

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY

STATE OF WASHINGTON DEPARTMENT OF
ECOLOGY,

Plaintiff,

v.

KITSAP COUNTY, and KITSAP COUNTY
SANITARY LANDFILL, INC., a Washington
corporation

Defendants.

NO. 95 2 03005 1

CONSENT DECREE

RECEIVED FOR FILING
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OCT 4 1995

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ROBERT L. FREUDENSTEIN

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the mutual
3 objective of the Washington State Department of Ecology (Ecology), Kitsap
4 County and Kitsap County Sanitary Landfill, Inc. (Defendants) is to provide
5 for remedial action at a facility where there has been a release of
6 hazardous substances. This Decree requires the Defendants to undertake the
7 following remedial action(s):

- 8 (1) Perform a State Remedial Investigation/Feasibility Study (RI/FS)
9 of the Hansville Landfill pursuant to WAC 173-340-350.

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

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

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

21 D. By entering into this Decree, the Parties do not intend to
22 discharge nonsettling persons or entities from any liability they may have
23 with respect to matters alleged in the Complaint. The Parties retain the
24 right to seek reimbursement, in whole or in part, from any liable persons
25 for sums expended under this Decree.
26

1 E. By signing this Consent Decree, Defendants deny any and all
2 legal and equitable liability under any federal, state, local or tribal
3 statute, regulation, or common law for any endangerment, nuisance, response,
4 removal or remedial costs incurred or to be incurred by the State of
5 Washington, or any other person as a result of the release or threat of
6 release of hazardous substances to, at, from or near the Hansville Landfill.
7 Defendants do not admit, and retain the right to controvert any of the
8 factual or legal statements or determinations made in this Consent Decree or
9 the exhibits to this Decree in any judicial or administrative proceeding,
10 except an action to enforce this Consent Decree. This Consent Decree shall
11 not be admissible in any judicial or administrative proceeding as proof of
12 liability or an admission of any fact dealt with herein, but it shall be
13 admissible in an action to enforce this Consent Decree. This Decree shall
14 not be construed as an admission of liability or any facts; or have any
15 effect in the nature of collateral or equitable estoppel, res judicata,
16 issue preclusion or similar legal doctrine; provided, however, that the
17 Defendants shall not challenge either the jurisdiction of the court or the
18 authority of Ecology in any proceeding to enforce this Decree.

19 II. JURISDICTION

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

23 B. Authority is conferred upon the Washington State Attorney
24 General by RCW 70.105D.040(4)(a) to agree to a settlement with any
25 potentially liable person if, after public notice and hearing, Ecology finds
26 the proposed settlement would lead to a more expeditious cleanup of

1 hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement
2 be entered as a consent decree issued by a court of competent jurisdiction.

3 C. Ecology has determined that a release or threatened release of
4 hazardous substances has occurred at the Site which is the subject of this
5 Decree.

6 D. Ecology has given notice to the Defendants, as set forth in RCW
7 70.105D.020(8), of Ecology's determination that the Defendants are
8 potentially liable persons for the Site and that there has been a release or
9 a threatened release of hazardous substances at the Site. Ecology has not
10 determined that the named defendants are the only entities liable pursuant
11 to RCW 70.105D.040.

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

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

16 III. PARTIES BOUND

17 This Decree shall apply to and be binding upon the signatories to this
18 Decree (Parties), their successors and assigns. Each Defendant's
19 undersigned representative hereby certifies that he or she is fully
20 authorized to enter into this Decree and to execute and legally bind such
21 party to comply with the Decree. Defendants agree to undertake all actions
22 required by the terms and conditions of this Decree and not to contest State
23 jurisdiction regarding this Decree. No change in ownership or corporate
24 status shall alter the responsibility of the Defendants under this Decree.
25 Defendants shall provide a copy of this Decree to all agents, contractors
26 and subcontractors retained to perform work required by this Decree and

1 shall ensure that all work undertaken by such contractors and subcontractors
2 will be in compliance with this Decree.

