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PIERCE COUNTY, WASHINGTON
TED RUTT, COUNTY CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

BONNEVILLE POWER
ADMINISTRATION, an agency of the
United States Department of Energy,
and OCCIDENTAL CHEMICAL
CORPORATION,

Defendants.

No. 97 2 06046 5

CONSENT DECREE

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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, the Bonneville Power Administration an agency of the United States Department of Energy (BPA) and Occidental Chemical Corporation (Oxychem) (Defendants) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances.

This Decree requires Defendants to undertake the following remedial actions on the BPA Tacoma Substation Right-of-Way as further described in Section VI. 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, the 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 but not from each other.

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 acts; provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Decree.

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

4 II. JURISDICTION

5 A. This Court has jurisdiction over the subject matter and over the Defendant
6 Oxychem pursuant to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA) and
7 to the extent provided by law, over BPA in accordance with section 120(a)(4) of the
8 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA,
9 Superfund), 42 U.S.C. 9620(a)(4).

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

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

17 D. Ecology has given notice to the Defendants, as set forth in RCW
18 70.105D.020(15), of Ecology's determination that the Defendants are potentially liable
19 persons for the Site and that there has been a release or threatened release of hazardous
20 substances at the Site.

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

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

25 G. Notwithstanding the above, nothing within this Decree shall interfere with
26 or require BPA or an agency of the United States to take any action inconsistent with its

1 statutory mission and responsibilities as described under the Bonneville Project Act (16
2 U.S.C. 832 *et seq.*) the Northwest Power Act (16 U.S.C. 839 *et seq.*) and other organic
3 legislation. Nor shall this Decree preclude the exercise of jurisdiction or other defenses by
4 the United States.

5 III. PARTIES BOUND

6 This Decree shall apply to and be binding upon the signatories to this Decree
7 (Parties), their successors and assigns. The undersigned representative of each party hereby
8 certifies that he or she is fully authorized to enter into this Decree and to execute and
9 legally bind such party to comply with the Decree. Defendants agree to undertake all
10 actions required by the terms and conditions of this Decree and not to contest state
11 jurisdiction regarding this Decree. No change in ownership or corporate status shall alter
12 the responsibility of the defendants under this Decree. Defendants shall provide a copy of
13 this Decree to all agents, contractors and subcontractors retained to perform work required
14 by this Decree and shall ensure that all work undertaken by such contractors and
15 subcontractors will be in compliance with this Decree. Regarding Defendant BPA, this
16 Decree shall not bind the United States, including BPA, to a commitment of funds or
17 authority inconsistent with or outside the organic powers of BPA.

18 IV. DEFINITIONS

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

21 A. Site: The Site, referred to as the BPA/Oxychem site, is the BPA right-of-
22 way located between the Tacoma Substation and the corner of Taylor Way and East-West
23 Road in Tacoma, Washington. The Site is more particularly described in Exhibit A to this
24 Decree which is a detailed site diagram and legal description.

25 B. Parties: Refers to the Washington State Department of Ecology,
26 Bonneville Power Administration (BPA) and Occidental Chemical Corporation (Oxychem).

1 C. Defendants: Refers to Bonneville Power Administration and Occidental
2 Chemical Corporation.

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

7 V. STATEMENT OF FACTS

8 A. Ecology makes the following findings of fact without any express or
9 implied admissions by the Defendants.

10 1. BPA is the owner of certain property between and adjacent to its Tacoma
11 Substation, and the corner of Taylor Way and East-West Road in Tacoma, Washington, as
12 described in Exhibit A.

13 2. Between 1969 and 1974, approximately 18,000 cubic yards of lime sludge
14 from waste treatment ponds at the Occidental Chemical Corporation (then Hooker Chemical
15 Corporation) manufacturing facility located at 605 Alexander Avenue were placed on the
16 BPA property.

17 3. The lime sludge placed on the Site contains elevated levels of chlorinated
18 volatile organic compounds (VOC), asbestos and lead.

19 4. In addition, around this same time, several hundred yards of baghouse
20 dust containing elevated concentrations of arsenic and lead were placed on the eastern
21 portion of the Site.

