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

STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Plaintiff,	)	No. 90-2-13283-8
	)	
v.	)	ORDER ENTERING CONSENT DECREE
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

Having reviewed the Consent Decree signed by the parties to this matter, the Joint Motion for Entry of the Consent Decree, the Affidavit of Jay J. Manning, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

SIGNED this 29 day of June, 1990.

(S)  
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Superior Court Judge

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

STATE OF WASHINGTON )  
DEPARTMENT OF ECOLOGY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CITY OF SEATTLE, )  
 )  
Defendant. )

No. 90-2 13283  
CONSENT DECREE

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7            Exhibit A  
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I. INTRODUCTION

The State of Washington Department of Ecology (Ecology) and the City of Seattle (hereinafter "Seattle") enter into this Consent Decree pursuant to Chapter 70.105D RCW, Laws of 1989, (passed by voters on November 8, 1988 as Initiative 97).

II. JURISDICTION

This Court has subject matter jurisdiction over this matter pursuant to 42 U.S.C. § 6901 et seq., 42 U.S.C. § 9601 et seq., Chapter 70.105D RCW, and personal jurisdiction over Ecology and Seattle as consenting hereto. The Court shall retain jurisdiction over this matter. No party shall challenge this Court's jurisdiction to enter and enforce this Consent Decree. The parties stipulate that venue is proper.

A. Authority is conferred upon the State of Washington Attorney General by Chapter 70.105D.040(4)(a) RCW to agree to a settlement with any potentially liable person if after public notice and hearing Ecology finds that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(d).

B. After public notice and concurrent with the filing of this Decree, the Attorney General of the State of Washington will file a complaint against Seattle pursuant to RCW 70.105D, seeking relief regarding the cleanup of the Midway Landfill as defined herein and recovering costs incurred and to be incurred

1 in responding to the release or threat of release of hazardous  
2 substances at or in connection with the Midway Landfill.

3 C. Authority is conferred upon the Attorney General by  
4 RCW 70.105D.040(4)(b), to enter the settlement agreement as a  
5 consent decree, issued by an appropriate state court.

6 **III. PARTIES BOUND**

7 This Consent Decree applies to and is binding upon the  
8 undersigned parties and their successors, assigns, officers,  
9 employees and agents. The undersigned representative of each  
10 party to this Decree certifies that he or she is fully  
11 authorized by the party or parties whom she or he represents to  
12 enter into the terms and conditions of this Consent Decree and  
13 to execute and legally bind that party to the terms of said  
14 Decree.

15 Seattle shall provide a copy of this Decree to all  
16 contractors, subcontractors, and consultants retained to  
17 conduct any portion of the work performed pursuant to this  
18 Decree, not later than fourteen (14) days after the effective  
19 date of this Decree or the date of such retention, which ever  
20 is later.

21 A. Seattle consents and agrees to finance and perform  
22 the work to be performed set out in this Decree, which in  
23 summary fashion is outlined below:

24 1. Complete a landfill cover, as technically described  
25 in Section XI herein. Ecology has required said landfill cover

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1 and has determined that it meets the following technical  
2 performance criteria:

- 3 a. Provides long-term minimization of migration of  
4 liquids through the closed landfill.  
5 b. Functions with a minimum of maintenance.  
6 c. Promotes drainage and minimizes erosion of cover.  
7 d. Accomodates settling and subsidence in cover design  
8 so that cover integrity is maintained.  
9 e. Has a cover permeability less than the existing  
10 natural system.  
11 f. Minimizes the need for further maintenance.  
12 g. Controls, minimizes, or eliminates, to the extent  
13 necessary to protect human health and the  
14 environment, post-closure escape of hazardous  
15 emissions from the Midway Landfill.

16 2. Complete a gas extraction system including, design  
17 and construction of a gas manifold system at the Midway  
18 Landfill facility.

19 3. Complete construction of a surface water management  
20 system.

21 4. Perform and comply with all provisions of this  
22 Decree.

23 B. Ecology consents and agrees to be bound by the terms  
24 of this Decree. However, conduct described herein by the words  
25 "may," shall," "expects to," etc. does not create a promise

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CONSENT DECREE

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1 undertaking or separate legal duty on the part of Ecology.  
2 Such expressions shall operate only as a condition precedent to  
3 a duty of Seattle to perform some act or refrain from acting as  
4 appropriate under the terms of this Decree.

#### 5 IV. DENIAL OF LIABILITY

6 The actions undertaken by Seattle in accordance with this  
7 Consent Decree do not constitute an admission by Seattle of any  
8 violation of state, county, or federal law or an admission of  
9 any liability by Seattle to the United States, the State of  
10 Washington, or any person or entity. Nor shall this Consent  
11 Decree be used as evidence or as collateral estoppel against  
12 Seattle in an action or proceeding other than an action or  
13 proceeding by Ecology to enforce the terms of this Decree. The  
14 City of Seattle specifically denies liability.

#### 15 V. PURPOSE

16 In entering into this Decree, the mutual objectives of  
17 Ecology and Seattle are:

18 1. To provide for an expeditious cleanup of the Midway  
19 Landfill facility by completing work on the final remedial  
20 action at the landfill, including capping the landfill,  
21 completing a surface water management system and completing a  
22 gas extraction system.

23 2. To accomplish the foregoing objectives in a manner  
24 consistent with RCW 70.105D.030(2)(d) and regulations  
25 promulgated thereunder and all other applicable state law.  
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1           2.    In response to a release or threatened release of  
2 hazardous substances at or from the landfill, Seattle commenced  
3 a Remedial Investigation and Feasibility Study (RI/FS) pursuant  
4 to a Response Order by Consent for the landfill which was  
5 issued by Ecology on October 3, 1986. The scope of that order  
6 was limited to the RI/FS phase of the cleanup process.

7           3.    Seattle is still in the process of completing the  
8 RI/FS. Seattle estimates completion of the RI/FS by late-1990.

9           4.    Investigations conducted by Ecology, Seattle and  
10 others indicate the presence of several contaminants of concern  
11 in the soil and groundwater on-site, as well as migration of  
12 ground water contaminants and landfill gas from the landfill.  
13 The contaminants of concern found in the landfill include  
14 benzene, chlorobenzene, ethylbenzene, toluene, vinyl chloride  
15 and xylenes in the landfill gas; arsenic, benzene, methylene  
16 chloride, chlorobenzene, vinyl chloride and xylenes in ground  
17 water and landfill leachate; and PCB-1242 and PCB-1260 in  
18 landfill leachate.

19           5.    Normally no final remedial action would begin until  
20 after Seattle had completed the RI/FS and Ecology had completed  
21 a Cleanup Action Plan (CAP) regarding the chosen cleanup  
22 alternative. Normally the CAP would include a discussion of  
23 Ecology's reasons for the final action, a response to any  
24 significant comment, any new data and any significant changes  
25 in the proposed remedial action plan.

1           6.     However, in this case, Ecology has determined that  
2 capping the landfill, completing a gas extraction system, and  
3 completing the surface water management system prior to the ROD  
4 will provide immediate protection to the public health, welfare  
5 and the environment.

6           7.     Ecology has informed Seattle that the capping, gas  
7 extraction and surface water system constructed or to be  
8 constructed by Seattle hereunder may be subject to modification  
9 or revision if the completed RI/FS contains significant new  
10 information not currently known to Ecology and substantially  
11 different from information presently known which changes the  
12 technical evaluation of landfill conditions and appropriate  
13 remedial actions at the landfill.

14           8.     Seattle has the capability and has indicated a  
15 willingness to perform the work described herein.

16           9.     All elements of an action under Chapter 70.105D RCW  
17 are met to wit:

18           a.     The Site is a "facility" as defined in RCW  
19 70.105D.020(3).

