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**STATE OF WASHINGTON  
COWLITZ COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

NORTHWEST ALLOYS, INC., and  
MILLENNIUM BULK TERMINALS  
LONGVIEW, LLC,

Defendants.

NO.

CONSENT DECREE

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## I. INTRODUCTION

A. The mutual objective of the State of Washington, Department of Ecology (Ecology), Northwest Alloys, Inc. (NWA) and Millennium Bulk Terminals-Longview, LLC (MBT-Longview) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires NWA (“Owner”) and MBT-Longview (~~the~~ “Operator”) (collectively referred to as “Owner and Operator”~~respectively~~) to implement the Cleanup Action Plan (CAP) attached hereto as Exhibit B. Ecology has determined that these actions are necessary to protect human 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. By signing this Decree, the Parties agree to its entry ~~and agree~~ to be bound by its terms, and commit to implement the CAP (Exhibit B).

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

E. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts and the Owner and Operator reserve the right to contest any such liability, responsibility, costs, and facts; provided, however, that Owner and Operator shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

1 F. The Court is fully advised of the reasons for entry of this Decree, and good cause  
2 having been shown:

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

4 **II. JURISDICTION**

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

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

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

14 D. Ecology has given notice to the Owner and Operator of Ecology's determination  
15 that the Owner and Operator are each a PLP for the Site, as required by  
16 RCW 70.105D.020(26) and WAC 173-340-500.

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

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

20 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
21 hazardous substances and provide for remedial action at the Site in compliance with the cleanup  
22 standards established under RCW 70.105D.030(2)(e) and WAC 173-340.

23 H. The Owner and Operator have agreed to undertake the actions specified in this  
24 Decree and consent to the entry of this Decree under MTCA.

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### III. PARTIES BOUND

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

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### IV. DEFINITIONS

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

A. Site: Refers to the Former Reynolds Metals Aluminum Smelter Site generally located at 4029 Industrial Way, Longview, Washington. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology, NWA and MBT-Longview.

C. Owner and Operator: Refers to NWA and MBT-Longview.

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

E. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

1 F. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under  
2 WAC 173-340-360 which selects Facility-specific corrective measures and specifies cleanup  
3 standards (cleanup levels, points of compliance, and other requirements for the corrective  
4 measures). Attached as Exhibit B. The CAP and any attachments to the CAP are integral and  
5 enforceable parts of this Decree.

6 G. Hazardous Substance: Refers to “hazardous substance” as defined in  
7 RCW 70.105D.020(13) and, for purposes of this Decree only, includes “dangerous waste  
8 constituents” listed in WAC 173-303-9905, the groundwater monitoring list in  
9 40 C.F.R. Part 264 Appendix IX, and any constituent which caused a waste to be listed or  
10 designated as dangerous under the provisions of WAC 173-303.

11 H. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070  
12 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are  
13 considered hazardous substances under RCW 70.105D.020(13).

14 I. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of  
15 land on or in which dangerous waste is placed, or the largest area in which there is a significant  
16 likelihood of mixing dangerous waste constituents in the same area, as defined in  
17 WAC 173-303-040.

18 J. Facility: Refers to the Former Reynolds Metals Aluminum Smelter Site DWMU  
19 controlled by the Owner and Operator located at 4029 Industrial Way, Longview, Washington;  
20 all property contiguous to the DWMU also controlled by the Owner and Operator; and all  
21 property, regardless of control, affected by release(s) or threatened release(s) of hazardous  
22 substances, including dangerous wastes and dangerous constituents, at and from these areas.  
23 “Facility” also includes the definition found in RCW 70.105D.020(8).

24 K. Solid Waste Management Unit (SWMU): Refers to any discernible location at  
25 the Facility where solid wastes have been placed at any time, irrespective of whether the location  
26

1 was intended for the management of solid or dangerous waste. Such locations include any area  
2 at the Facility at which solid wastes, including spills, have been routinely and systematically  
3 released, and include regulated units as defined by WAC 173-303.

4 L. Regulated Unit: Means any new or existing surface impoundment, landfill, land  
5 treatment area, or waste pile that receives any dangerous waste after: July 26, 1982, for wastes  
6 regulated by 40 CFR Part 261; October 31, 1984, for wastes designated only by WAC 173-303  
7 and not regulated by 40 CFR Part 261; or the date six months after a waste is newly identified  
8 by amendments to 40 CFR Part 261 or WAC 173-303 which cause the waste to be regulated.

9 M. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C.  
10 §§ 6901-6992k.

11 N. Remedial Action: Refers to “remedial action” as defined in  
12 RCW 70.105D.020(33) and, for purposes of this Decree only, includes investigations, studies,  
13 characterizations, corrective actions, and corrective measures undertaken in whole or in part to  
14 fulfill the requirements of WAC 173-303-64610.

## 15 V. FINDINGS OF FACTS

16 Ecology makes the following findings of fact without any express or implied admissions  
17 of such facts by the Owner and Operator.

18 A. The Site is located in Longview, Washington, and consists of approximately 536  
19 acres. The Site is bounded by a Weyerhaeuser wood/paper products facility to the East, the Mint  
20 Farm Industrial Park, Bonneville Power Administration-owned properties, a quarry, and other  
21 privately owned acreage to the North, the Port of Longview to the West, and the Columbia River  
22 to the South. A diagram of the Site is attached as Exhibit A.