22 5. The Site and its associated contamination has been the subject of nine
23 investigations or studies as described in the Cleanup Action Plan (Exhibit B).

24 6. These studies have documented the following:

25 (a) levels of VOC and metal in excess of applicable standards for
26 protection of human health and groundwater resources in sludges, sediments, soils and

1 wastes from across the Site;

2 (b) concentrations of VOC in groundwater both on-site and off-site in
3 excess of applicable groundwater standards for protection of human health and the
4 environment; and,

5 (c) the presence of asbestos in sludges at the Site which may pose a threat
6 to human health.

7 VI. WORK TO BE PERFORMED

8 A. This Decree contains a program designed to protect public health, welfare
9 and the environment from the release, or threatened release, of hazardous substances or
10 contaminants at, on, or from the Site.

11 1. The Defendant Oxychem shall perform the remedial actions specified in
12 detail in the Cleanup Action Plan (Exhibit B), the Scope of Work and Schedule (Exhibit C)
13 including the following:

14 (a) Acquire all permits, easements, and rights of access necessary to
15 implement cleanup action plan;

16 (b) excavate all sludges, soils, sediments and wastes above the cleanup
17 levels for soil specified in the cleanup action plan including all asbestos containing sludges
18 as detailed in the Ecology-approved Remedial Design Report;

19 (c) prepare the subgrade for a containment facility on the eastern portion
20 of the Site;

21 (d) place all materials excavated under (b) above in the containment
22 facility and cover with a impermeable, multi-layer cap system as specified in the Ecology-
23 approved Remedial Design Report to prevent surface water infiltration through the
24 contaminated materials;

25 (e) ensure effectiveness of above remedial actions by monitoring
26 groundwater in wells located adjacent to the containment facility and at the down-gradient

1 property boundaries;

2 (f) inspect and maintain the containment facility; and,

3 (g) within 30 days of completion of containment facility cap construction,

4 Defendant Oxychem shall record a restrictive covenant (Exhibit D) in the title records to
5 that portion of the property underlying the containment facility over which the Defendants
6 hold fee title. The restrictive covenant shall limit activities occurring on the Site to prohibit
7 activities that could in any way reduce the effectiveness of the remedial actions conducted at
8 the Site containment facility (such as breaching the containment cap) and shall prohibit the
9 use of groundwater until Ecology has determined that cleanup standards have been met.

10 The defendant shall forward a filed copy of the restrictive covenant to Ecology within 10
11 days of receiving a filed copy from the Pierce County Auditor.

12 2. Defendant BPA shall:

13 (a) provide access to the Site for the purpose of consolidating the
14 excavated sludge and substances located on the Site;

15 (b) sell a portion of the right of way sufficient for defendant Oxychem to
16 consolidate the excavated materials onsite and meet the requirements of this Consent
17 Decree; and,

18 (c) provide permanent easement access to the Site for Defendant
19 Oxychem's maintenance of the Site.

20 3. Defendants agree not to perform any remedial actions outside the scope of
21 this Decree unless the Parties agree to amend the scope of work to cover these actions. All
22 work conducted under this Decree shall be done in accordance with ch. 173-340 WAC
23 unless otherwise provided herein.

24 4. Ecology expects that the removal of the source of groundwater
25 contamination will result in a reduction of contaminant concentrations, eventually resulting
26 in compliance with groundwater cleanup standards. In the event that groundwater does not

1 respond in this manner, Ecology reserves the right to require further investigation and
2 action if Ecology determines that it is necessary to protect human health or the
3 environment.

4 VII. DESIGNATED PROJECT COORDINATORS

5 The project coordinator for Ecology is:

6 Garin Schrieve, Environmental Engineer
7 P.O. Box 47775
Olympia, Washington 98504-7775

8 The project coordinator for BPA is:

9 Brett Sherer
10 Environmental Engineer
707 W. Main Street, Suite 500
11 Spokane, Washington 99201-0641

12 The project coordinator for Oxychem is:

13 Alastair McGregor, Manager
Asset Management for Glenn Springs Holdings, Inc.
14 1795 Baseline Road
Grand Island, New York 14072-2010

15 Each project coordinator shall be responsible for overseeing the implementation of
16 this Decree. The Ecology project coordinator will be Ecology's designated representative
17 at the Site. To the maximum extent possible, communications between Ecology and the
18 Defendants and all documents, including reports, approvals, and other correspondence
19 concerning the activities performed pursuant to the terms and conditions of this Decree,
20 shall be directed through the project coordinators. The project coordinators may designate,
21 in writing, working level staff contacts for all or portions of the implementation of the
22 remedial work required by this Decree. The project coordinators may agree to minor
23 modifications to the work to be performed without formal amendments to this Decree.
24 Minor modifications will be documented in writing by Ecology.