20           b.     Past, present and potential migration of hazardous  
21 substances from the facility constitute an actual or  
22 potential "release" as defined in RCW 70.105D.020(10).

23           c.     Seattle, as owner/operator of the Seattle Midway  
24 Landfill, is a potentially liable person as defined in RCW  
25 70.105D.020(8).

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CONSENT DECREE

1 d. On the basis of findings from investigations and all  
2 other information available to date, Ecology determined  
3 that there has been soil and surface water contamination  
4 on-site, as well as migration of groundwater and landfill  
5 gas from the landfill and that said releases other than  
6 landfill gas will continue to pose a threat or potential  
7 threat to human health or the environment unless abated or  
8 mitigated.

9 e. Pursuant to RCW 70.105D.030, if there is a  
10 reasonable basis to believe that a release or threatened  
11 release of a hazardous substance may exist, Ecology may  
12 require potentially liable persons to conduct remedial  
13 actions, including investigations, to remedy releases or  
14 threatened releases of hazardous substances.

15 10. To minimize leachate production and to expedite  
16 cleanup action at the landfill, Seattle is proceeding with the  
17 work described herein prior to implementation of this Consent  
18 Decree.

19 11. Seattle has consultants familiar with the landfill,  
20 has performed six prior phases of the remedial action required  
21 at the landfill and has indicated a willingness to proceed  
22 immediately with this final phase of the remedial action at the  
23 landfill. Seattle can now proceed with remedial action in a  
24 more expeditious manner than if Ecology were to proceed with  
25 the work set out herein.

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**VIII. ECOLOGY DETERMINATION**

Based on the foregoing Findings of Fact, Ecology has concluded that execution of this Decree will be conducive to prompt, efficient performance of the remedial actions set out herein, and result in a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.040(4)(a).

**IX. DEFINITIONS**

A. Model Toxics Control Act (MTCA), Chapter 2, laws of 1989: An act (Initiative No. 97), Chapter 70.105D RCW of Washington State, relating to the cleanup of hazardous waste sites.

B. CERCLA as amended by SARA: The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. Section 9601 et seq. which has been amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.

C. National Contingency Plan (NCP): 40 C.F.R. Part 300 as published in the Federal Register 47912 on November 20, 1985, and as revised and amended, Federal Register, Vol. 55, pg. 8666 on March 8, 1990, (see EPA proposed rule December 21, 1988). The National Oil and Hazardous Substances Pollution Contingency Plan which describes the process for conducting a remedial response.

1 D. Remedial Action: As defined by RCW 70.105D.020(11),  
2 any action or expenditure consistent with the purposes of the  
3 MTCA to identify, eliminate, or minimize any threat or  
4 potential threat posed by hazardous substances to human health  
5 or the environment including any investigative and monitoring  
6 activities with respect to any release or threatened release of  
7 a hazardous substance and any health assessments or health  
8 effects studies conducted in order to determine the risk or  
9 potential risk to human health and in particular shall mean all  
10 work required by this Consent Decree and all appendices and  
11 attachments, plans and schedules and all amendments to any of  
12 the above.

13 E. Feasibility Study: The process of identifying,  
14 evaluating, and selecting remedial action alternatives as  
15 described in EPA document "Guidance for Conducting Remedial  
16 Investigations and Feasibility Studies under CERCLA" (Interim  
17 Final, October 1988, OSWER Directive 9355.3-01).

18 F. Remedial Investigation: Data collection and site  
19 characterization activities that determine the nature and  
20 extent of the contamination sufficient to determine the need  
21 for and to identify appropriate remedial actions, as outlined  
22 in the NCP and as described in the EPA document listed in E of  
23 this section.

24 G. Facility: "Facility," as defined by RCW  
25 70.105D.020(3) means (a) any building, structure,

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1 installation, equipment, pipe or pipeline (including any pipe  
2 into a sewer or publicly owned treatment works), well, pit,  
3 pond, lagoon, impoundment, ditch, landfill, storage container,  
4 motor vehicle, rolling stock, vessel, or aircraft, or (b) any  
5 site or area where a hazardous substance, other than a consumer  
6 product in consumer use, has been deposited, stored, disposed  
7 of, or placed, or otherwise come to be located.

8 H. Hazardous Substance - as defined in RCW  
9 70.105D.020(5), means:

10 (a) Any dangerous or extremely hazardous waste as  
11 defined in RCW 70.105.010(5) and (6), or any dangerous or  
12 extremely dangerous waste designated by rule pursuant to ch.  
13 70.105 RCW;

14 (b) Any hazardous substance as defined in RCW  
15 70.105.010(14) or any hazardous substance as defined by rule  
16 pursuant to ch. 70.105 RCW;

17 (c) Any substance that, on the effective date of this  
18 Section, is a hazardous substance under Section 101(14) of the  
19 federal cleanup law, 42 U.S.C. Section 9601(14);

20 (d) Petroleum or petroleum products; and

21 (e) Any substance or category of substances, including  
22 solid waste decomposition products, determined by the director  
23 by rule to present a threat to human health or the environment  
24 if released into the environment.  
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1 I. Day: For the purposes of this Decree, day refers to a  
2 calendar day.

3 J. "Consent Decree" means this Decree and all Exhibits  
4 and Appendices attached hereto.

5 K. "Ecology" means the Washington Department of  
6 Ecology.

7 L. "Seattle" means The City of Seattle, a municipal  
8 corporation organized and existing under the laws of the State  
9 of Washington.

10 M. "Work Plan" shall mean the design plans and their  
11 attachments, which describes the remedial actions to be  
12 undertaken at and around the landfill, and includes the plans  
13 and specifications revised to include the one-foot clay layer  
14 specified in section XI.B.1., all change orders negotiated to  
15 the construction contract and which materially affect the work  
16 and which are approved by Ecology, and construction schedule  
17 prepared by the contractor according to the project  
18 specifications.

19 N. "Response Costs" means any past and future costs  
20 incurred by Ecology pursuant to the Chapter 70.105D RCW  
21 including oversight costs.

22 O. "Scope of Work ('SOW')" means the scope of work for  
23 implementation of the remedial design, remedial action, and  
24 operation and maintenance of the remedial action at the  
25 landfill, as set forth herein.

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**X. STATEMENT OF FACTS**

**A. Site Location and Status**

The project area in this matter (the "Site"), is known as the Midway Landfill Site, and is located within the Kent city limits. The land areas comprising the Midway Landfill are represented by King County Assessor's tax parcel numbers, which are listed with the owner and which are set out in detail in Appendix A. Seattle is the current owner of the Midway Landfill and adjacent property shown in Figure 1, which is attached hereto and incorporated herein by this reference.

Additionally, the scope of the Site as defined herein includes the areal extent of the plume of contamination in groundwater, areal extent of the area of gas movement, and all other locations that extend outside of the boundaries described above which have been found to be contaminated as a result of the Midway Landfill.

In October 1984, the Midway Landfill was nominated to the National Priority List (NPL). The landfill was placed on the NPL in 1986.

**B. Facility History and Operations**

From 1947 to 1966, the landfill was operated as a gravel pit. The pit originally was adjacent to a peat bog, Lake Meade, located northeast of the center of the landfill. In January 1966, the City of Seattle leased the property and began using it as a landfill. During operations at the landfill, an



1 estimated three million cubic yards of solid waste were  
2 deposited. This waste covers approximately 40 acres and is up  
3 to 130 feet deep in places. The facility stopped accepting  
4 waste in October 1983.

5 **C. Previous Site Investigations**

6 In 1984 and 1985, Seattle conducted field investigations  
7 which showed the presence of surface water contamination  
8 on-site and contaminated groundwater and landfill gas outside  
9 the landfill boundary. The findings of groundwater  
10 contamination lead to the listing of the Midway Landfill on the  
11 National Priority List. In 1985, Ecology conducted site  
12 inspections and found concentrations of methane gas in nearby  
13 structures. Both Seattle and Ecology have conducted extensive  
14 field investigations for landfill gas since that time.