3 IV. DEFINITIONS

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

6 A. Site: The Site, includes the Facility referred to as Hansville
7 Landfill, and is located at 31645 Hansville Road Northeast, Hansville,
8 Washington 98340. The Site is in the southwest quarter of the northeast
9 quarter of Section 9, Township 27 North, Range 2 East. The Site includes
10 the areas described more particularly in Exhibit A to this Decree which is a
11 detailed site description, and extends vertically and laterally to any area
12 where hazardous substances from the landfill have come to be located.

13 B. Parties: Refers to the Washington State Department of Ecology,
14 Kitsap County Sanitary Landfill, Inc., and Kitsap County.

15 C. Defendants: Refers to Kitsap County Sanitary Landfill, Inc. and
16 Kitsap County.

17 D. Consent Decree or Decree: Refers to this Consent Decree and
18 each of the exhibits to the Decree. All exhibits are integral and
19 enforceable parts of this Consent Decree.

20 V. STATEMENT OF FACTS

21 Ecology makes the following finding of facts without any express or
22 implied admissions by the Defendants.

23 A. Kitsap County owns the property currently known as the Hansville
24 Landfill. Exhibit B contains a map showing the location of the Site.
25
26

1 B. The Facility was actively used as a landfill from 1962 until
2 1989, and it served as a disposal area for mixed municipal solid waste,
3 demolition waste, and septage for the central and northern portions of
4 Kitsap County. A drop box facility has operated at the site from 1989 to
5 the present.

6 C. Kitsap County Sanitary Landfill, Inc. operated the landfill by
7 lease agreement most recently dated August 27, 1979.

8 D. Pacific Sound Resources, formerly known as Wyckoff Company,
9 generated and arranged for the transport and disposal of hazardous
10 substances at the Site from the late 1960's to the early 1970's.

11 E. Hazardous substances were identified at the Site by Parametrix,
12 Inc. in data collected from onsite monitoring wells in 1993. Concentrations
13 of vinyl chloride, 1,1-dichloroethane, and arsenic exceeded WAC 173-200
14 groundwater quality standards. (Hansville Landfill Groundwater, Surface
15 Water, and Landfill Gas Monitoring Program, 1993 Annual Report, Parametrix,
16 Inc., April 1994.) In addition, the following leachate indicator parameters
17 were detected in downgradient monitoring wells at levels that were
18 statistically elevated with respect to water quality in the upgradient
19 monitoring well: barium, iron, manganese, specific conductance, chloride,
20 total organic carbon, chemical oxygen demand, nitrate nitrogen, nitrite
21 nitrogen, sulfate (1993 Annual Monitoring Report, Hansville Landfill, CH2M
22 HILL, Inc., April 1994).

23 F. The Hansville Landfill is located on a 60-acre +/- site adjacent
24 to the eastern property boundary of the Port Gamble S'Klallam Indian
25 Reservation. The primary groundwater flow direction is from the landfill
26

1 toward the Reservation. Potential receptors that may be affected by the
2 release of these hazardous substances include drinking water sources,
3 surface waters, fisheries resources and shellfish production areas.

4 G. Three separate disposal areas have been used at the landfill
5 site. The primary disposal area was a 13-acre municipal landfill in the
6 central portion of the site that accepted municipal solid waste. In the
7 northeastern portion of the site, a 4-acre demolition landfill accepted
8 construction demolition and land clearing waste. Septage waste was disposed
9 of in this area prior to demolition debris. The third disposal area was a
10 1/2-acre septage lagoon located between the two landfills.

11 H. In November 1988, a temporary cover was placed over much of the
12 landfill. By late 1989, passive gas collection systems were installed in
13 both the municipal and demolition landfills and in the adjacent native
14 soils. The gas collection system consisted of a network of slotted pipe
15 connected to flares on the surface. The slotted pipes were placed below the
16 cover material in gravel trenches. By December 1990, a permanent cover had
17 been installed. The cover includes a high density polyethylene (HDPE)
18 geomembrane, HDPE geonet composite, 18 inches of native sand, and 6 inches
19 of topsoil. Covers were placed over each of the three disposal areas. In
20 1991-92, an active gas extraction system was installed. The Bremerton
21 Kitsap County Health District regulated corrective actions, maintenance and
22 monitoring at the landfill by permit between closure and the entry of this
23 decree.