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

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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. Defendants 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 Defendants' 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 Defendants. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans, including BPA specific safety plans regarding operation of an electric substation and transmission lines. Ecology shall use best efforts to provide BPA 24 hour notice of its intent to visit the Site.

X. SAMPLING, DATA REPORTING, AND AVAILABILITY

With respect to the implementation of this Decree, Defendants 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.

If requested by Ecology, Defendants shall allow split or duplicate samples to be

1 taken by Ecology and/or its authorized representatives of any samples collected by
2 Defendants pursuant to the implementation of this Decree. Defendants shall notify Ecology
3 seven (7) days in advance of any sample collection or work activity at the Site. Ecology
4 shall, upon request, allow split or duplicate samples to be taken by Defendants or
5 authorized representatives of any samples collected by Ecology pursuant to the
6 implementation of this Decree provided it does not interfere with the Department's
7 sampling. Without limitation on Ecology's rights under Section IX, Ecology shall endeavor
8 to notify Defendants prior to any sample collection activity.

9 XI. PROGRESS REPORTS

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

- 13 A. A list of on-site activities that have taken place during the month;
- 14 B. Detailed description of any deviations from required tasks not otherwise
15 documented in project plans or amendment requests;
- 16 C. Description of all deviations from the schedule (Exhibit C) during the
17 current month and any planned deviations in the upcoming month;
- 18 D. For any deviations in schedule, a plan for recovering lost time and
19 maintaining compliance with the schedule;
- 20 E. All raw data (including laboratory analysis) received by the Defendants
21 during the past month and an identification of the source of the sample;
- 22 F. A list of deliverables for the upcoming month if different from the
23 schedule; and,

24 All progress reports shall be submitted by the tenth day of the month in which they
25 are due after the effective date of this Decree. Unless otherwise specified, progress reports
26 and any other documents submitted pursuant to this Decree shall be sent by certified mail,

1 return receipt requested, to Ecology's project coordinator.

2 XII. RETENTION OF RECORDS

3 Defendant Oxychem shall preserve, during the pendency of this Decree and for ten
4 (10) years from the date this Decree is no longer in effect as provided in Section XXV, all
5 records, reports, documents, and underlying data in its possession relevant to the
6 implementation of this Decree and shall insert in contracts with project contractors and
7 subcontractors a similar record retention requirement. Upon request by Ecology, Oxychem
8 shall make all non-archived records available to Ecology and allow access for review. All
9 archived records shall be made available to Ecology within a reasonable period of time.

10 XIII. TRANSFER OF INTEREST IN PROPERTY

11 Defendant Oxychem shall make no voluntary or involuntary conveyance or
12 relinquishment of title, easement, leasehold, or other interest in any portion of the Site
13 without provision for continued operation and maintenance of any containment system,
14 treatment system, and monitoring system installed or implemented pursuant to this Decree.
15 Prior to transfer of any legal or equitable interest in all or any portion of the property, and
16 during the effective period of this Decree, Defendant Oxychem shall serve a copy of this
17 Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in
18 interest of the property owned by Oxychem. At least thirty (30) days prior to any transfer,
19 Defendant Oxychem shall notify Ecology and BPA of said contemplated transfer.

20 Defendant BPA's conveyance or proposed conveyance to Defendant Oxychem
21 shall be made as described in section 120 of CERCLA.

22 XIV. RESOLUTION OF DISPUTES

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

26 (1) Upon receipt of the Ecology project coordinator's decision, the

1 Defendants have fourteen (14) days within which to notify Ecology's project coordinator of
2 its objection to the decision.