15 In October 1986, Seattle signed a "Response Order By  
16 Consent" with Ecology and agreed to conduct a remedial  
17 investigation/feasibility study for the Midway Landfill.

18 **XI. SCOPE OF WORK**

19 The work to be performed under this Decree will be  
20 consistent with draft regulations filed January 3, 1990, WAC  
21 173-340-400 and 173-340-430.

22 Seattle consents and agrees to finance and perform the  
23 following remedial action projects for the Midway Landfill, as  
24 set out in this Decree, including:

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- 1 1. Design and construction of a landfill cover, as  
2 described in Section XI.B. below.
- 3 2. Construction of a gas extraction system, including  
4 facilities both on and off of the landfill.
- 5 3. Construction of a surface water management system.
- 6 4. Preparation of an Operation and Maintenance Manual  
7 for all remedial action projects implemented at the  
8 landfill as a part of this Decree.

9 **A. Work Performed To Date**

10 As of the effective date of this Consent Decree, Seattle  
11 has completed the planning, design, and construction of the  
12 following remedial action projects at the Midway Landfill:

13 1. Gas Extraction System. The landfill gas extraction  
14 system at the Midway Landfill consists of the following  
15 elements: on-site facilities include vertical wells for  
16 extracting landfill gas, temporary and permanent motor blower  
17 and flare systems to extract and combust the extracted gas, and  
18 temporary manifold pipe systems to connect the wells to the  
19 motor blower and flare system; off-site facilities include  
20 construction of individual gas extraction units consisting of a  
21 vertical well, motor blower, filter, and exhaust pipe to  
22 extract gas from areas outside of the landfill boundary.

23 Construction of 135 on-site gas extraction wells at 80  
24 locations in and around the landfill perimeter was completed  
25 between October 1985 and October 1989. Construction of the

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1 temporary motor blower and flare and temporary manifold systems  
2 was completed in the spring of 1986. Construction of the  
3 permanent motor blower and flare system was completed in March  
4 1990. Construction of seventeen off-site gas extraction well  
5 units was completed as an Interim Remedial Measure (IRM)  
6 between January 1986 and January 1988.

7 2. Surface Water Management System. The surface water  
8 management system at the Midway Landfill consists of the  
9 following elements: preparation of a Surface Water Management  
10 Plan; site grading to control surface water drainage and  
11 construction of a 10-million gallon surface water detention  
12 pond (the On-Site Grading and Drainage Project); construction  
13 of a pipeline and outfall to convey the discharged surface  
14 water to McSorley Creek, also called the North Fork of Smith  
15 Creek (the Off-Site Drainage with Hwy 99 Project); and  
16 construction of a pump station and diversion system to divert  
17 surface water runoff from I-5 and surrounding areas out of the  
18 landfill and into the detention pond (the East I-5 Pump Station  
19 Project).

20 Preparation of a detailed Surface Water Management Plan  
21 was completed in June 1987. Construction of the On-Site  
22 Grading and Drainage Project was completed in June 1989.  
23 Construction of the Off-Site Drainage with Hwy 99 Project was  
24 completed in January 1989. Construction of the East/I-5 Pump  
25 Station Project was completed in April 1990.

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1 The planning and design of each of these projects was  
2 reviewed and approved by Ecology prior to construction. Any  
3 supporting documents for these projects previously approved and  
4 which are listed in Appendix B are hereby incorporated into  
5 this Decree by reference.

6 **B. Work To Be Performed**

7 Within thirty (30) days of the effective date of this  
8 Decree, or as soon thereafter as weather conditions will  
9 permit, Seattle shall begin work on the Landfill Cover and  
10 Final Gas Manifold Projects as described below. While Ecology  
11 has approved the concept for these projects, Ecology has not  
12 yet approved the design drawings, specifications, and project  
13 manual for the addition of one foot of clayey silt or silty  
14 clay as described herein:

15 1. Landfill Cover. The work to be performed for this  
16 Decree consists of construction of a multi-layered landfill  
17 cover system comprised of the following layers (from bottom to  
18 top):

- 19 a. One foot of clayey silt/silty clay or amended soil  
20 material with a permeability not greater than  $1 \times 10^{-7}$   
21 cm/sec, as measured after placement.  
22 b. 50-mil synthetic membrane  
23 c. Geonet drainage layer.  
24 d. One foot of sand.

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1 e. One foot of topsoil planted with shallow rooted  
2 grasses.

3 The placement of the clayey silt/silty clay will be  
4 limited to the central area of the landfill. The north slope  
5 along the detention pond and the east slope along I-5 will  
6 receive the 50-mil synthetic membrane (textured) only because  
7 of the difficulty in placing the clayey silt/silty clay on the  
8 steep slopes.

9 2. Final Gas Manifold System. The work to be performed  
10 for this Decree consists of construction of a permanent  
11 manifold piping system which links the on-site gas extraction  
12 wells to the permanent motor blower and flare system. The gas  
13 manifold system shall include construction of a collection  
14 system for condensate from the gas pipelines. The final gas  
15 manifold system constitutes the final element for completion of  
16 the on-site landfill gas extraction system.

17 Any supporting documents for these projects previously  
18 approved and which are listed in Appendix B are hereby  
19 incorporated into this Decree by reference. While Ecology has  
20 approved the concept for these projects, Ecology has not yet  
21 approved the design drawings, specifications, and project  
22 manual for the addition of one foot of clayey silt or silty  
23 clay as described herein.

24 3. Final Project Reports. Seattle shall prepare a final  
25 project report for each remedial action project constructed at  
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1 the landfill which shall include the following elements:  
2 record drawings documenting the work as constructed, and a  
3 narrative report identifying deviations from the approved plans  
4 and specifications.

5           4. Landfill Operation and Maintenance Manual.  
6 Seattle shall prepare a comprehensive Operation and Maintenance  
7 Manual which incorporates both short-term and long-term  
8 operation and maintenance requirements for all remedial action  
9 projects constructed at the Midway Landfill under the terms of  
10 this Decree. Seattle shall prepare a draft manual and shall  
11 submit five copies to Ecology for review. Seattle shall make  
12 revisions as appropriate and submit five (5) copies of the  
13 final manual to Ecology.

14           **C. Work Plan**

15           Within thirty (30) days of the effective date of this  
16 Decree, Seattle shall submit to Ecology a proposed work plan  
17 for the two projects listed in Section XI.B. above. For the  
18 purposes of this Decree, the work plan shall consist of a cover  
19 letter with the following attachments: a copy of all plans and  
20 specifications revised to include the one foot clay layer  
21 specified in Section XI.B.1. above; all change orders to the  
22 construction contract negotiated prior to the effective date of  
23 this Decree and approved by Ecology; an organization chart for  
24 Seattle's management staff assigned to the project, including  
25 the senior staff of the construction contractor retained by

1 Seattle to construct the projects; and a construction schedule  
2 prepared by the contractor according to the project  
3 specifications.

4       Within fifteen (15) days of the receipt of the work plan  
5 Ecology shall notify Seattle, in writing, of Ecology's approval  
6 or disapproval of the work plan. In the event of any  
7 disapproval, Ecology shall specify, in writing, both the  
8 deficiencies and any Ecology recommended modifications  
9 regarding the work plan.

10       Within fifteen (15) days of the receipt of Ecology's  
11 notification of the work plan disapproval or recommended  
12 modification, Seattle shall amend and submit to Ecology a  
13 revised work plan. If deemed appropriate, Ecology may allow  
14 additional time to respond to the notification. Any  
15 disagreement shall be resolved pursuant to Section XX,  
16 Resolution of Disputes.