24 I. To monitor leachate migration from the Facility, six monitoring
25 wells (MW-1 through MW-6) were installed. Selected wells have been sampled
26

1 periodically since 1982. Five gas probes (GP-1 through GP-5) were installed
2 to monitor the migration of gases away from the landfill. In addition,
3 three surface water stations were monitored.

4 VI. ECOLOGY DETERMINATION

5 A. Kitsap County is an "owner" as defined in RCW 70.105D.020(6) and
6 RCW 70.105D.040(1)(a) of a "facility" as defined in RCW 70.105D.020(3).

7 B. Kitsap County Sanitary Landfill, Inc. is an "operator" as
8 defined in RCW 70.105D.020(6) and RCW 70.105D.040(1)(a) of a "facility" as
9 defined in RCW 70.105D.020(3).

10 C. Pacific Sound Resources, formerly known as Wyckoff Company, is a
11 "generator" and arranged for the disposal of a hazardous substance as
12 defined in RCW 70.105D.040(1)(c).

13 D. The Facility is known as the Hansville Landfill and is located
14 at 31645 Hansville Road Northeast, Hansville, Washington 98340.

15 E. The substances found in ground water at the facility as
16 described above are "hazardous substances" as defined in RCW 70.105D.020(5)
17 and pose a threat or potential threat to human health and the environment.

18 F. Based on the presence of these hazardous substances at the
19 facility and all factors known to Ecology, there is a release of hazardous
20 substances from the facility, as defined in RCW 70.105D.020 (10).

21 G. By letter dated March 16, 1993, Ecology notified Kitsap County
22 of its status as a "potentially liable person" under RCW 70.105D.040 after
23 notice and opportunity for comment.

1 H. By letter dated March 22, 1993, Ecology notified Kitsap County
2 Sanitary Landfill, Inc. of its status as a "potentially liable person"
3 under RCW 70.105D.040 after notice and opportunity for comment.

4 I. By letter dated May 4, 1993, Ecology notified Pacific Sound
5 Resources of its status as a "potentially liable person" under RCW
6 70.105D.040 after notice and opportunity for comment.

7 J. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may
8 require potentially liable persons to investigate or conduct other remedial
9 actions with respect to the release of hazardous substances, whenever it
10 believes such an action to be in the public interest.

11 K. Based on the foregoing facts, Ecology believes the remedial
12 investigation and feasibility study required by this decree is in the public
13 interest.

14 VII. WORK TO BE PERFORMED

15 This Decree contains a program designed to protect public health,
16 welfare and the environment from the known release, or threatened release,
17 of hazardous substances or contaminants at, on, or from the Site.

18 A. A work plan and schedule for a State Remedial
19 Investigation/Feasibility Study (RI/FS) of the nature and extent of
20 contamination in groundwater, surface water, soil, sediment, and air at the
21 Hansville Landfill Site are attached as Exhibit D and incorporated herein by
22 reference. The RI/FS shall be conducted in accordance with the Work Plan
23 and WAC 173-340-350(5) and (6).

1 B. The RI/FS shall delineate the nature and extent of landfill
2 material and contamination in groundwater, surface water, soil, sediment,
3 and air at the Site.

4 C. The RI/FS shall identify water supply wells within a one (1)
5 mile radius of the Facility. Water supply wells that may potentially be
6 affected by a release from the landfill shall be identified and included in
7 the groundwater/surface water monitoring network.

8 D. All draft and final RI/FS work plans, schedules, technical
9 memoranda and reports sent to Ecology will also be simultaneously submitted
10 to the Port Gamble S'Klallam Tribe and the Bremerton Kitsap County Health
11 District for informational purposes.

12 E. Draft interim reports shall be made available for public review
13 in accordance with the Hansville Landfill Public Participation Plan.
14 Subsequent work plans and the final report shall be subject to public
15 comment and hearings in accordance with the Hansville Landfill Public
16 Participation Plan. Modifications to work plans that Ecology determines are
17 not significant will not be subject to public comment.