23 B. NWA is and has been the owner of the Site since on or about September 2005.  
24 MBT-Longview is and has been the operator of the Site since on or about January 2011.  
25  
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1 C. Between approximately 1941 and 2001, the Site was used by Reynolds Metals  
2 Company for the manufacture of aluminum. A cryolite recovery plant operated at the Site from  
3 1953 until May 1990, which generated a solid known as “black mud” which contained fluoride  
4 and cyanide. Between 1972 and 1990, the “black mud” was consolidated at the Site in a 33-acre  
5 impoundment known as the Black Mud Pond. The Black Mud Pond was closed in 1991.  
6 Contamination remaining at the Site is related to primary aluminum production facilities, on-site  
7 recycling, industrial landfills, and cable plant operations.

8 D. On November 19, 1980, facilities treating, storing, or disposing of hazardous  
9 waste became subject to RCRA permitting requirements, including interim status requirements  
10 pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder. Eventually,  
11 such facilities became subject to federally-authorized state regulations promulgated in  
12 WAC 173-303. Owners and operators of treatment, storage, and disposal facilities to which  
13 RCRA’s permitting requirements apply are required to meet corrective action requirements for  
14 all releases of hazardous waste or constituents from any solid waste management facility,  
15 including beyond the facility boundary if necessary to protect human health and the environment,  
16 or if releases have migrated beyond the facility boundary. 42 U.S.C. § 6924(u), (v); WAC 173-  
17 303-64620(1), ~~(2)~~, (2).

18 E. On August 18, 1980, Reynolds Metals Company notified EPA of its dangerous  
19 waste management activities. In the notification, Reynolds Metals Company identified itself as  
20 managing the following dangerous wastes at the Reynolds Metals Company Longview  
21 Reduction Plant: fluoride and cyanide in the Black Mud Pond.

22 F. Pursuant to the August 18, 1980, notification, Reynolds Metals Company was  
23 issued identification number WAD 057068561 by EPA.

24 G. On September 26, 1984, Reynolds Metals Company submitted to Ecology  
25 Part A of the RCRA permit application. Revisions to the RCRA Part A application were  
26



1 submitted on May 30, 1985. Aluminum production at the Site ceased in 2001. A final RCRA  
2 permit has not been issued for the facility and it is under interim status. On April 29, 1989,  
3 Ecology performed a RCRA Facility Assessment (RFA) at the facility. The purpose of an RFA  
4 is to identify those areas at a facility where release(s) of hazardous substances, as defined in  
5 RCW 70.105D.020(13), may have occurred or may be occurring.

6 H. Pursuant to the RFA Report and other information, Ecology identified the  
7 following SWMUs and AOCs at the Facility:

8	Black Mud Pond	SWMU
9	Cryolite Recovery Plant	SWMU
10	Fill Deposit A	SWMU
11	Fill Deposit B	SWMU
12	Landfill #1 (floor sweeps)	SWMU
13	Landfill #2(Industrial)	SWMU
14	Landfill #3(construction debris)	SWMU
15	Cable Plant	SWMU
16	Former Stockpile Area	SWMU
17	Scrap Yard	SWMU
18	Flat Storage Area	SWMU
19	Former South Potlines	SWMU
20	Former North Potlines	SWMU
21	Former Cast Houses	SWMU
22	Pitch Storage Area	SWMU
23	East Plant Area	AOC
24	West Plant Area	AOC
25	CDID Ditch System	AOC
26		

1	On-site Ditch System	AOC
2	Columbia River Sediments	AOC
3	Upper Aquifer Groundwater	AOC

4 The regulated unit (the Black Mud Pond) is located among the SWMUs and AOCs and wastes  
5 from these areas are co-mingled at the Facility.

6 I. The Facility Owner and Operator completed previous cleanup or interim  
7 measures, including the following:

- 8 1. Scrap Yard Cleanup of PAH-impacted soil;
- 9 2. Cable Plant Underground Storage Tank Cleanup of petroleum hydrocarbons;
- 10 3. Warehouse UST and Fuel Island Cleanup of diesel;
- 11 4. Soil Removal from the Former Cryolite Area Ditches;
- 12 5. Cleanup of the Diesel Aboveground Storage Tank;
- 13 6. Cleanup of Other Reported Spills to Soil including Drum Soil Cleanup and Cleanup of  
14 Heat Transfer Media.

15 J. Effective February 16, 2012, Ecology and the Owner and Operator entered into  
16 MTCA Agreed Order No. 8940, pursuant to which the Owner and Operator completed and  
17 submitted a Public Review Draft Remedial Investigation (RI) and Feasibility Study (FS) Report  
18 in January 2015. Ecology finalized the RI/FS Report in January 2015.

19 K. Release(s) and/or potential release(s) of hazardous substances at the Site  
20 including, but not limited to, fluoride and cyanide from SWMUs and AOCs at the Facility are  
21 documented in the RI/FS. The contaminants of concern at the Site that exceed MTCA cleanup  
22 levels are fluoride, polycyclic aromatic hydrocarbons (PAHs), and petroleum hydrocarbons  
23 (TPH) in soil and fluoride in groundwater. Ecology has assigned the Site an overall priority  
24 ranking of 5 pursuant to MTCA. A ranking of 5 is the lowest priority ranking on Ecology's scale  
25  
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1 of 1-5. WAC 173-340-120(3)(b); “Model Toxics Control Act Cleanup Regulation: Process for  
2 Cleanup of Hazardous Waste Sites” Ecology Focus No. 94-129, Nov. 2007 (revised), pg. 5.