17       Within fifteen (15) days of the final approval of the work  
18 plan, Seattle shall commence work on those activities not  
19 completed prior to this Decree and thereafter complete all  
20 tasks by the dates indicated in subsection D of this section.  
21 If the schedule of the work plan or the performance of tasks  
22 specified in the work plan developed by Seattle indicates that  
23 the time frame(s) is an impractical or infeasible period in  
24 which to perform the tasks, then Ecology and Seattle agree to  
25 reconsider the time frames established herein through Section  
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1 XXII, Extension of Schedule, and if necessary, amend the Decree  
2 through Section XXI, Amendment of Consent Decree. The approved  
3 work plan shall be attached to and incorporated into this  
4 Decree as part of Appendix B.

5 This work plan and each element thereof shall be  
6 designated, implemented and completed in accordance with the  
7 NCP as defined herein and in accordance with the requirements  
8 of CERCLA as amended by SARA; Chapter 70.105D RCW; all  
9 applicable federal, state and local laws and regulations; and  
10 all applicable EPA guidance documents.

11 In the event amendments to the NCP and/or the Chapter  
12 70.105D RCW or other applicable and relevant laws, regulations,  
13 and guidance documents become effective after the effective  
14 date of this Decree and prior to completion of the remedial  
15 actions specified herein which materially affect the right or  
16 obligation of any party or construction documents or schedules  
17 of the Decree, the Parties agree to negotiate in good faith a  
18 written amendment to the Decree to provide for such changes, if  
19 deemed necessary.

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CONSENT DECREE

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1           **D.    Schedule**

2           1.    Seattle shall submit final project reports for the  
3 projects completed prior to the effective date of this Decree  
4 to Ecology no later than July 31, 1990.

5           2.    Seattle shall complete all construction work  
6 performed under this Consent Decree no later than September 30,  
7 1991. The final project report for the landfill cover and  
8 final gas manifold construction project shall be submitted to  
9 Ecology not later than sixty (60) days after construction is  
10 considered complete by Seattle's Senior Construction Engineer.

11          3.    Seattle shall submit the draft Operations and  
12 Maintenance Manual to Ecology for review not later than May 1,  
13 1991. Ecology understands and accepts that the draft  
14 Operations and Maintenance Manual may not be complete with  
15 respect to the cover and final gas manifold projects. Ecology  
16 agrees to submit any review comments to Seattle within sixty  
17 (60) days of receipt of the draft manual. Seattle shall make  
18 revisions as appropriate. Seattle shall in any event submit a  
19 final manual to Ecology within sixty (60) days of receipt of  
20 Ecology's comments or within 60 days of completion of  
21 construction of the cover and manifold, which ever occurs  
22 later. If deemed appropriate by Ecology, additional time may  
23 be allowed to Seattle to address Ecology's comments.

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**XII. DESIGNATED PROJECT MANAGERS**

On or before the entry of this Decree, Ecology and Seattle shall each designate a project manager and alternate. Each project manager shall be responsible for overseeing the implementation of this Decree. The Ecology project manager will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Seattle 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 managers or alternate if the project manager for either party is not available. The project managers may designate staff contacts for all or portions of the implementation of the remedial work required by this Decree.

Seattle and Ecology may change their respective project managers or alternates without amending this Decree by notifying the counterpart designated project manager, in writing, at least ten (10) days prior to the change.

The project manager for Ecology is:

Russ Darr  
Washington State Department of Ecology  
Hazardous Waste Investigation and Cleanup  
Program  
Mail Stop PV-11, Woodland Square  
Olympia, WA 98504-8711  
(206) 438-3043

1 The project manager for Seattle is:

2  
3 Lin Robinson  
4 City of Seattle  
5 Solid Waste Utility  
6 Suite 505  
7 710 2nd Avenue  
8 Seattle, WA 98104  
9 (206) 684-7687

7 **XIII. PERFORMANCE**

8 All construction work performed pursuant to this Decree  
9 shall be under the oversight, as necessary, of a professional  
10 engineer or qualified hydrogeologist, or equivalent. Seattle  
11 shall notify Ecology as to the identity of such engineer(s) or  
12 hydrogeologist(s), and of any contractors and subcontractors to  
13 be used in carrying out the terms of this Decree, in advance of  
14 their involvement at the Midway Landfill. All contractors and  
15 Seattle construction management staff shall meet federal and  
16 state health and safety laws regarding construction work  
17 conducted on an NPL site. This provision is not intended to  
18 and does not relieve any contractor, subcontractor, or  
19 consultant of any responsibility, liability or obligation under  
20 contract with Seattle.

21 **XIV. ACCESS**

22 Ecology and its authorized representative shall have the  
23 authority to enter and freely move about all property at the  
24 Midway Landfill at all reasonable times for the purposes of,  
25 inter alia: inspecting records, operation logs, and contracts

1 related to the work being performed pursuant to this Decree;  
2 reviewing the progress in carrying out the terms of this  
3 Decree; conducting such tests or collecting samples as Ecology  
4 or the project manager may deem necessary; using a camera,  
5 sound recording, or other documentary type equipment to record  
6 work done pursuant to this Decree; and verifying the data  
7 submitted to Ecology by Seattle. Ecology shall make a  
8 reasonable effort to notify Seattle ten (10) days in advance of  
9 any field sampling event. All consultants and contractors with  
10 access to the Midway Landfill pursuant to this paragraph shall  
11 comply with the Ecology reviewed and accepted health and safety  
12 plans.

13 Any new off-site access locations necessary for remedial  
14 activities must be identified in writing and such information  
15 must be submitted to Ecology. Seattle has obtained all  
16 necessary permits and easements for access to private property  
17 for the purpose of conducting necessary off-site remedial  
18 activities. If, after diligent efforts, Seattle is unable to  
19 achieve additional access, Ecology will use its best efforts,  
20 consistent with its legal authority under the Chapter 70.105D  
21 RCW, to assist Seattle in obtaining such access. Seattle shall  
22 comply with the Chapter 70.105D RCW with respect to entry on  
23 real property not owned by Seattle.

24 **XV. SAMPLING, DATA REPORTING AND AVAILABILITY**

25 Seattle shall make the results of all sampling, laboratory  
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1 reports, and/or test results generated by it, or on its behalf,  
2 available to Ecology and shall submit these results once  
3 quality assurance data is received by Seattle (unless immediate  
4 action is required) or in progress reports submitted in  
5 accordance with Section XIV, Progress Reports.

6 At the request of Ecology, Seattle shall allow split or  
7 duplicate samples to be taken by Ecology and/or its authorized  
8 representatives of any samples collected by Seattle pursuant to  
9 the implementation of this Decree unless Ecology fails to make  
10 available a representative for this purpose. Seattle shall  
11 make a reasonable effort to notify Ecology ten (10) days in  
12 advance of any field sampling activity (sample collection,  
13 drilling, excavation, etc.). Ecology shall allow split or  
14 duplicate samples to be taken by Seattle or its authorized  
15 representatives of any samples collected by Ecology pursuant to  
16 the implementation of this Decree, unless Seattle fails to make  
17 available a representative for this purpose. Ecology shall  
18 make a reasonable effort to notify Seattle ten (10) days in  
19 advance of any field sampling activity.

#### 20 XVI. PROGRESS REPORTS

21 Commencing with entry of this Decree, Seattle shall submit  
22 to Ecology written monthly progress reports which describe the  
23 actions it has taken during the previous month to implement the  
24 requirements of this Decree. Progress reports shall also  
25 describe the activities scheduled to be taken during the next  
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1 month. All progress reports shall be submitted by the tenth  
2 day of the month in which they are due commencing in the first  
3 month after the effective date of this Decree. The progress  
4 reports shall include a detailed statement of the manner and  
5 extent to which the requirements and time schedules set out in  
6 the work plan and this Decree are being met. Unless otherwise  
7 agreed, progress reports and any other documents submitted  
8 pursuant to this Decree shall be sent by certified mail,  
9 return-receipt requested, or overnight parcel delivery  
10 (signature required), to Ecology's project manager.