18 F. Although a phased approach may be used by the Defendants,
19 Ecology intends the RI/FS investigations to be conducted in a timely and
20 expeditious manner.

21 G. Ecology has consulted with the Bremerton-Kitsap County Health
22 District and has identified substantive requirements of Health District
23 regulations pertaining to this facility. They are attached as Exhibit E to
24 this Decree. Ecology has determined that the Work Plan meets these
25 requirements.

1 H. Defendants will not undertake any remedial actions beyond the
2 scope of this Decree unless the Decree or the attached Work Plan is amended
3 to cover the additional remedial action. All work conducted under this
4 Decree shall be done in accordance with Chapter 173-340 WAC unless otherwise
5 provided herein.

6 I. Ecology will not take enforcement action against the Defendants
7 to require the RI/FS specified in this Decree so long as the Defendants
8 comply with the provisions of this Decree.

9 VIII. DESIGNATED PROJECT COORDINATORS

10 The project coordinator for Ecology is:

11 Name: Brian S. Sato, P.E.

12 Address: Washington State Department of Ecology
13 Toxic Cleanup Program
3190 - 160th Avenue Southeast
Bellevue, WA 98008-5452

14 Telephone: (206) 649-7265

15 FAX: (206) 649-7098

16 The project coordinator for Kitsap County and KCSL is:

17 Name: Thair Jorgenson, P.E.

18 Address: Parametrix
5700 Kitsap Way
19 Bremerton, WA 98312

20 Telephone: (206) 377-0014

21 FAX: (206) 479-5961

22 Each project coordinator shall be responsible for overseeing the
23 implementation of this Decree. The Ecology project coordinator will be
24 Ecology's designated representative at the Site. To the maximum extent
25 possible, communications between Ecology and the Defendants and all
26

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

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

12 IX. PERFORMANCE

13 All work performed pursuant to this Decree shall be under the
14 direction and supervision, as necessary, of a professional engineer or
15 hydrogeologist, or equivalent, with experience and expertise in hazardous
16 waste site investigation and cleanup. Any construction work must be under
17 the supervision of qualified personnel. Defendants shall notify Ecology in
18 writing as to the identity of such engineer(s) or hydrogeologist(s), or
19 others and of any contractors and subcontractors to be used in carrying out
20 the terms of this Decree, in advance of their involvement at the Site.

21 X. ACCESS

22 Ecology or any Ecology authorized representatives shall have the
23 authority to enter and freely move about all property at the Facility at all
24 reasonable times for the purposes of, inter alia: inspecting records,
25 operation logs, and contracts related to the work being performed pursuant
26

1 to this Decree; reviewing progress of the Defendants in carrying out the
2 terms of this Decree; conducting such tests or collecting such samples as
3 Ecology may deem necessary; using a camera, sound recording, or other
4 documentary type equipment to record work done pursuant to this Decree; and
5 verifying the data submitted to Ecology by the Defendant. Ecology shall
6 provide the parties twenty four (24) hours notice of its intent to enter the
7 property except under emergency conditions. All parties with access to the
8 Facility pursuant to this paragraph shall comply with approved health and
9 safety plans. Defendants shall use their best efforts to obtain access
10 agreement or easements to any other property to which access is necessary
11 for the purposes of accomplishing the requirements of this Decree. If
12 Defendants are unable, after exercising best efforts, to obtain access
13 agreements or easements, they shall notify Ecology within a reasonable
14 period of time. Ecology agrees to use its best efforts, consistent with its
15 authority, to assist Defendants in obtaining access agreements or easements.

16 **XI. SAMPLING, DATA REPORTING, AND AVAILABILITY**

17 With respect to the implementation of this Decree, Defendants shall
18 validate the results of all sampling, laboratory reports, and/or test
19 results generated by them, or on their behalf, and make the results
20 available to Ecology, the Port Gamble S'Klallam Tribe, and the Bremerton-
21 Kitsap County Health District and shall submit these results in accordance
22 with Section XII of this Decree.

