises as to an approval, disapproval, proposed
9 modification or other decision or action by Ecology's project coordinator, the parties shall utilize
10 the dispute resolution procedure set forth below.

11 (1) Upon receipt of the Ecology project coordinator's decision, the Defendant
12 has fourteen (14) days within which to notify Ecology's project coordinator of its objection to
13 the decision.

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

17 (3) Defendant may then request Ecology management review of the decision.
18 This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven
19 (7) days of receipt of Ecology's project coordinator's decision.

20 (4) Ecology's Program Manager shall conduct a review of the dispute and shall
21 issue a written decision regarding the dispute within thirty (30) days of the Defendant's request
22 for review. The Program Manager's decision shall be Ecology's final decision on the disputed
23 matter.

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

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

4 C. The parties agree to utilize the dispute resolution process only in good faith and
5 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

6 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
7 the other party may seek sanctions.

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

11 XV. AMENDMENT OF CONSENT DECREE

12 This Decree may be amended only by a written stipulation among the parties to this Decree that
13 is entered by the Court, or by order of the Court. Such amendment shall become effective upon
14 entry by the Court. Agreement to amend shall not be unreasonably withheld by any party to the
15 Decree. Defendant shall submit any request for an amendment to Ecology for approval.
16 Ecology shall indicate its approval or disapproval in a timely manner after the request for
17 amendment is received. If the amendment to the Decree is substantial, Ecology will provide
18 public notice and opportunity for comment. Reasons for the disapproval shall be stated in
19 writing. If Ecology does not agree to any proposed amendment, the disagreement may be
20 addressed through the dispute resolution procedures described in Section XIV of this Decree.

21 XVI. EXTENSION OF SCHEDULE

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

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2 B. An extension shall be granted only for such period of time as Ecology determines
3 is reasonable under the circumstances. A requested extension shall not be effective until
4 approved by Ecology or the Court. Ecology shall act upon any written request for extension in
5 a timely fashion. It shall not be necessary to formally amend this Decree pursuant to Section
6 XV when a schedule extension is granted.

7 C. The burden shall be on the Defendant to demonstrate to the satisfaction of
8 Ecology that the request for such extension has been submitted in a timely fashion and that good
9 cause exists for granting the extension. Good cause includes, but is not limited to, the
10 following.

11 (1) Circumstances beyond the reasonable control and despite the due diligence of
12 Defendant including delays caused by unrelated third parties or Ecology, such as (but not limited
13 to) delays by Ecology in reviewing, approving, or modifying documents submitted by
14 Defendant; or

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

17 (3) Endangerment as described in Section XVII.

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

21 D. Ecology may extend the schedule for a period not to exceed ninety (90) days,
22 except where an extension is needed as a result of:

23 (1) Delays in the issuance of a necessary permit that was applied for in a timely
24 manner;

25 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

26 (3) Endangerment as described in Section XVI.

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E. Ecology shall give Defendant written notice in a timely fashion of any extensions granted pursuant to this Decree.

XVII. ENDANGERMENT

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

B. In the event Defendant determines that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the site or in the surrounding area or to the environment, Defendant may stop implementation of this Decree for such period of time necessary for Ecology to evaluate the situation and determine whether Defendant should proceed with implementation of the Decree or whether the work stoppage should be continued until the danger is abated. Defendant shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology disagrees with the Defendant's determination, it may order Defendant to resume implementation of this Decree. If Ecology concurs with the work stoppage, the Defendant's obligations shall be suspended and the time period for performance of that work, as

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well as the time period for any other work dependent upon the work that was stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved through the dispute resolution procedures in Section XIV.

XVIII. COVENANT NOT TO SUE

A. In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all administrative, legal, and equitable remedies and enforcement actions available to Ecology against Defendant for the release of known or suspected hazardous substances covered by the terms of this Decree.

B. This covenant is strictly limited in its application to that portion of the Site at which remedial action is conducted pursuant to this Decree, and to those hazardous substances resulting from ASR that Ecology knows or suspects to be located at such portion of the Site as of the date of entry of this Decree. This covenant is not applicable to any hazardous substance from other sources or in other areas and Ecology retains all of its authority relative to such substances and areas.

C. In the following circumstances Ecology may exercise its full legal authority to address the release of hazardous substances at the Site notwithstanding the Covenant Not to Sue set forth above:

- (1) If Defendant fails to comply with the terms and conditions of this Decree, including all exhibits, and, after written notice of noncompliance, fails to come into compliance immediately;
- (2) If factors not known at the time of entry of this Decree, including factors listed in WAC 173-340-420(2), are discovered and Ecology determines, in light of these factors, that further remedial action is necessary to

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protect human health or the environment, and Defendant, after notice, fails to take the necessary action within a reasonable time; or

- (3) If conditions at the Site cause an endangerment to human health or the environment under Section XVI of this Consent Decree, and Defendant, after notice, fails to eliminate the endangerment within a reasonable time.

D. The Covenant Not to Sue set forth above shall have no applicability whatsoever to:

- (4) Criminal liability;
- (5) Liability for damages to natural resources;
- (6) Any Ecology action against potentially liable persons not a party to this Decree.

XIX. INDEMNIFICATION

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

XX. COMPLIANCE WITH APPLICABLE LAWS

A. All actions carried out by Defendant(s) pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

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2 B. Pursuant to RCW 70.105D.090(1), all actions carried out by Defendant pursuant
3 to this Decree are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105,
4 75.20, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or
5 authorizing local government permits or approvals for the remedial action under this Decree.