11 **XVII. RETENTION OF RECORDS**

12 Seattle shall preserve, during the pendency of this Decree  
13 and for ten (10) years from the date of completion of  
14 compliance monitoring all final documents in its possession  
15 relevant to the implementation of this Decree, unless relieved  
16 of this obligation by operation of law. Upon request of  
17 Ecology, Seattle shall make all non-archived records available  
18 to Ecology and allow access for review. All archived records  
19 shall be made available to Ecology within thirty (30) days.

20 **XVIII. PROVISION OF OTHER DOCUMENTS**

21 Upon Ecology's request, Seattle shall provide Ecology with  
22 copies of Midway Landfill final plans, final task memoranda,  
23 including memoranda recording minor field modifications,  
24 recommendations for further action, quality assurance memoranda  
25 and audits, final reports, raw data filed into laboratory  
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1 analytical reports and any other documents which relate in any  
2 way to the facility, including those pertaining to any studies  
3 relevant to but not specifically required by this Decree.

4 **XIX. TRANSFER OF INTEREST IN PROPERTY**

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

11 Upon entry of this Decree, and to the extent Seattle is  
12 the owner of the real property described in Appendix A, Seattle  
13 shall place a notice in the records of real property kept by  
14 the county auditor stating that said property was used as a  
15 landfill and was on the National Priorities List. Prior to  
16 transfer of any legal or equitable interest in all or any  
17 portion of the landfill real property, Seattle shall serve a  
18 copy of this Decree upon any prospective purchaser, lessee,  
19 transferee, assignee, or other successor in interest of the  
20 property; and, at least thirty (30) days prior to any transfer,  
21 Seattle shall notify Ecology of said contemplated transfer.

22 **XX. RESOLUTION OF DISPUTES**

23 Seattle and Ecology's project managers shall use their  
24 best efforts informally and in good faith to resolve all  
25 disputes or differences of opinion. If, however, disputes  
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1 arise between Seattle and Ecology concerning modifications,  
2 disapprovals, or decisions made pursuant to this Decree, which  
3 the project managers are unable to resolve informally, either  
4 Ecology shall present a written notice of such dispute to  
5 Seattle or Seattle shall present a written notice of such  
6 dispute to Ecology.

7 If Seattle objects to any Ecology disapproval, proposed  
8 modification, or decision made pursuant to this Decree, it  
9 shall notify Ecology in writing of its objections within  
10 fifteen (15) days of receipt of such notice. Thereafter, the  
11 Parties shall confer in an effort to resolve informally the  
12 dispute. This informal dispute resolution process should start  
13 with the Ecology section head and Seattle Landfill Closure  
14 Director. If these individuals are unable to resolve the  
15 dispute, the issue shall be elevated to the Ecology Program  
16 Manager and Seattle Solid Waste Utility Director. The final  
17 level of informal dispute resolution shall involve the Ecology  
18 Assistant Director of Waste Management and Seattle's Director  
19 of the Engineering Department.

20 If, through this informal dispute resolution process,  
21 agreement cannot be reached on the dispute within thirty (30)  
22 days after receipt by Ecology of such objections, Ecology shall  
23 promptly provide a written statement of its decision to  
24 Seattle.  
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1 If Ecology's final written decision is unacceptable to  
2 Seattle, then Seattle has the right to submit the dispute to  
3 the Court for resolution. The Parties agree that one judge may  
4 retain jurisdiction over this case and shall, as necessary,  
5 resolve any dispute arising under this Decree.

6 In the event Seattle presents an issue to the Court for  
7 review, the Court shall review the action or decision of  
8 Ecology on the basis of whether such action or decision was  
9 arbitrary and capricious and render a decision based on such  
10 standard of review. Ecology and Seattle agree to only utilize  
11 the dispute resolution process in good faith and agree to  
12 expedite, to the extent possible, the dispute resolution  
13 process whenever it is used. Where either party utilizes the  
14 dispute resolution in bad faith or for purposes of delay, the  
15 other party may seek sanctions.

16 Implementation of these dispute resolution procedures  
17 shall not provide a basis for delay of any activities required  
18 in this Decree, unless Ecology agrees in writing to a schedule  
19 extension or the Court so orders. Stipulated penalties shall  
20 not begin to accrue during pendency of good faith dispute  
21 resolution procedures.

22 **XXI. AMENDMENT OF CONSENT DECREE**

23 This Decree may only be amended by a written stipulation  
24 among all the Parties to this Decree that is entered by the  
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**CONSENT DECREE**

1 Court. Such amendment shall become effective upon entry by the  
2 Court.

3 Amendment of this Consent Decree is not required for minor  
4 change orders or minor field work orders that do not materially  
5 affect the scope of work. Major design change or field work  
6 orders that materially change the scope of work or conceptual  
7 design will require amendment of this Decree.

8 Amendment of this Decree is not required for change of  
9 designated project managers.

10 **XXII. EXTENSION OF SCHEDULE**

11 If any event occurs which may cause or has caused a delay  
12 in or deviation from achievement of the requirements of this  
13 Decree, Seattle shall promptly notify Ecology's project manager  
14 orally and shall, within five (5) working days of oral  
15 notification to Ecology, notify Ecology in writing of:

16 1. The anticipated duration and cause of the delay or  
17 deviation.

18 2. The measures that have been or will be taken to  
19 prevent or minimize the delay or deviation.

20 3. The timetable by which Seattle proposes to carry out  
21 such measures.

22 A. An extension of schedule shall be granted only when a  
23 request for an extension is submitted in a timely fashion and  
24 good cause exists for granting the extension. A requested  
25 extension shall not be effective until approved by Ecology.

1 Ecology shall act upon any written request for extension within  
2 thirty (30) days. It shall not be necessary to formally amend  
3 this Decree pursuant to Section XXI, Amendment of Consent  
4 Decree, when a schedule extension is granted.

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

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

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

18 3. Endangerment as described in Section XXIV,  
19 Endangerment. However, neither increased costs of performance  
20 of the terms of the Decree nor changed economic circumstances  
21 shall be considered circumstances beyond the reasonable control  
22 of Seattle; or

23 4. Lack of access.

24 C. Ecology may extend the schedule for a period not to  
25 exceed ninety (90) days, except where an extension is needed as  
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1 a result of the items listed below. Ecology may extend the  
2 schedule in excess of 90 days for the following reasons:

3 1. Delays in the issuance of a necessary permit which  
4 was timely applied for or, if necessary, to comply with permit  
5 conditions; or

6 2. Judicial review of the issuance, non-issuance, or  
7 reissuance of a necessary permit; or

8 3. Other circumstances deemed exceptional or  
9 extraordinary by Ecology; or

10 4. Endangerment as described in Section XXIV,  
11 Endangerment; or

12 5. The need to protect the environment or public health.  
13 Ecology shall give Seattle written notice in a timely  
14 fashion of any extensions granted or denied pursuant to the  
15 Decree.

16 D. If Seattle does not meet the requirements in the  
17 Plans and Specifications detailing the scope of work as set out  
18 in the work plan described in Section XI.B. and C herein,  
19 Ecology reserves the right to require the work cease until  
20 Seattle and Ecology agree to an appropriate course of action.  
21 Ecology shall provide Seattle with five (5) days written notice  
22 prior to requiring Seattle to cease work. Said written notice  
23 shall state specifically the work not meeting requirements set  
24 forth in the project plans and specifications.