1 All validated field and laboratory data shall be submitted on computer
2 disk where applicable. Data submitted on computer disk shall be compatible
3 with Ecology data import requirements for the computer software Microsoft
4 Excel 4.0. A hard copy of data submitted on computer disk also shall be
5 submitted. If requested by Ecology, Defendants shall allow split or
6 duplicate samples to be taken by Ecology and/or its authorized
7 representatives of any samples collected by Defendants pursuant to the
8 implementation of this Decree. Defendants shall notify Ecology seven (7)
9 days in advance of any sample collection or work activity at the Site.
10 Ecology shall, upon request, allow split or duplicate samples to be taken by
11 Defendants or their authorized representatives of any samples collected by
12 Ecology pursuant to the implementation of this Decree provided it does not
13 interfere with the Department's sampling. Without limitation on Ecology's
14 rights under Section X, Ecology shall endeavor to notify Defendants seven
15 (7) days prior to any sample collection activity.

16 XII. PROGRESS REPORTS

17 Defendants shall submit to Ecology written monthly progress reports
18 which describe the actions taken during the previous month to implement the
19 requirements of this Decree. The progress shall include the following:

- 20 A. A list of on-site activities that have taken place during the
21 month;
22 B. Detailed description of any deviations from required tasks not
23 otherwise documented in project plans or amendment requests;
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1 C. Description of all deviations from the schedule during the
2 current month and any planned deviations in the upcoming month;

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

5 E. All validated data (including laboratory analysis) received by
6 the Defendants during the past month and an identification of the source of
7 the samples; and

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

10 All progress reports shall be submitted by the fifteenth day of the
11 month in which they are due after the effective date of this Decree. Unless
12 otherwise specified, progress reports and any other documents submitted
13 pursuant to this Decree shall be sent to Ecology's project coordinator.
14 Defendants shall simultaneously provide a copy of such progress reports to
15 the contact personnel for the Port Gamble S'Klallam Tribe and the Bremerton-
16 Kitsap County Health District for informational purposes.

17 The contact person for the Port Gamble S'Klallam Tribe is:

18 Name: Jay Watson

19 Address: Port Gamble S'Klallam Tribe
20 31912 Little Boston Rd. N.E.
Kingston, WA 98346

21 Telephone: (206) 297-2646
22 FAX: (206) 297-7097

1 The contact person for the Bremerton-Kitsap County Health District is:

2 Name: Keith Grellner

3 Address: 109 Austin Drive
4 Bremerton WA 958312

5 Phone: (206) 478-5235

6 FAX: (206) 478-5298

7 XIII. RETENTION OF RECORDS

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

17 XIV. RESOLUTION OF DISPUTES

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

22 (1) Upon receipt of the Ecology project coordinator's written
23 decision, Defendants have fourteen (14) days within which to notify
24

1 Ecology's project coordinator of their objection to the decision, and mail
2 copies to the Tribe and BKCHD contact personnel for their information.

3 (2) The Parties' project coordinators shall then confer in an effort
4 to resolve the dispute. If the project coordinators cannot resolve the
5 dispute within fourteen (14) days, Ecology's project coordinator shall issue
6 a written decision with copies to the Port Gamble S'Klallam Tribe and BKCHD
7 contact personnel.

8 (3) Defendants may then request Ecology management review of the
9 decision. This request shall be submitted in writing to the Toxics Cleanup
10 Program Manager within seven (7) days of receipt of Ecology's project
11 coordinator's written decision, with a copy of the request to the Port
12 Gamble S'Klallam Tribe and BKCHD contact personnel for their information.

13 (4) Ecology's Program Manager shall conduct a review of the dispute
14 and shall issue a written decision regarding the dispute within fourteen
15 (14) days of the Defendant's request for review. The Program Manager's
16 decision shall be Ecology's final decision on the disputed matter.

17 (5) If Ecology's final written decision is unacceptable to either
18 Defendant, either Defendant has the right to submit the dispute to the Court
19 for resolution. The Parties agree that one judge should retain jurisdiction
20 over this case and shall, as necessary, resolve any dispute arising under
21 this Decree. In the event either Defendant presents an issue to the Court
22 for review, the Court shall review the action or decision of Ecology on the
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1 basis of whether such action or decision was arbitrary and capricious and
2 render a decision based on such standard of review.