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

6 (3) Defendant, Oxychem or BPA may then request Ecology review of
7 the decision. This request shall be submitted in writing to the Toxics Cleanup Program
8 Manager within seven (7) days of receipt of Ecology's project coordinator's decision by a
9 Defendant.

10 (4) Ecology's Program Manager shall review the dispute and shall
11 issue a written decision regarding the dispute within thirty (30) days of a Defendant's
12 request for review. The Program Manager's decision shall be Ecology's final decision on
13 the disputed matter.

14 B. If Ecology's final written decision is unacceptable to Defendants,
15 Defendants have the right to submit the dispute to the Court for resolution. The Parties
16 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve
17 any dispute arising under this Decree the event Defendants present an issue to the Court for
18 review, the Court shall review the action or decision of Ecology on the basis of whether
19 such action or decision was arbitrary and capricious and render a decision based on such
20 standard of review. Defendant BPA agrees to be bound by any decision of the Court to the
21 extent consistent with Federal law.

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

26 Implementation of these dispute resolution procedures shall not provide a basis for

1 delay of any activities required in this Decree, unless Ecology agrees in writing to a
2 schedule extension or the Court so orders.

3 XV. AMENDMENT OF CONSENT DECREE

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

8 Defendants shall submit any request for an amendment to Ecology for approval.
9 Ecology shall indicate its approval or disapproval in a timely manner after the request for
10 amendment is received. If the amendment to the Decree is substantial, Ecology will
11 provide public notice and opportunity for comment. Reasons for the disapproval shall
12 be stated in writing. If Ecology does not agree to any proposed amendment, the
13 disagreement may be addressed through the dispute resolution procedures described in
14 Section XIV of this Decree.

15 XVI. EXTENSION OF SCHEDULE

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

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

26 B. The burden shall be on a Defendant to demonstrate to the satisfaction of

1 Ecology that the request for such extension has been submitted in a timely fashion and that
2 good cause exists for granting the extension. Good cause includes, but is not limited to, the
3 following.

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

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

10 (3) Endangerment as described in Section XVII.

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

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

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

18 (2) Other circumstances deemed exceptional or extraordinary by
19 Ecology; or,

20 (3) Endangerment as described in Section XVI.

21 Ecology shall give a Defendant written notification in a timely fashion of any
22 extensions granted pursuant to this Decree.

23 XVII. ENDANGERMENT

24 In the event Ecology determines that activities implementing or in noncompliance
25 with this Decree, or any other circumstances or activities, are creating or have the potential
26 to create a danger to the health or welfare of the people on the Site or in the surrounding

1 area or to the environment, Ecology may order a Defendant to stop further implementation
2 of this Decree for such period of time as needed to abate the danger or may petition the
3 Court for an order as appropriate. During any stoppage of work under this section, the
4 obligations of Defendants with respect to the work under this Decree which is ordered to be
5 stopped shall be suspended and the time periods for performance of that work, as well as
6 the time period for any other work dependent upon the work which is stopped, shall be
7 extended, pursuant to Section XVI of this Decree, for such period of time as
8 Ecology determines is reasonable under the circumstances.

9 In the event a Defendant determines that activities undertaken in furtherance of
10 this Decree or any other circumstances or activities are creating an endangerment to the
11 people on the Site or in the surrounding area or to the environment, a Defendant may stop
12 implementation of this Decree for such period of time necessary for Ecology to evaluate the
13 situation and determine whether the Defendant should proceed with implementation of the
14 Decree or whether the work stoppage should be continued until the danger is abated. A
15 Defendant shall notify Ecology's project coordinator as soon as possible, but no later than
16 twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology
17 with documentation of the basis for the work stoppage. If Ecology disagrees with a
18 Defendant's determination, it may order a Defendant to resume implementation of this
19 Decree. If Ecology concurs with the work stoppage, the Defendant's obligations shall be
20 suspended and the time period for performance of that work, as well as the time period for
21 any other work dependent upon the work which was stopped, shall be extended, pursuant
22 to Section XVI of this Decree, for such period of time as Ecology determines is reasonable
23 under the circumstances. Any disagreements pursuant to the clause shall be resolved
24 through the dispute resolution procedures in Section XIV.