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**XXIII. STIPULATED PENALTIES**

A. If Seattle fails to meet a scheduled deadline in accordance with Section XI.D. of this Decree, Seattle stipulates and agrees that it shall be obligated at Ecology's discretion to pay into the State Toxics Control Account of the State of Washington, a civil penalty, in an amount of up to five hundred dollars (\$500) per day during the first thirty (30) days; up to seven hundred fifty dollars (\$750) per day during the next thirty (30) days; and up to one thousand dollars (\$1,000) per day thereafter.

B. Seattle shall not be liable for payment under this section if it has submitted a timely request to Ecology for an extension of schedule under Section XXII, Extension of Schedule, and such request has been granted by Ecology or the Court prior to or after the deadline at issue. Penalties shall begin to accrue only upon receipt by Seattle of Ecology's notification of noncompliance or denial of a schedule extension.

C. Upon determination by Ecology that Seattle has failed to meet a deadline referenced in Section XI.D. of this Decree or has otherwise failed to comply with this Decree, Ecology shall immediately give written notice to Seattle of the failure, specifying the provision of the Decree which has not been complied with and specifying the amount of the civil penalty due pursuant to Subsection A of this Section. Seattle

1 shall pay the civil penalty within sixty (60) days of receipt  
2 of notification from Ecology or as may be required after the  
3 completion of any dispute resolution under Section XX,  
4 Resolution of Disputes. Ecology may waive stipulated penalties  
5 when it deems appropriate.

6 D. Any disagreement over the factual basis for issuance  
7 of a penalty under this Section shall be resolved through the  
8 dispute resolution clause. In the event Seattle disagrees with  
9 the result of the dispute resolution process, Seattle may seek  
10 relief from the Court. Any penalty issued pursuant to this  
11 Section shall not be appealable to the Pollution Control  
12 Hearings Board.

#### 13 XXIV. ENDANGERMENT

14 In the event Ecology determines or concurs in a  
15 determination by another local, state, or federal agency that  
16 activities implementing or in noncompliance with this Decree,  
17 or any other circumstances or activities, are creating or have  
18 the potential to create a danger to the health or welfare of  
19 the people on the Midway Landfill or in the surrounding area or  
20 to the environment, Ecology shall order Seattle to stop further  
21 implementation of this Decree for such period of time as needed  
22 to abate the danger or may petition the Court for an order as  
23 appropriate. During any stoppage of work under this Section,  
24 the obligations of Seattle with respect to the work ordered to  
25 be stopped shall be suspended and the time periods for  
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1 performance of that work, as well as the time period for any  
2 other work dependent upon the work which is stopped, shall be  
3 extended, pursuant to Section XXII, Extension of Schedule, for  
4 such period of time as Ecology determines is reasonable under  
5 the circumstances.

6 In the event Seattle determines that activities undertaken  
7 in furtherance of this Decree or any other circumstances or  
8 activities are creating an imminent and substantial  
9 endangerment to the people on the Midway Landfill or in the  
10 surrounding area or to the environment, Seattle shall stop  
11 implementation of this Decree for such periods of time  
12 necessary for Ecology to evaluate the situation and determine  
13 whether Seattle should proceed with implementation of this  
14 Decree or whether the work stoppage should be continued until  
15 the danger is abated. Seattle shall notify either Ecology  
16 field personnel on-site or the project manager as soon as is  
17 possible, but no later than twenty-four (24) hours after such  
18 stoppage of work. Within five (5) days after such stoppage,  
19 Seattle shall provide Ecology with documentation of its  
20 analysis in reaching this determination. If Ecology disagrees  
21 with Seattle's determination, it may order Seattle to resume  
22 implementation of this Decree. If Ecology concurs in the work  
23 stoppage, Seattle's obligations shall be suspended and the time  
24 period for performance of that work, as well as the time period  
25 for any other work dependent upon the work which was stopped,

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CONSENT DECREE

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1 shall be extended, pursuant to Section XXII, Extension of  
2 Schedule, for such period of time as Ecology determines is  
3 reasonable under the circumstances. Any disagreements pursuant  
4 to this clause shall be resolved through the dispute resolution  
5 procedures in Section XX, Resolution of Disputes.

6 **XXV. RESERVATION OF RIGHTS**

7 A. Ecology reserves its rights to institute remedial  
8 action(s) at the Site and subsequently pursue cost recovery,  
9 and Ecology reserves its rights to issue orders and/or  
10 penalties pursuant to available statutory authority under the  
11 following circumstances:

12 1. In the event Seattle fails to comply with the terms  
13 of this Consent Decree; or

14 2. In the event or upon the discovery of a release or  
15 threatened release not addressed by this Decree; or

16 3. In the event that the remedial actions are not being  
17 constructed to the specifications set forth herein; or

18 4. Upon Ecology's determination that action beyond the  
19 terms of this Decree is necessary to abate an emergency  
20 situation which threatens the public health or welfare or the  
21 environment.

22 Ecology will notify Seattle in writing of the need for any  
23 such remedial action and will allow Seattle the option to  
24 perform the additional remedial action before Ecology initiates  
25 such an action at the site.



1 B. Seattle reserves all rights and defenses available in  
2 law and in equity regarding liability or responsibility in any  
3 proceedings related to the Midway Landfill, other than  
4 proceedings by Ecology to enforce this Decree.

5 This Decree shall not be construed in any way as a waiver  
6 or limitation on Ecology's or Seattle's right to seek  
7 reimbursement from any responsible party, including entities  
8 not a signatory to this Decree, for investigative, response,  
9 and oversight costs incurred by Ecology or Seattle in  
10 connection with activities conducted at the Midway Landfill.

11 **XXVI. COVENANT REOPENERS**

12 Pursuant to RCW 70.105D.040 (4)(c), a reopener to the  
13 aforementioned Covenant Not to Sue is necessary which requires  
14 amendment of this Decree if factors not known at the time of  
15 entry of the settlement agreement are discovered and present a  
16 previously unknown threat to human health or the environment.  
17 In addition, because final remedial action will begin prior to  
18 completion of the RI/FS and Record of Decision, the landfill  
19 cap, gas extraction and surface water systems remedial actions  
20 may be subject to modification for the reasons set forth below.

21 Therefore, Ecology specifically reserves the opportunity  
22 to reopen the Covenant Not to Sue in the following  
23 circumstances:

- 24 1. In the event Seattle fails to comply with the terms  
25 of this Consent Decree; or

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- 2. In the event of an emergency; or
- 3. In the event new hazardous substances are found in the landfill which are not presently known and which present a previously unknown threat to human health or the environment; or
- 4. In the event the completed RI/FS contains significant new information that alters the technical evaluation of landfill conditions and appropriate remedial action pursuant to RCW 70.105D.040 (4)(a).

**XXVII. CONTRIBUTION PROTECTION**

Subject to the Covenant Reopeners and the Reservation of Rights set forth above, Ecology agrees that by entering into and carrying out the terms of this Consent Decree, pursuant to RCW 70.105D(4)(d) Seattle will have resolved its liability to the Ecology for matters covered herein and shall not be liable for claims for contribution regarding matters covered herein.

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**XXVIII. INDEMNIFICATION**

Insofar as Seattle may be authorized to do so under the laws and constitution of the State of Washington, Seattle 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 Seattle, its officers, employees, agents, or contractors in entering into or implementing this Decree, except for claims arising from or on account of the negligent acts or omissions of Ecology, its agents, officers or employees.

**XXIX. COMPLIANCE WITH APPLICABLE LAWS**

All actions carried out by Seattle pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, insofar as required by law.