6 Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94,
7 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local
8 government permits or approvals for the remedial action under this Decree that are known to be
9 applicable at the time of entry of the Decree have been included in Exhibit E, Substantive
10 Requirements for Complying with State and Local Permits, and are binding and enforceable
11 requirements of the Decree.

12 C. Defendant has a continuing obligation to determine whether additional permits or
13 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
14 action under this Decree. In the event either Defendant or Ecology determines that additional
15 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
16 remedial action under this Decree, it shall promptly notify the other party of this determination.
17 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
18 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly
19 consult with the appropriate state and/or local agencies and provide Ecology with written
20 documentation from those agencies of the substantive requirements those agencies believe are
21 applicable to the remedial action. Ecology shall make the final determination on the additional
22 substantive requirements that must be met by Defendant and on how Defendant must meet those
23 requirements. Ecology shall inform Defendant in writing of these requirements. Once
24 established by Ecology, the additional requirements shall be enforceable requirements of this
25 Decree. Defendant shall not begin or continue the remedial action potentially subject to the
26 additional requirements until Ecology makes its final determination.

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2 D. Ecology shall ensure that notice and opportunity for comment is provided to the
3 public and appropriate agencies prior to establishing the substantive requirements under this
4 section.

5 E. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
6 exemption from complying with the procedural requirements of the laws referenced in RCW
7 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for
8 the State to administer any federal law, the exemption shall not apply and the Defendant shall
9 comply with both the procedural and substantive requirements of the laws referenced in RCW
10 70.105D.090(1), including any requirements to obtain permits.

11 XXI. REMEDIAL AND INVESTIGATIVE COSTS

12 The Defendant agrees to pay costs incurred by Ecology in addressing the release of
13 hazardous substances at this Site. These costs shall include work performed by Ecology or its
14 contractors for, or on, the Site under Ch. 70.105D RCW both prior to and subsequent to the
15 issuance of this Decree for investigations, remedial actions, and Decree preparation,
16 negotiations, oversight and administration. Ecology costs shall include costs of direct activities
17 and support costs of direct activities as defined in WAC 173-340-550(2). The Defendant agrees
18 to pay the required amount within ninety (90) days of receiving from Ecology an itemized
19 statement of costs that includes a summary of costs incurred, an identification of involved staff,
20 and the amount of time spent by involved staff members on the project. A general statement of
21 work performed will be provided upon request. Itemized statements shall be prepared quarterly.
22 Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will
23 result in interest charges at the rate of twelve (12) percent per annum.

24 XXII. IMPLEMENTATION OF REMEDIAL ACTION

25 If Ecology determines that Defendant has failed without good cause to implement the remedial
26 action, Ecology may, after notice to Defendant, perform any or all portions of the remedial

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2 action that remain incomplete. If Ecology performs all or portions of the remedial action
3 because of the Defendant's failure to comply with its obligations under this Decree, Defendant
4 shall reimburse Ecology for the costs of doing such work in accordance with Section XXI,
5 provided that Defendant is not obligated under this section to reimburse Ecology for costs
6 incurred for work inconsistent with or beyond the scope of this Decree.

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8 XXIII. PUBLIC PARTICIPATION

9 A. Ecology shall maintain the responsibility for public participation at the site.
10 However, Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

11 B. Prepare drafts of public notices and fact sheets at important stages of the
12 remedial action, such as the submission of work plans, or engineering design reports. Ecology
13 will finalize (including editing if necessary) and distribute such fact sheets and prepare and
14 distribute public notices of Ecology's presentations and meetings;

15 C. Notify Ecology's project coordinator prior to the preparation of all press releases
16 and fact sheets, and before major meetings with the interested public and local governments.
17 Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact
18 sheets, and before major meetings with the interested public and local governments;

19 D. Participate in public presentations on the progress of the remedial action at the
20 site. Participation may be through attendance at public meetings to assist in answering
21 questions, or as a presenter;

22 E. In cooperation with Ecology, arrange and/or continue information repositories to
23 be located at Citizens for a Healthy Bay, 771 Broadway, Tacoma, WA 98402-3700, (253) 383-
24 2429; Tacoma Public Library - Main Branch, Northwest Room, 1102 Tacoma Avenue South,
25 Tacoma, WA 98402-2006, (253) 591-5666; and Ecology's Southwest Regional Office at
26 300 Desmond Drive, Lacey, Washington. At a minimum, copies of all public notices, fact
sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air

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monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

XXIV. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendant has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed.

XXV. CLAIMS AGAINST THE STATE

Defendant hereby agrees that it will not seek to recover any costs incurred in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the Defendant will make no claim against the State Toxics Control Account or any Local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendant expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other person.

XXVI. EFFECTIVE DATE

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

XXVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

A. This Decree has been the subject of public notice and comment under RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more expeditious cleanup of hazardous substances at the site.

B. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without

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

Mary E. Burg 7-28-97 Mark Jobson 7/30/97
MARY BURG Date MARK JOBSON Date
Program Manager Assistant Attorney General
Toxics Cleanup Program WSBA #22171

Donald E. Oline 7-25-97 James V. Handmacher 7/28/97
DONALD E. OLINE Date JAMES V. HANDMACHER Date
Attorney for Donald E. Oline
Ronald S. Oline
Judy D. Johnson
WSBA #08637

Ronald S. Oline 7-27-97
RONALD S. OLINE Date

Judy D. Johnson 7-27-97
JUDY D. JOHNSON Date

DATED this _____ day of _____, 1997.

Mark Gelman
JUDGE / Commissioner Pro Tem
Pierce County Superior Court