25 XVIII. OTHER ACTIONS

26 Ecology reserves its rights to institute remedial action(s) at the Site and

1 subsequently pursue cost recovery, and Ecology reserves its rights to issue orders and/or
2 penalties or take any other enforcement action pursuant to available statutory authority
3 under the following circumstances:

4 (1) Where a Defendant fails, after notice, to comply with any
5 requirement of this Decree;

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

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

11 (4) Upon the occurrence or discovery of a situation beyond the scope
12 of this Decree as to which Ecology would be empowered to perform any remedial action or
13 to issue an order and/or penalty, or to take any other enforcement action. This Decree is
14 limited in scope to the geographic site described in Exhibit A and to those contaminants
15 which Ecology knows to be at the Site when this Decree is entered.

16 Ecology reserves all rights regarding the injury to, destruction of, or loss of
17 natural resources resulting from the release or threatened release of hazardous substances
18 from "the Site".

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

21 XIX. INDEMNIFICATION

22 To the extent consistent with Federal law, including the Federal Tort Claims Act,
23 Defendants agree to indemnify and save and hold the State of Washington, its employees,
24 and agents harmless from any and all claims or causes of action for death or injuries to
25 persons or for loss or damage to property arising from or on account of acts or omissions
26 of Defendants, their officers, employees, agents, or contractors in entering into and

1 implementing this Decree. However, the Defendants shall not indemnify the State of
2 Washington nor save nor hold its employees and agents harmless from any claims or causes
3 of action arising out of the negligent acts or omissions of the State of Washington, or the
4 employees or agents of the State, in implementing the activities pursuant to this Decree.

5 **XX. COMPLIANCE WITH APPLICABLE LAWS**

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

9 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of
10 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or
11 authorizing local government permits or approvals for the remedial action under this Decree
12 that are known to be applicable to BPA, to Oxychem or to both at the time of entry of the
13 Decree have been included in Exhibit B, the Cleanup Action Plan, and are binding and
14 enforceable requirements of the Decree.

15 Defendants have a continuing obligation to determine whether additional permits or
16 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
17 remedial action under this Decree. In the event either the Defendants or Ecology
18 determines that additional permits or approvals addressed in RCW 70.105D.090(1) would
19 otherwise be required for the remedial action under this Decree, it shall promptly notify the
20 other party of this determination. Ecology shall determine whether Ecology or a Defendant
21 shall be responsible to contact the appropriate state and/or local agencies. If Ecology
22 so requires, a Defendant shall promptly consult with the appropriate state and/or local
23 agencies and provide Ecology with written documentation from those agencies of the
24 substantive requirements those agencies believe are applicable to the remedial action.
25 Ecology shall make the final determination on the additional substantive requirements that
26 must be met by a Defendant and on how a Defendant must meet those

1 requirements. Ecology shall inform the Defendants in writing of these requirements. Once
2 established by Ecology, the additional requirements shall be enforceable requirements of
3 this Decree. A Defendant shall not begin or continue the remedial action potentially subject
4 to the additional requirements until Ecology makes its final determination. Ecology shall
5 ensure that notice and opportunity for comment is provided to the public and appropriate
6 agencies prior to establishing the substantive requirements under this section.

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

13 **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

14 Defendant Oxychem agrees to pay costs incurred by Ecology pursuant to this
15 Decree for supervision of the Cleanup Action Plan and completion of the Decree's
16 requirements as set forth above. These costs shall include work performed by Ecology or
17 its contractors for, or on, the Site under Ch. 70.105D RCW both prior to and subsequent to
18 the issuance of this Decree for investigations, remedial actions, and Decree preparation,
19 negotiations, oversight and administration. Ecology costs shall include costs of direct
20 activities and support costs of direct activities as defined in WAC 173-340-550(2). The
21 Defendant Oxychem agrees to pay the required amount within ninety (90) days of receiving
22 from Ecology an itemized statement of costs that includes a summary of costs incurred, an
23 identification of involved staff, and the amount of time spent by involved staff members on
24 the project. A general statement of work performed will be provided. Itemized statements
25 shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days
26 of receipt of the itemized statement will result in interest charges.