**XXX. OVERSIGHT COSTS**

Seattle agrees to reimburse the State Toxics Control Account of the State of Washington, for all reasonable and appropriate costs expended by Ecology, including oversight costs not to exceed \$125,000 per year, associated with Ecology's activities at the Midway Landfill conducted during the implementation of this Decree. Oversight dollars that are not expended by Ecology during a given year shall not carry

1 over to succeeding years. Within ninety (90) days of the end  
2 of each fiscal quarter, Ecology will submit to Seattle a  
3 summary statement of Ecology's expenses for the previous  
4 quarter, with adequate documentation. Following receipt of the  
5 statement and adequate documentation, Seattle shall pay, within  
6 ninety (90) days, into the State Toxics Control Account of the  
7 State of Washington, the required sum. With respect to the  
8 costs incurred by Ecology prior to the work included under the  
9 Midway "Response Order by Consent" dated October 3, 1986,  
10 Seattle will make payment within 120 days of receipt of  
11 satisfactory supporting documentation from Ecology. Ecology  
12 has indicated the costs incurred prior to the October 3, 1986,  
13 Consent Order total approximately \$1.2 million dollars. The  
14 actual amount to be paid by Seattle will be determined after  
15 Seattle has verified Ecology's documentation.

16 Documentation for payment of oversight costs made to  
17 Ecology by Seattle under the terms of this Decree shall be  
18 attached to each statement of Ecology's expenses and may  
19 include, but not be limited to, the following information:  
20 documentation of work performed, as identified by Ecology  
21 project index codes, expenses incurred, proof of payment and to  
22 whom paid, and consultant and/or contractor invoices. Upon  
23 request by Seattle, Ecology will make available to Seattle for  
24 verification all reasonable supporting records and documents,  
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1 not privileged, which supports Ecology's claim for oversight  
2 costs.

3 Payment of such sums shall not be construed in any way  
4 as evidence of or an admission of liability or responsibility  
5 by Seattle in any proceeding. Seattle retains the right to  
6 seek reimbursement in whole or in part from any responsible  
7 entities for such sums expended.

8 **XXXI. PUBLIC PARTICIPATION**

9 Ecology shall maintain the lead responsibility for public  
10 participation at the Site. To date, Ecology and Seattle have  
11 completed a public participation plan at the Midway Landfill  
12 and have implemented an on-going public participation program  
13 for on-going remedial activities at the landfill. Ecology will  
14 work cooperatively with Seattle to complete the remaining tasks  
15 required under WAC 173-340-600 for activities at the landfill.  
16 Ecology may delegate to Seattle all or portions of these tasks:

17 A. Provide information to the public, public notice, and  
18 opportunities to comment as specified in WAC 173-340-600 for  
19 upcoming activities at the landfill.

20 B. Prepare drafts of press releases, public notices, and  
21 fact sheets at important stages of the remedial action, such as  
22 the approval of work plans and the selection of a remedial  
23 alternative.

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1 C. Coordinate press, public notice, and fact sheet  
2 releases before major meetings and presentations with the  
3 interested public and local government.

4 D. Supply information to the data repositories  
5 established at the Kent and Des Moines Public Libraries. For  
6 example, work plans, remedial investigation and feasibility  
7 study reports, public review documents and other information  
8 deemed necessary by Ecology.

9 Seattle and Ecology shall work cooperatively to implement  
10 public participation activities for the Site. This shall  
11 include participation in public meetings and presentations on  
12 the progress of remedial actions at the Site. Participation  
13 may be through attendance at public meetings to assist in  
14 answering questions or as a presenter.

15 In the event of a disagreement over the contents of any  
16 document or action prepared for purposes of public  
17 participation, issues shall be resolved in a mutually agreeable  
18 manner. Disagreements between Seattle's and Ecology's project  
19 managers shall be elevated to their respective section heads or  
20 directors for resolution if they cannot be resolved by the  
21 project managers.

22 **XXXII. DURATION OF DECREE**

23 This Decree shall remain in effect and the remedial  
24 program described in this Decree shall be maintained and  
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CONSENT DECREE

-45-

1 continued until all requirements as specified in Section XI of  
2 this Decree have been completed to the satisfaction of Ecology.

3 **XXXIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

4 This Decree will be subject to public notice and hearing  
5 under the Chapter 70.105D RCW. Ecology reserves the right to  
6 withdraw or withhold its consent to the proposed final Decree  
7 if new information discloses facts or considerations which  
8 indicate that the proposed Decree is inappropriate, improper,  
9 or inadequate.

10 If the Court withholds or withdraws its consent, this  
11 Decree shall be null and void at the option of any party and  
12 the accompanying Complaint shall be dismissed without costs and  
13 without prejudice. In such an event, no party shall be bound  
14 by the requirements of this Decree.

15 **XXXIV. CONFIDENTIAL INFORMATION**

16 Seattle may claim any exemption from disclosure of public  
17 records pursuant to existing law. Such a claim shall be  
18 adequately substantiated when the confidentiality claim is  
19 made. Quality-assured analytical data shall not be claimed as  
20 confidential by Seattle. Information determined to be  
21 confidential by Ecology will be afforded the protection  
22 specified by law. If no such claim accompanies the information  
23 when it is submitted to Ecology, it may be made available to  
24 the public.

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**XXXV. OTHER CLAIMS**

Nothing herein is intended to release any claims, causes of action or demands in law or equity by any party against any person, entity, firm, partnership or corporation not a signatory to this Decree for any liability arising out of, or relating in any way to, the disposal of waste at, or the release of any substance at, to, or from, the Midway Landfill.

**XXXVI. SATISFACTION OF THIS DECREE**

The provisions of this Decree shall be deemed satisfied upon Seattle's receipt of written certification from Ecology that the program outlined in this Decree has been completed. Ecology's failure to certify completion is subject to the provisions of Section XX of this Decree.

By their signatures hereto, the undersigned represent that they have the authority to bind the parties they represent.

For State of Washington  
Department of Ecology

Carol L. Fleskes  
CAROL FLESKES  
Program Manager  
Hazardous Waste  
Investigation and Cleanup

Date: May 29, 1990

For State of Washington  
Attorney General's Office

Jay J. Manning  
- JAY J. MANNING  
Assistant Attorney General

Date: May 30, 1990



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For City of Seattle

For City of Seattle  
City Attorney's Office

*John Zarker* FOR  
GARY ZARKER  
Director  
Seattle Engineering Dept.