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

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

11 XV. AMENDMENT OF CONSENT DECREE

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

17 Defendants shall submit any request for an amendment to Ecology for
18 approval. Ecology shall indicate its approval or disapproval in a timely
19 manner after the request for amendment is received. If the amendment to the
20 Decree is substantial, Ecology will provide public notice and opportunity
21 for comment to commence with filing the motion for approval of the proposed
22 amendment with the court. Reasons for the disapproval shall be stated in
23 writing. If Ecology does not agree with any proposed amendment, the
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1 disagreement may be addressed through the dispute resolution procedures
2 described in Section XIV of this Decree, excluding judicial review as
3 described therein. Similarly, Ecology may submit a request for an amendment
4 to the Decree to the Defendants. Each Defendant shall indicate its
5 agreement or disagreement with the proposed amendment in a timely manner
6 after it receives a request. If either Defendant does not agree with any
7 proposed amendment, Ecology may seek court approval of the amendment upon
8 proper notice to the Defendants.

9
10 XVI. EXTENSION OF SCHEDULE

11 A. An extension of schedule shall be granted only when a request
12 for an extension is submitted in a timely fashion, generally at least 30
13 days prior to expiration of the deadline for which the extension is
14 requested, and good cause exists for granting the extension. All extensions
15 shall be requested in writing to Ecology, and a copy shall be sent to the
16 contact personnel for the Port Gamble S'Klallam Tribe and the Bremerton
17 Kitsap County District. The request shall specify the reason(s) the
18 extension is needed.

19 An extension shall only be granted for such period of time as Ecology
20 determines is reasonable under the circumstances. A requested extension
21 shall not be effective until approved by Ecology or the Court. Ecology
22 shall act upon any written request for extension in a timely fashion. It
23 shall not be necessary to formally amend this Decree pursuant to Section XVI
24 when a schedule extension is granted.

1 B. The burden shall be on the Defendants to demonstrate to the
2 satisfaction of Ecology that the request for such extension has been
3 submitted in a timely fashion and that good cause exists for granting the
4 extension. Good cause includes, but is not limited to, the following.

5 (1) Circumstances beyond the reasonable control and despite the due
6 diligence of Defendants including delays caused by unrelated third parties
7 or Ecology, such as (but not limited to) delays by Ecology in reviewing,
8 approving, or modifying documents submitted by Defendants and delays by
9 Ecology in securing access to the site; or

10 (2) Acts of God, including fire, flood, blizzard, extreme
11 temperatures, storm, or other unavoidable casualty; or

12 (3) Endangerment as described in Section XVIII.

13 However, neither increased costs of performance of the terms of the
14 Decree nor changed economic circumstances shall be considered circumstances
15 beyond the reasonable control of the Defendants.

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

18 (1) Delays in the issuance of a necessary permit which was applied
19 for in a timely manner; or

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

22 (3) Endangerment as described in Section XVIII.
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1 Ecology shall give Defendants written notification in a timely fashion
2 of any extensions granted pursuant to this Decree.

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4 **XVII. ENDANGERMENT**

5 In the event Ecology determines that activities implementing or in
6 noncompliance with this Decree, or any other circumstances or activities,
7 are creating or have the potential to create a danger to the health or
8 welfare of the people on the Site or in the surrounding area or to the
9 environment, Ecology may order Defendants to stop further implementation of
10 this Decree for such period of time as needed to abate the danger or may
11 petition the Court for an order as appropriate. During any stoppage of work
12 under this section, the obligations of Defendants with respect to the work
13 under this Decree which is ordered to be stopped shall be suspended and the
14 time periods for performance of that work, as well as the time period for
15 any other work dependent upon the work which is stopped, shall be extended,
16 pursuant to Section XVII of this Decree, for such period of time as Ecology
17 determines is reasonable under the circumstances.