3 L. Hazardous substances have been and may continue to be released from the  
4 Facility into the environment including but not limited to: surface water drainage areas; soil;  
5 groundwater; air; and floral and faunal habitats.

6 M. A post-closure permit is required for the facility by WAC 173-303-800(2) and  
7 40 C.F.R. § 270.1(c). However, Ecology has agreed that this Decree shall serve as an enforceable  
8 document in lieu of a post-closure permit as authorized by WAC 173-303-800(12);  
9 40 C.F.R. § 270.1(c)(7); and 40 CFR 265.121, adopted by reference in WAC 173-303-400(3)(a).

10 N. NWA and MBT-Longview have submitted to Ecology information about the  
11 Facility as required by 40 CFR 265.121(a)(1), as adopted by reference at WAC  
12 173-303-~~800(12400(3)(a))~~ and also as required by WAC 173-303-806(4)(o). See Exhibit D,  
13 RCRA Enforceable Document Information Summary. The Ecology has determined that the  
14 public notice and comment that Ecology provided for this Decree ~~satisfied~~satisfies the  
15 requirements of 40 C.F.R. § 265.121(b)(1)(ii). The Ecology has determined that the Decree will  
16 ensure that the Owner and Operator meet the requirements of 40 C.F.R. § 265.121(a)(2), WAC  
17 173-303-64620(1), (2), and (4), 173-303-64630(1) and (2), and 173-303-800(2), for facility-  
18 wide corrective action.

19 O. The Ecology has determined that the requirements of this Decree are at least as  
20 protective of human health and the environment as the otherwise applicable Dangerous Waste  
21 Regulations and applicable federal rules (40 CFR Part 264, Subpart F) adopted pursuant to  
22 RCRA and will satisfy the closure performance standards of § 265.111(a) and (b). The Ecology  
23 has determined that the Decree will ~~also~~ ensure that the Owner and Operator meet the  
24 requirements of 40 C.F.R. § 265.121(a)(3) and WAC 173-303-645 for groundwater protection;  
25 for public notice and comment at the time of a proposed decision that remedial action is complete  
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1 at the facility as required by 40 C.F.R. § 265.121(b)(1)(iii); and for financial responsibility as  
2 required by 40 C.F.R. § 265 Subpart H, adopted by reference in WAC 173-303-400(3)(a).

### 3 **VI. WORK TO BE PERFORMED**

4 This Decree contains requirements designed to protect human health and the environment  
5 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
6 or from the Site. Consistent with 40 C.F.R. 265.121(a)(2), as adopted by reference at WAC 173-  
7 303-400(3)(a), the Owner's and Operator's facility-wide corrective action requirements pursuant  
8 to WAC 173-303-64620(1), (2), and (4) will be met by performance of this Decree. Ecology is  
9 issuing this consent decree under MTCA in lieu of a post-closure permit pursuant to WAC 173-  
10 303-64630(1) and (2). The actions required by this Decree meet the requirements of MTCA in  
11 RCW 70.105D and WAC 173-340, and meet or exceed all substantive post-closure permit  
12 requirements of RCRA, the state Hazardous Waste Management Act, and the Dangerous Waste  
13 Regulations.

14 A. The Owner and Operator shall implement the CAP attached to this Decree  
15 (Exhibit B). Among other remedial actions, the CAP requires the Owner and Operator to  
16 complete dredging work as detailed in the Interim Action Work Plan which was Exhibit E to  
17 Agreed Order No. DE 8940 and is now an integral and enforceable part of the CAP. Completion  
18 of that work will be enforceable under the terms of this Decree. Ecology will consider the  
19 requirements under Agreed Order No. DE 8940 to be deemed satisfied upon the effective date  
20 of this Decree. All remedial action(s) conducted by Owner and Operator at the Site shall be  
21 done in accordance with WAC 173-340 unless otherwise provided herein.

22 B. To effectuate the work to be performed under this Decree in the most efficient  
23 manner, language in the CAP may indicate either NWA or MBT-Longview will conduct certain  
24 activities. However, in the event the party identified in the CAP as the party who will be  
25

1 conducting an activity should become unable to complete performance of the required work, the  
2 other party shall then take on the responsibility to perform the remaining work, if any.

3 C. Except in cases of emergency or where required by law, Owner and Operator  
4 agree not to perform any remedial actions at the Site except as provided by this Decree to address  
5 the contamination that is the subject of this Decree. In the event of an emergency, or where  
6 actions are taken as required by law, Owner and Operator must notify Ecology in writing of the  
7 event and remedial action(s) planned or taken as soon as practical but no later than within twenty-  
8 four (24) hours of the discovery of the event.

9 D. All plans or other deliverables submitted by Owner and Operator for Ecology's  
10 review and approval under the CAP or Scope of Work and Schedule shall, upon Ecology's  
11 approval, become integral and enforceable parts of this Decree.