1 XXII. IMPLEMENTATION OF REMEDIAL ACTION

2 If Ecology determines that Defendant Oxychem has failed without good cause to
3 implement the remedial action, Ecology may, after notice to Defendants, perform any or all
4 portions of the remedial action that remain incomplete. If Ecology performs all or portions
5 of the remedial action because of the Defendant Oxychem's failure to comply with
6 its obligations under this Decree, Defendant Oxychem shall reimburse Ecology for the costs
7 of doing such work in accordance with Section XXI, provided that neither Defendant is
8 obligated under this section to reimburse Ecology for costs incurred for work inconsistent
9 with or beyond the scope of this Decree.

10 XXIII. FIVE YEAR REVIEW

11 As remedial action, including ground water monitoring, continues at the Site, the
12 Parties agree to the extent feasible and reasonable to review the progress of remedial action
13 at the Site, and to review the data accumulated as a result of site monitoring as often as is
14 necessary and appropriate under the circumstances. At least once in every five year period
15 after implementation of the Consent Decree, Defendants and Ecology shall meet to discuss
16 the status of the Site and the need, if any, of further remedial action at the Site. Ecology
17 reserves the right to require Defendants to take further remedial action at the Site if the
18 Remedial Action Plan has not removed the threat to human health and the environment as
19 described in this Consent Decree and regulations in effect at the time this Decree was
20 executed. This provision shall remain in effect for the duration of the Decree.

21 XXIV. PUBLIC PARTICIPATION

22 Ecology shall maintain the responsibility for public participation at the Site, and in
23 consultation with defendants,

24 A. Prepare drafts of public notices and fact sheets at important stages of the
25 remedial action, such as the submission of work plans, Remedial Investigation/Feasibility
26 Study reports and engineering design reports. Ecology will finalize (including editing if

necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

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

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

D. In cooperation with Ecology, arrange and/or continue information repositories to be located at Tacoma Public Library- Main Branch, Northwest Room, 1102 Tacoma Avenue South, Tacoma, and Ecology's Southwest Regional Office at 510 Desmond Drive, Lacey. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air 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.

XXV. DURATION OF DECREE AND RELEASE

This Decree shall remain in effect and the program described in the Decree shall be maintained and continued until the Defendants have received written notification from Ecology that the requirements of the Decree have been satisfactorily completed. Upon a demonstration that the Cleanup Action Plan has been completed, except for long term monitoring, and that the Site meets MTCA cleanup standards, Ecology will present Defendants with covenants not to sue commensurate with the scope of the Decree and consistent with RCW 70.105D.040(4)(c).

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XXVI. CLAIMS AGAINST THE STATE

Defendants hereby agree that they will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the Defendants 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, Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other potentially liable person.

XXVII. EFFECTIVE DATE

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

XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

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

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1 STATE OF WASHINGTON
2 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

3
4 Mary E. Burg
5 MARY E. BURG
6 Program Manager
7 Toxics Cleanup Program

Thomas C. Morrill
THOMAS C. MORRILL
Assistant Attorney General

8 DATED: 7 February 1997

DATED: 2-13-97

9 BONNEVILLE POWER
10 ADMINISTRATION

BONNEVILLE POWER
ADMINISTRATION

11 Alexandra B. Smith
12 ALEXANDRA B. SMITH
13 Vice President for
14 Environment, Fish & Wildlife

Ernest E. Estes
ERNEST E. ESTES
Attorney - Advisor

15 DATED: 12/18, 1996

DATED: Dec. 18, 1996

16 OCCIDENTAL CHEMICAL
17 CORPORATION

BOGLE & GATES

18 Keith McDole
19 KEITH MCDOWELL MCDOLE
20 Title: Sr. Vice President & General Counsel
21 Attorneys for Occidental Chemical

Charles R. Blumenfeld
CHARLES R. BLUMENFELD

22 DATED: February 18, 1997

DATED: February 25/1997

23 RESPECTFULLY submitted this 3rd day of March, 1997

PAUL M. BOYLE
COURT COMMISSIONER

JUDGE
Pierce County Superior Court

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