*Mary Kay Doherty*  
MARY KAY DOHERTY  
Assistant City Attorney

Date: 5/29/90

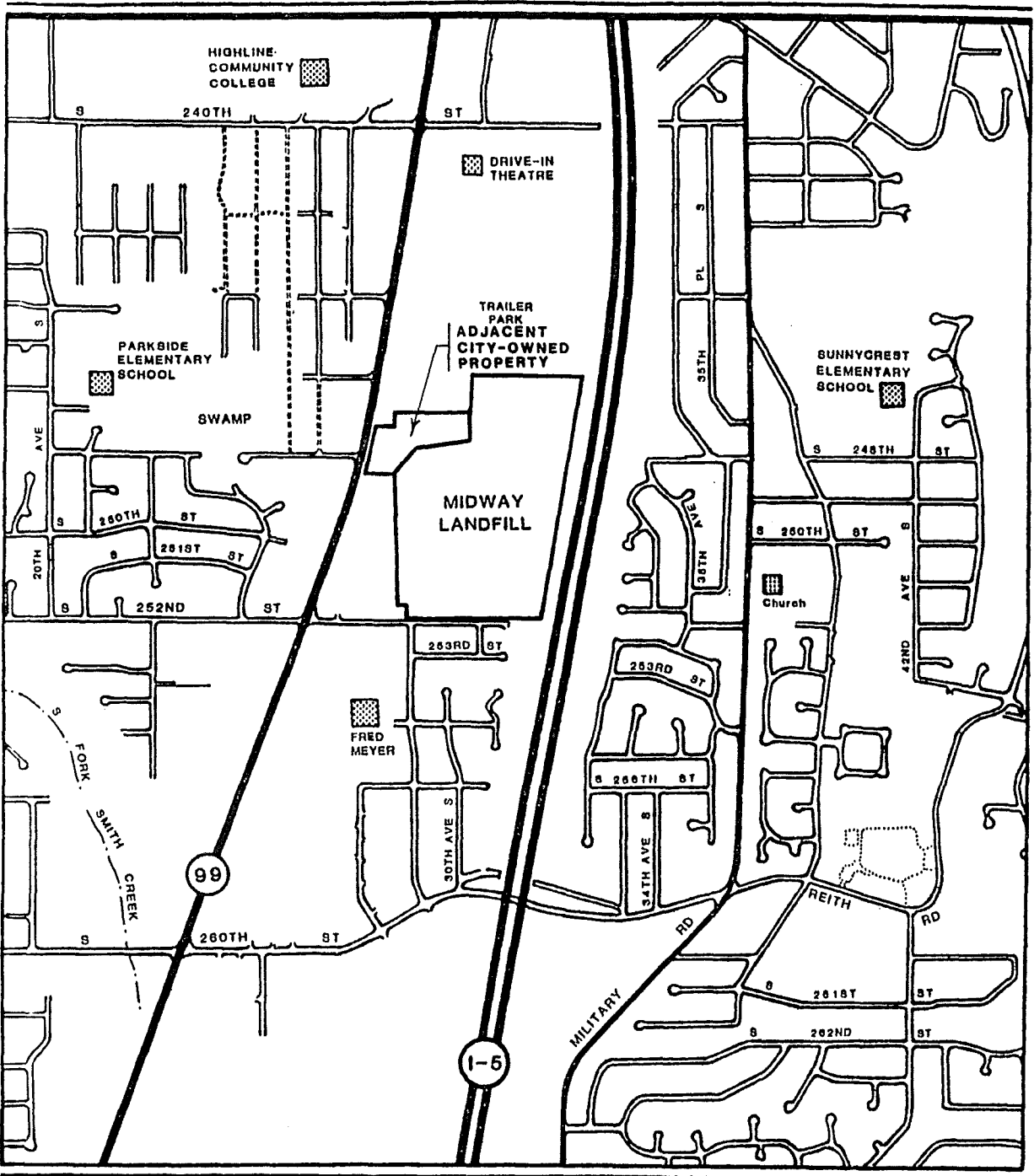
Date: May, 29, 1990


DATED AND ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

\_\_\_\_\_  
JUDGE, King County Superior Court

T1/consent/midwaycd

CONSENT DECREE




  
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**MIDWAY LANDFILL AND  
 ADJACENT PROPERTY OWNED  
 BY THE CITY OF SEATTLE**

**Figure 1**

APPENDIX A

MIDWAY LANDFILL

PARCEL 1:

That portion of the northwest quarter of Section 22, Township 22 North, Range 4 East, W.M., in King County, Washington, lying west of the primary State Highway Number 1, (Interstate Highway No. 5) and south of the easterly extension of the north line of the southeast quarter of the southeast quarter of the northeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington.

PARCEL 2:

The south half of the southeast quarter of the northeast quarter and the west half of the west half of the northeast quarter of the southeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington, lying westerly of Primary State Highway Number 1 (Interstate Highway No. 5); EXCEPT that portion described as follows:

Beginning at the southwest corner of the southeast quarter of the northeast quarter of said section;  
thence north 01°07'09" east 363.64 feet along the west line of said subdivision;

thence south 87°53'39" east 602.44 feet;

thence south 01°07'09" west 202.70 feet;

thence south 81°19'39" west 447.99 feet;

thence south 39°19'39" west 260.00 feet to the west line of the northeast quarter of the southeast quarter of said Section;

thence north 01°05'25" east 130.03 feet along said west line to the point of beginning;

AND EXCEPT that portion of the north half of the southwest quarter of the southeast quarter of the northeast quarter of said Section 21, lying north of the south 40 feet and west of the east 60 feet.

AND EXCEPT the north 100 feet of the south 130 feet of the west 95 feet of the west half of the west half of the northeast quarter of the southeast quarter, of said Section 21;

AND EXCEPT the south 30 feet thereof for South 252nd Street.

PARCEL 3:

The north 535.83 feet of the northeast quarter of the southeast quarter of Section 21, Township 22 North, Range 4 East, W.M., in King County, Washington, lying westerly of Primary State Highway Number 1 (Interstate Highway No. 5);

EXCEPT that portion within the west half of the northwest

quarter of the northeast quarter of the southeast quarter of said Section 21.

PARCEL 4:

That portion of the NE quarter of the SE quarter of Sec. 21, Township 22 N., Range 4 E., W.M., in King County Washington, more fully described as follows:

Beginning at the NE corner of the NE quarter of the SE quarter of said Section; thence S. along the E. section line of said Section 21, 535.83 feet to the true point of beginning; thence W. parallel with the S. line of said subdivision 987.6 feet to the E. line of the W. quarter of the NE quarter of the SE quarter; thence south along said E. line 780 feet to the S. line of said subdivision; thence E. along said S. line 987.6 feet to the SE corner of said subdivision; thence N. along said section line 780 feet to the true point of beginning; EXCEPT that portion lying within Primary State Highway Number 1 (Interstate Highway No. 5); AND EXCEPT that portion lying within South 252nd Street.

## Appendix B

1. Gas Extraction System:
  - o Midway Landfill Gas Migration Control System, Blower/Flare Facility
    - o Design Drawings (May 1988); Vault Plan No. 870-175
    - o Project Manual, including construction specifications, construction contract, and all amendments and change orders (June 1988)
    - o Midway Landfill Blower/Flare Facility Design Criteria Report (Prepared for the City of Seattle by Parametrix, Inc., September 1987)
2. Surface Water Management Projects
  - o Surface Water Management Plan (Prepared for the City of Seattle by Parametrix, Inc., June 1987)
  - o Midway Landfill On-Site Grading and Drainage Project
    - o Design Drawings (August 1989); Vault Plan No. 774-20
    - o Project Manual, including construction specifications, construction contract, and all amendments and change orders (June 1988)
    - o Quality Assurance Plan for Construction Management of Midway Landfill Closure Stormwater Detention Pond (October 1988)
  - o Midway Landfill Closure Off-Site Drainage with Highway 99 Project
    - o Design Drawings (March 1988); Vault Plan No. 774-23
    - o Project Manual, including construction specifications, construction contract, and all amendments and change orders (April 1988)

Appendix B to Midway Consent Decree

Page 2

- o Midway Landfill Closure East I-5 Pump Station Project
  - o Design Drawings (May 1989); Vault Plan No. 777-422
  - o Project Manual, including construction specifications, construction contract, and all amendments and change orders (June 1989)
  
- 3. Landfill Cover/Final Gas Manifold System Project
  - o Technical Memorandum for Midway Landfill Final Cover And Gas Collection System, Evaluation of Alternatives (Prepared for the City of Seattle by Parametrix, Inc., March 1989)
  - o Addendum One to the Technical Memorandum for Midway Landfill Final Cover and Gas Collection System, Evaluation of Alternatives (Prepared for the City of Seattle by Parametrix, Inc., May 1989)
  - o Summary of Geotechnical Studies, Final Cover Project Midway Landfill Closure, Kent, Washington (Prepared for the City of Seattle and Parametrix, Inc. by Rittenhouse-Zeman and Associates, June 1989)
  - o Design Drawings (July 1989). Subject to revision for the addition of one foot of clayey silt or silty clay, as per Section XI.B of the Consent Decree; Vault Plan No. 782-177
  - o Project Manual, including construction specifications, construction contract, and all amendments and change orders (July 1989). Subject to revision for the addition of one foot of clayey silt or silty clay, as per Section XI.B of the Consent Decree