18 In the event Defendants determine that activities undertaken in
19 furtherance of this Decree or any other circumstances or activities are
20 creating an endangerment to the people on the Site or in the surrounding
21 area or to the environment, Defendants may stop implementation of this
22 Decree for such period of time necessary for Ecology to evaluate the
23 situation and determine whether Defendants should proceed with
24 implementation of the Decree or whether the work stoppage should be

1 continued until the danger is abated. Defendants shall notify Ecology's
2 project coordinator as soon as possible, but no later than twenty-four (24)
3 hours after such stoppage of work, and thereafter provide Ecology with
4 documentation of the basis for the work stoppage. Defendants shall, at the
5 time Ecology is notified, also notify the contact personnel for the Port
6 Gamble S'Klallam Tribe and the Health District. If Ecology disagrees with
7 the Defendants' determination, it may order Defendants to resume
8 implementation of this Decree. If Ecology concurs with the work stoppage,
9 the Defendants' obligations shall be suspended and the time period for
10 performance of that work, as well as the time period for any other work
11 dependent upon the work which was stopped, shall be extended, pursuant to
12 Section XVII of this Decree, for such period of time as Ecology determines
13 is reasonable under the circumstances. Any disagreements pursuant to the
14 clause shall be resolved through the dispute resolution procedures in
15 Section XV.

16 XVIII. OTHER ACTIONS

17 Ecology reserves its rights to institute remedial action(s) at the
18 Site and subsequently pursue cost recovery, and Ecology reserves its rights
19 to issue orders and/or penalties or take any other enforcement action
20 pursuant to available statutory authority under the following circumstances:

21 (1) Where a Defendant fails, after a reasonable time after notice,
22 to comply with any requirement of this Decree;

1 (2) In the event or upon the discovery of a release or threatened
2 release not addressed by this Decree;

3 (3) Upon Ecology's determination that action beyond the terms of
4 this Decree is necessary to abate an emergency situation which threatens
5 public health or welfare or the environment; or

6 (4) Upon the occurrence or discovery of a situation beyond the scope
7 of this Decree as to which Ecology would be empowered to perform any
8 remedial action or to issue an order and/or penalty, or to take any other
9 enforcement action.

10 Ecology reserves all rights regarding the injury to, destruction of,
11 or loss of natural resources resulting from the release or threatened
12 release of hazardous substances from Hansville Landfill.

13 Ecology reserves the right to take any enforcement action whatsoever,
14 including a cost recovery action, against potentially liable persons not
15 party to this Decree.

16 XIX. INDEMNIFICATION

17 Each party agrees to indemnify and save and hold the other parties,
18 their employees, and their agents harmless from any and all claims or causes
19 of action for death or injuries to persons or for loss or damage to property
20 arising from or on account of acts or omissions of that party's officers,
21 employees, agents, or contractors in entering into and implementing this
22 Decree.

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XX. COMPLIANCE WITH APPLICABLE LAWS

All actions carried out by Defendants pursuant to this Decree shall be done in accordance with all applicable federal, state, local, and tribal requirements, including requirements to obtain necessary permits. Pursuant to RCW 70.105D.090, the applicable substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48 and 90.58 RCW, and any laws requiring or authorizing local government permits or approvals are incorporated by reference here as binding and enforceable requirements in this Decree. In the event Ecology determines that additional permits are required for the RI/FS in addition to those requirements included in Exhibit E, Ecology and Defendants will work together to identify the substantive requirements of those permits, and to consult with the appropriate state or local jurisdictions and obtain written documentation from those jurisdictions that Defendants' actions will comply with those substantive requirements. Subject to the dispute resolution procedures in Section XIV and the provisions for amendment of this Decree in Section XV of this Decree, Ecology shall determine which additional substantive requirements must be met and how Defendants must meet those requirements. Upon appropriate amendment of this Decree, the additional requirements shall become enforceable requirements of this Decree. Ecology shall ensure that public notice and opportunity for comment is provided as required by the Public Participation Plan.

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XXI. REMEDIAL AND INVESTIGATIVE COSTS

Defendants agree to pay costs incurred by Ecology pursuant to this Decree. These costs shall include work performed by Ecology or its contractors at the Site under Chapter 70.105D RCW both prior to and subsequent to the execution of this Decree for investigations, remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, travel costs, laboratory costs, contractor fees, and employee benefit packages; and support costs of direct activities. Defendants agree to pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. Itemized statements containing project site logs shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in interest charges.