## 12 VII. DESIGNATED PROJECT COORDINATORS

13 The project coordinator for Ecology is:

14 [Guy Barrett](#)  
15 [Garin Schriever](#)  
16 Industrial Section  
17 Department of Ecology  
18 P.O. Box 47600  
19 Olympia, WA 98504-7600  
20 (360) 407-6999

21 The project coordinator for Defendant NWA is:

22 Mark A. Stiffler, President  
23 Northwest Alloys, Inc.  
24 c/o Alcoa Inc.  
25 201 Isabella St.  
26 Pittsburgh, PA 15212-5858  
(412) ~~553-1658~~[315-2788](#)

The project coordinator for Defendant MBT-Longview is:

Kristin Gaines  
Millennium Bulk Terminals LLC  
P.O. Box 2098  
4029 Industrial Way  
Longview, WA 98632-[2098](#)

1 (360) 425-2800

2 Each project coordinator shall be responsible for overseeing the implementation of this  
3 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.  
4 To the maximum extent possible, communications between Ecology and the Owner and  
5 Operator and all documents, including reports, approvals, and other correspondence concerning  
6 the activities performed pursuant to the terms and conditions of this Decree shall be directed  
7 through the project coordinators. The project coordinators may designate, in writing, working  
8 level staff contacts for all or portions of the implementation of the work to be performed required  
9 by this Decree.

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

#### 12 **VIII. PERFORMANCE**

13 All geologic and hydrogeologic work performed pursuant to this Decree shall be under  
14 the supervision and direction of a geologist or hydrogeologist licensed by the State of  
15 Washington or under the direct supervision of an engineer registered by the State of Washington,  
16 except as otherwise provided for by RCWs 18.43 and 18.220.

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

20 All construction work performed pursuant to this Decree shall be under the direct  
21 supervision of a professional engineer or a qualified technician under the direct supervision of a  
22 professional engineer. The professional engineer must be registered by the State of Washington,  
23 except as otherwise provided for by RCW 18.43.130.

24 Any documents submitted containing geologic, hydrologic, or engineering work shall be  
25 under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.  
26

1 Owner and Operator shall notify Ecology in writing of the identity of any engineer(s)  
2 and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the  
3 terms of this Decree, in advance of their involvement at the Site.

#### 4 IX. ACCESS

5 Ecology or any Ecology authorized representative shall have access to enter and freely  
6 move about all property at the Site that the Owner and Operator either own, control, or have  
7 access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records,  
8 operation logs, and contracts related to the work being performed pursuant to this Decree;  
9 reviewing the Owner's and Operator's progress in carrying out the terms of this Decree;  
10 conducting such tests or collecting such samples as Ecology may deem necessary; using a  
11 camera, sound recording, or other documentary type equipment to record work done pursuant to  
12 this Decree; and verifying the data submitted to Ecology by the Owner and Operator. Nothing  
13 in this Decree is intended by the Owner and Operator to waive any right they may have under  
14 applicable law to limit disclosure of documents protected by the attorney-work product and/or  
15 attorney client privilege. If a Defendantan Owner or Operator withholds any requested records  
16 based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the  
17 records withheld and the applicable privilege. No Site-related data collected pursuant to this  
18 Decree shall be considered privileged. Owner and Operator shall make all reasonable efforts to  
19 secure access rights for those properties within the Site not owned or controlled by Owner and  
20 Operator where remedial activities or investigations will be performed pursuant to this Decree.  
21 Ecology or any Ecology authorized representative shall give reasonable notice before entering  
22 any Site property owned or controlled by the Owner and Operator unless an emergency prevents  
23 such notice. All Parties who access the Site pursuant to this section shall comply with any  
24 applicable health and safety plan(s). Ecology employees and their representatives shall not be  
25 required to sign any liability release or waiver as a condition of Site property access. Ecology  
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1 employees or an Ecology authorized representative shall, however, avoid any unreasonable  
2 interference with business and operations and shall follow any appropriate safety precautions  
3 related to Site conditions. The Project Coordinators shall make good faith efforts to work out  
4 safety protocols in advance.

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

6 With respect to the implementation of this Decree, the Owner and Operator shall make  
7 the results of all sampling, laboratory reports, and/or test results generated by them or on their  
8 behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be  
9 submitted to Ecology in both printed and electronic formats in accordance with Section XI  
10 (Progress Reports) and/or any current procedures specified by Ecology for data submittal. As  
11 of the effective date of this Decree, the current procedure for data submittal is Ecology's Toxics  
12 Cleanup Program Policy 840 (Data Submittal Requirements).

13 If requested by Ecology, the Owner and Operator shall allow Ecology and/or its  
14 authorized representative to take split or duplicate samples of any samples collected by the  
15 Owner and Operator pursuant to the implementation of this Decree. The Owner and Operator  
16 shall verbally notify Ecology five (5) business days in advance of any sample collection at the  
17 Site pursuant to this Decree. Upon such notification, if Ecology states that it does not desire to  
18 take split or duplicative samples, the Owner and Operator may immediately proceed with the  
19 sampling. Ecology shall, upon request, allow the Owner or Operator and/or their authorized  
20 representative to take split or duplicate samples of any samples collected by Ecology pursuant  
21 to the implementation of this Decree, provided that doing so does not unreasonably interfere  
22 with Ecology's sampling. Without limitation on Ecology's rights under Section IX (Access),  
23 Ecology shall notify the Owner and Operator prior to any sample collection activity unless an  
24 emergency prevents such notice.  
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1 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be  
2 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be  
3 conducted, unless otherwise approved by Ecology.

#### 4 **XI. PROGRESS REPORTS**

5 Unless directed by Ecology in writing to suspend submittal of progress reports, the  
6 Owner and Operator shall submit to Ecology written quarterly Progress Reports on a calendar  
7 basis with the first one due by the twentieth (20th) day of the month following the end of the  
8 calendar quarter in which the Effective Date falls. Each Progress Report shall describe the  
9 actions taken during the previous quarter to implement the requirements of this Decree, and shall  
10 include the following:

- 11 A. A list of on-site activities that have taken place during the quarter;
- 12 B. Detailed description of any deviations from required tasks not otherwise  
13 documented in project plans or amendment requests;
- 14 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)  
15 during the current quarter and any planned deviations in the upcoming quarter;
- 16 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
17 compliance with the schedule;
- 18 E. A summary of all environmental data received by Owner and Operator during the  
19 past quarter;
- 20 F. At Ecology's request, Owner and Operator will provide Ecology with a copy of  
21 all raw data including laboratory analyses and an identification of the source of the sample, and  
22
- 23 G. A list of deliverables for the upcoming quarter if different from the schedule.

24 All Progress Reports shall be submitted by the twentieth (20th) day of the month  
25 following the end of the quarter which is covered by that particular Progress Report. No further  
26 Progress Reports shall be required after Ecology issues written notification of satisfactory

1 completion of construction as provided in Section XXVIII. The Owner and Operator shall  
2 submit long-term monitoring reports in accordance with the schedule in the CAP. Progress  
3 Reports, long-term monitoring reports, and any other documents submitted pursuant to this  
4 Decree shall be submitted both electronically and by certified mail, or equivalent  
5 shipping/ mailing alternative, return receipt requested, to Ecology's project coordinator unless  
6 Ecology approves of a change in the method of submittal.

## 7 **XII. RETENTION OF RECORDS**

8 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
9 no longer in effect as provided in Section XXVIII (Duration of Decree), the Owner and Operator  
10 shall preserve all records, reports, documents, and underlying data in its possession relevant to  
11 the implementation of this Decree and shall notify in writing all project contractors and  
12 subcontractors who have contracts in existence at the effective date of this Decree that they shall  
13 follow this record retention requirement. Owner and Operator shall insert a similar record  
14 retention requirement into all contracts with its project contractors and subcontractors for those  
15 contracts entered into after the effective date of this Decree. Upon request of Ecology, the Owner  
16 and Operator shall make all records that are not subject to an attorney-client privilege available  
17 to Ecology and allow access for review within a reasonable time.

18 Nothing in this Decree is intended by either ~~Defendant~~Owner or Operator to waive any  
19 right it may have under applicable law to limit disclosure of documents protected by the attorney  
20 work-product privilege and/or the attorney-client privilege. If ~~a Defendant~~the Owner or  
21 Operator withholds any requested records based on an assertion of privilege, ~~that Defendant~~it  
22 shall provide Ecology with a privilege log specifying the records withheld and the applicable  
23 privilege. No Site-related data collected pursuant to this Decree shall be considered privileged.  
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**XIII. TRANSFER OF INTEREST IN PROPERTY**

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

During the effective period of this Decree, prior to ~~a Defendant's~~ the Owner or Operator's transfer of any interest in all or any portion of the Site to any party other than the other Defendant, that ~~Defendant~~ Owner or Operator shall provide a copy of this Decree to the prospective purchaser, lessee, transferee, assignee, or other successor in said interest. Prior to ~~a Defendant's~~ the Owner or Operator's transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, ~~that Defendant~~ it shall, at least thirty (30) days prior to any transfer, notify Ecology of said transfer. Upon transfer of any interest to any party other than the other Defendant, the ~~Defendant~~ Owner or Operator shall notify all transferees of the restrictions on the activities and uses of the property under this Decree and incorporate reference to any such use restrictions into the transfer documents.

**XIV. RESOLUTION OF DISPUTES**

A. In the event that an Owner or Operator elects to invoke dispute resolution, that party must utilize the procedure set forth below.

1. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), an Owner or Operator has twenty-one (21) calendar days within which to notify Ecology's project coordinator in writing of its dispute and request Industrial Section management review (Dispute Notice). The Dispute Notice shall include: a description of the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

1           2.       The Industrial Section Manager shall conduct a review of the dispute and  
2 shall issue a written decision regarding the dispute (Decision on Dispute) within twenty  
3 one (21) calendar days of receipt of the Dispute Notice.

4           3.       If the disputing Owner or Operator finds Ecology's Industrial Section  
5 Manager's decision unacceptable, that Party may then request final management review  
6 of the decision. This request (Final Review Request) shall be submitted in writing to the  
7 ~~Waste 2 Resources~~Solid Waste Management Program Manager within fourteen (14)  
8 calendar days of the Party's receipt of the Decision on Dispute. The Final Review  
9 Request shall include a written statement of dispute setting forth: the nature of the  
10 dispute; the disputing Party's position with respect to the dispute; and the information  
11 relied upon to support its position.

12           4.       Ecology's Solid Waste Management~~Waste 2 Resources~~ Program  
13 Manager shall conduct a review of the dispute and shall issue a written decision regarding  
14 the dispute (Final Decision on Dispute) within thirty (30) calendar days of receipt of the  
15 Final Review Request. The Solid Waste Management~~Waste 2 Resources~~ Program  
16 Manager's decision shall be Ecology's final decision on the disputed matter.