Defendants agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Decree. Defendants shall identify any contested costs and the basis of the objection. All undisputed costs shall be remitted by Defendants in accordance with the schedule in the preceding paragraph. Defendants bear the burden of establishing an Ecology accounting error or the inclusion of costs outside the scope of this Decree.

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XXII. CONTRIBUTION

The Defendants, reserving their rights to seek contribution each from the other for costs and expenses incurred under this decree, nevertheless shall not be liable for claims from third parties regarding matters addressed in this Decree pursuant to RCW 70.105D.040(4)(d).

XXIII. ECOLOGY IMPLEMENTATION OF ACTION

If Ecology determines that Defendants have failed without good cause to implement the RI/FS, Ecology may, after notice to Defendants, perform any or all portions of the RI/FS that remain incomplete. If Ecology performs all or portions of the RI/FS because of the Defendants' failure to comply with its obligations under this Decree, Defendants shall reimburse Ecology for the costs of doing such work in accordance with Section XXII, provided that Defendants are not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Decree.

XXIV. PUBLIC PARTICIPATION

Public participation will be accomplished by implementing the Hansville Landfill Public Participation Plan. Ecology shall maintain the responsibility for preparing and implementing the Public Participation Plan in accordance with WAC 173-340-600(8)(g). Defendants will be given an opportunity to review and comment on the Plan before it is implemented.

RCW 70.105D.030(2)(a) requires that, at a minimum, this Decree be subject to concurrent public notice. Ecology shall be responsible for

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

1 providing such public notice and reserves the right to modify or withdraw
2 any provisions of this Decree after consulting with the Defendants should
3 public comment disclose facts or considerations which indicate to Ecology
4 that the Decree is inadequate or improper in any respect. Should Ecology
5 modify the Decree as a result of public participation, Defendants reserve
6 the right to withdraw from the Decree.

7
8 XXV. DURATION OF DECREE

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

13 XXVI. CLAIMS AGAINST THE STATE

14 KCSL hereby agrees that it will not seek to recover any costs accrued
15 in implementing the RI/FS required by this Decree from the Department of
16 Ecology. Kitsap County may request grant funding from the State Toxics
17 Control Account or any Local Toxics Control Account. Defendants expressly
18 reserves its right to seek to recover any costs incurred in implementing
19 this Decree from any other potentially liable person.

20 XXVII. EFFECTIVE DATE

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

22 XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

23 This Decree has been the subject of public notice and comment under
24 RCW 70.105D.040(4)(a). As a result of this process, Ecology has found that
25


1 this Decree will lead to a more expeditious cleanup of hazardous substances
2 at the Site.

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

7 For the Washington State Department of Ecology

8
9 Mary E. Burg
10 MARY BURG
11 Program Manager
12 Toxics Cleanup Program

13 2 October 1995
14 Date


STEVEN J. THIELE
Assistant Attorney General
Counsel for Ecology

10-2-95
Date

15
16 For Kitsap County Sanitary Landfill, Inc.

17 LEE WILSON
18 General Manager

19
20 Date

21 ///

22 ///

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26 KITSAP COUNTY CONSENT DECREE
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Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

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DEPT OF ECOLOGY

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7 For the Washington State Department of Ecology
8


9
10 MARY BURG
11 Program Manager
12 Toxics Cleanup Program

STEVEN J. THIELE
Assistant Attorney General
Counsel for Ecology

13
14 Date

Date

15 For Kitsap County Sanitary Landfill, Inc.

16 
17 LEE WILSON
18 General Manager

19 Date

14 July 1995

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26 KITSAP COUNTY CONSENT DECREE

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ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

1 Kitsap County

2
3 Chris Haul
COMMISSIONER

July 10, 1995
Date

4
5 Mark Fy
COMMISSIONER

July 10, 1995
Date

6
7 Phil Best
COMMISSIONER

July 10, 1995
Date

8
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10
11 DATED this 10th day of July, 1995.

12
13
14 JUDGE

Kitsap County Superior Court