17           B.       If Ecology's Final Decision on Dispute is unacceptable to the disputing Owner  
18 or Operator, that Party has the right to submit the dispute to the Court for resolution. The Parties  
19 agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any  
20 dispute arising under this Decree. In the event an Owner or Operator presents an issue to the  
21 Court for review, the action or decision of Ecology will be reviewed by the Court in accordance  
22 with the applicable standard of review for such actions.

23           C.       The Parties agree to only utilize the dispute resolution process in good faith and  
24 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
25  
26

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

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

6 E. In case of a dispute, failure to either proceed with the work required by this  
7 Decree or timely invoke dispute resolution may result in Ecology's determination that  
8 insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
9 undertaking the work under Section XXV (Implementation of Remedial Action).

#### 10 **XV. AMENDMENT OF DECREE**

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

14 Substantial changes to the work to be performed shall require formal amendment of this  
15 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
16 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
17 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
18 by any party.

19 Any party requesting an amendment to this Decree shall submit a written request for  
20 amendment to the other parties for approval. The parties receiving the request for amendment  
21 shall indicate their approval or disapproval in writing and in a timely manner after the written  
22 request for amendment is received. If the amendment to the Decree is a substantial change,  
23 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval  
24 of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to  
25  
26

1 an amendment proposed by the Owners and Operators, the disagreement may be addressed  
2 through the dispute resolution procedures described in Section XIV (Resolution of Disputes).

3 **XVI. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be granted only when a request for an extension  
5 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the  
6 deadline for which the extension is requested, and good cause exists for granting the extension.

7 All extensions shall be requested in writing. The request shall specify:

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

12 were granted.

13 B. The burden shall be on the Owner and Operator to demonstrate to the satisfaction  
14 of Ecology that the request for such extension has been submitted in a timely fashion and that  
15 good cause exists for granting the extension. Good cause may include, but may not be limited  
16 to:

17 1. Circumstances beyond the reasonable control and despite the due  
18 diligence of the Owner and Operator including delays caused by unrelated third parties  
19 or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or  
20 modifying documents submitted by the Owner and Operator;

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

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



1 If Ecology concurs with or orders a work stoppage pursuant to this section, Owner's and  
2 Operator's obligations with respect to the ceased activities shall be suspended until Ecology  
3 determines the danger is abated, and the time for performance of such activities, as well as the  
4 time for any other work dependent upon such activities, shall be extended, in accordance with  
5 Section XVI (Extension of Schedule), for such period of time as Ecology determines is  
6 reasonable under the circumstances.

7 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or  
8 contractors to take or require appropriate action in the event of an emergency.

### 9 **XVIII. COVENANT NOT TO SUE**

10 A. Covenant Not to Sue: In consideration of the Owner's and Operator's compliance  
11 with the terms and conditions of this Decree, Ecology covenants not to institute legal or  
12 administrative actions against the Owner and Operator regarding the release or threatened release  
13 of hazardous substances covered by this Decree.

14 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
15 and those hazardous substances that Ecology knows are located at the Site as of the date of entry  
16 of this Decree. This Decree does not cover any other hazardous substance or area. Ecology  
17 retains all of its authority relative to any substance or area not covered by this Decree.

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

- 19 1. Criminal liability;
- 20 2. Liability for damages to natural resources; and
- 21 3. Any Ecology action, including cost recovery, against PLPs not a party to  
22 this Decree.

23 If factors not known at the time of entry of this Decree are discovered and present a  
24 previously unknown threat to human health or the environment, the Court shall amend this  
25 Covenant Not to Sue.  
26



1 B. Reopeners: Ecology ~~specifically reserves the right to institute legal or~~  
2 ~~administrative action against either Owner or Operator, including under an Order or through an~~  
3 ~~amendment to this Decree, to~~ may require it to perform additional remedial actions at the Site,  
4 and ~~to pursue~~ appropriate cost recovery, ~~pursuant to RCW 70.105D.050~~ under the following  
5 circumstances:

6 1. Upon Owner's and Operator's failure to meet the requirements of this  
7 Decree;

8 2. Failure of the remedial action to meet the cleanup standards identified in  
9 the Cleanup Action Plan (CAP) (Exhibit B);

10 3. Upon Ecology's determination that remedial action beyond the terms of  
11 this Decree is necessary to abate an imminent and substantial endangerment to human  
12 health or the environment;

13 4. Upon the availability of new information regarding factors previously  
14 unknown to Ecology, including the nature or quantity of hazardous substances at the Site,  
15 and Ecology's determination, in light of this information, that further remedial action is  
16 necessary at the Site to protect human health or the environment;

17 5. Upon Ecology's determination that additional remedial actions are  
18 necessary to achieve cleanup standards within the reasonable restoration time frame set  
19 forth in the CAP; or

20 6. Upon the U.S. Environmental Protection Agency's decision not to  
21 approve Ecology's authority under WAC 173-303-800(12) to use alternative enforceable  
22 documents in lieu of post-closure permits as specified in 40 C.F.R. 265.121, 40 CFR §  
23 ~~271.270~~.1(c)(7), and 40 CFR § 271.16(e).

24 ~~C. If any circumstances listed in Section XVIII.B. occur, Ecology~~  
25 ~~specifically reserves the right to require the Owner or Operator to carry out additional remedial~~  
26

1 action at the Site by: (1) amending the Decree under Section XV (Amendment of Decree); or  
2 (2) unilaterally seeking a court order amending the Decree; or (3) entering into an agreed order  
3 with the Owner or Operator.

4 D. Except in the case of an emergency, prior to instituting legal ~~or administrative~~  
5 action against the Owner and Operator pursuant to this section, Ecology shall provide the Owner  
6 and Operator with thirty (30) calendar days' notice of such action.

#### 7 **XIX. CONTRIBUTION PROTECTION**

8 With regard to claims for contribution against the Owner and Operator, the Parties agree  
9 that the Owner and Operator are entitled to protection against claims for contribution for matters  
10 addressed in this Decree as provided by RCW 70.105D.040(4)(d).

#### 11 **XX. LAND USE RESTRICTIONS**

12 As detailed in the CAP, an Environmental (Restrictive) Covenant will be required on  
13 portions of the Site as an institutional control. The CAP will indicate which parcels of property  
14 at the Site will require an Environmental (Restrictive) Covenant. After completion of  
15 construction, and in consultation with Ecology, the Owner and Operator will provide for  
16 Ecology's review an Environmental (Restrictive) Covenant consistent with WAC  
17 173-340-440, and RCW 64.70. After approval by Ecology, the Owner and Operator shall record  
18 the Environmental (Restrictive) Covenant with the office of the Cowlitz County Auditor within  
19 ten (10) days of Ecology's approval. The Environmental (Restrictive) Covenant shall restrict  
20 future activities and uses of those portions of the Site identified in the CAP as needing an  
21 institutional control. The Owner and Operator shall provide Ecology with the original recorded  
22 Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

#### 23 **XXI. FINANCIAL ASSURANCES**

24 1. Financial assurance for corrective action is required by WAC 173-303-64620.  
25 Every year, either the Owner or Operator (or the Owner and Operator working collectively) shall  
26

1 provide and submit proof of financial assurance consistent with the requirements of WAC 173-  
2 303-64620. and WAC 173-303-610(7). Under WAC 173-303-610(7), Ecology has determined,  
3 and the Parties have agreed, that the financial assurance will, at all times, cover 30 years of  
4 remedial action costs at the Site. Ecology's Financial Assurance Officer ~~shall determine~~, on  
5 behalf of Ecology, shall determine when Owner and Operator's actions and submissions meet  
6 the requirements of  
7 ~~WAC 173-303-6420. The determination~~ this section and WAC 173-303-64620, both during the  
8 yearly review of financial assurance and as a component of the five-year reviews required for  
9 the Site by WAC 173-340-420(2)(a). Determinations of Ecology's Financial Assurance Officer  
10 ~~is~~ are considered ~~a triggering event~~ events subject to Section XIV (Resolution of Disputes).

11 2. ~~Ecology's~~ The Ecology Financial Assurance Officer's contact information is:

12 Financial Assurance Officer is:

13  
14 Kimberly Goetz  
15 Washington State Department of Ecology  
16 P.O. Box 47600  
17 Olympia, WA 98504-7600  
18 Phone: (360) 407-6754  
19 Fax: (360) 407-6715  
20 Email: ~~kgoe461@ecy.wa.gov~~

## 21 **XXII. INDEMNIFICATION**

22 The Owner and Operator agree to indemnify and save and hold the State of Washington,  
23 its employees, and agents harmless from any and all claims or causes of action  
24 (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising  
25 from or on account of acts or omissions of the Owner and Operator, their officers, employees,  
26 agents, or contractors in entering into and implementing this Decree. However, the Owner and  
Operator shall not indemnify the State of Washington nor save nor hold its employees and agents  
harmless from any claims or causes of action to the extent arising out of the negligent acts or

1 omissions of the State of Washington, or the employees or agents of the State, in entering into  
2 or implementing this Decree.

3 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

4 A. All actions carried out by the Owner and Operator pursuant to this Decree shall  
5 be done in accordance with all applicable federal, state, and local requirements, including  
6 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The actions  
7 to be taken under this Decree fulfill Owner's and Operator's RCRA, state Hazardous Waste  
8 Management Act, and Dangerous Waste Regulations corrective action responsibilities for the  
9 release of hazardous substances at the Site as provided by WAC 173-303-64620 and 173-303-  
10 64630. The actions to be taken under this Decree meet or exceed all substantive corrective action  
11 requirements of RCRA, the state Hazardous Waste Management Act, and the Dangerous Waste  
12 Regulations regarding the release of hazardous substances at the Site.

13 The permits or other federal, state, or local requirements that the agency has determined  
14 are applicable and that are known at the time of entry of this Decree have been identified in the  
15 CAP (Exhibit B).

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

23 The Owner and Operator have a continuing obligation to determine whether additional  
24 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
25 remedial action under this Decree. In the event either Ecology or the Owner and Operator  
26

1 determine that additional permits or approvals addressed in RCW 70.105D.090(1) would  
2 otherwise be required for the remedial action under this Decree, it shall promptly notify the other  
3 Parties of this determination. Ecology shall determine whether Ecology or the Owner and  
4 Operator shall be responsible to contact the appropriate state and/or local agencies. If Ecology  
5 so requires, the Owner and Operator shall promptly consult with the appropriate state and/or  
6 local agencies and provide Ecology with written documentation from those agencies of the  
7 substantive requirements those agencies believe are applicable to the remedial action. Ecology  
8 shall make the final determination on the additional substantive requirements that must be met  
9 by the Owner and Operator and on how the Owner and Operator must meet those requirements.  
10 Ecology shall inform the Owner and Operator in writing of these requirements. Once established  
11 by Ecology, the additional requirements shall be enforceable requirements of this Decree. The  
12 Owner and Operator shall not begin or continue the remedial action potentially subject to the  
13 additional requirements until Ecology makes its final determination, and the schedule shall be  
14 adjusted by the parties as appropriate.

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

#### 21 **XXIV. REMEDIAL ACTION COSTS**

22 The Owner and Operator shall pay to Ecology costs incurred by Ecology pursuant to this  
23 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by  
24 Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions  
25 and Decree preparation, negotiation, oversight, and administration. These costs shall include  
26

1 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
2 include costs of direct activities and support costs of direct activities as defined in  
3 WAC 173-340-550(2). Ecology has accumulated \$252,807.83 in remedial action costs related  
4 to this facility as of September 30, 2015, and Ecology has received \$243,410.14 in payments.  
5 Payment for any outstanding amounts shall be submitted within thirty (30) days of the effective  
6 date of this Decree. For all costs incurred subsequent to September 30, 2015, The Owner and  
7 Operator shall pay the required amount within thirty (30) days of receiving from Ecology an  
8 itemized statement of costs that includes a summary of costs incurred, an identification of  
9 involved staff, and the amount of time spent by involved staff members on the project. A general  
10 statement of work performed will be provided upon request. Itemized statements shall be  
11 prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within  
12 ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the  
13 rate of twelve percent (12%) per annum, compounded monthly. Payments shall be directed to:

14  
15 Department of Ecology  
16 Cashiering Section  
17 P.O. Box 5128  
18 Lacey, WA 98509-5128

19 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
20 authority to recover unreimbursed remedial action costs by filing a lien against real property  
21 subject to the remedial actions.

## 22 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

23 If Ecology determines that the Owner and Operator have failed to make sufficient  
24 progress or failed to implement the remedial action, in whole or in part, Ecology may, after thirty  
25 (30) days' notice to the Owner and Operator and opportunity for dispute resolution, perform any  
26 or all portions of the remedial action or at Ecology's discretion allow the Owner and Operator  
opportunity to correct. In an emergency, Ecology is not required to provide thirty (30) days'  
notice to the Owner and Operator, or an opportunity for dispute resolution. The Owner and

1 Operator shall reimburse Ecology for the costs of doing such work in accordance with Section  
2 XXIV (Remedial Action Costs).

3 Except where necessary to abate an emergency situation or where required by law, the  
4 Owner and Operator shall not perform any remedial actions at the Site outside those remedial  
5 actions required by this Decree to address the contamination that is the subject of this Decree,  
6 unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV  
7 (Amendment of Decree).

#### 8 **XXVI. PERIODIC REVIEW**

9 As remedial action, including groundwater monitoring, continues at the Site, the Parties  
10 agree to review the progress of remedial action at the Site, and to review the data accumulated  
11 as a result of monitoring the Site as often as is necessary and appropriate under the  
12 circumstances. As often as the period required by RCW 70.105D.030(8), as hereafter amended,  
13 the Parties shall review the status of the Site and the need, if any, for further remedial action at  
14 the Site. At least ninety (90) days prior to each periodic review, the Owner and Operator shall  
15 submit a report to Ecology that documents whether human health and the environment are being  
16 protected based on the factors set forth in WAC 173-340-420(4). Following review of Owner's  
17 and Operator's report, if Ecology believes that additional remedial action may be warranted, the  
18 Parties will meet to discuss the status of the Site and the need, if any, for further remedial action  
19 at the Site.

#### 20 **XXVII. PUBLIC PARTICIPATION**

21 A Public Participation Plan is required for this Site. Ecology shall review any existing  
22 Public Participation Plan to determine its continued appropriateness and whether it requires  
23 amendment.

24 Ecology shall maintain the responsibility for public participation at the Site and insure  
25 the public notice requirements of 40 CFR 265.121(b)(1), as adopted by reference at  
26

1 WAC 173-303-400(3)(a), have been met and will be met in the future. The Owner and Operator  
2 shall cooperate with Ecology, and shall:

3 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public  
4 notices and fact sheets at important stages of the remedial action, such as the submission of work  
5 plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering  
6 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and  
7 prepare and distribute public notices of Ecology's presentations and meetings.

8 B. Notify Ecology's project coordinator prior to the preparation/issuance of all press  
9 releases and fact sheets, and before major meetings with the interested public and local  
10 governments regarding matters addressed by this Decree. Likewise, Ecology shall notify the  
11 Owner and Operator prior to the issuance of all press releases and fact sheets, and before major  
12 meetings with the interested public and local governments regarding matters addressed by this  
13 Decree. For all press releases, fact sheets, meetings, and other outreach efforts by the Owner  
14 and Operator regarding matters addressed by this Decree that do not receive prior Ecology  
15 approval, The Owner and Operator shall clearly indicate to their audience that the press release,  
16 fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

17 C. When requested by Ecology, participate in public presentations on the progress  
18 of the remedial action at the Site. Participation may be through attendance at public meetings to  
19 assist in answering questions, or as a presenter.

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

- 22 1. Longview Public Library  
23 1600 Louisiana St.  
24 Longview, WA 98632
- 25 2. Ecology's Industrial Section Office  
26 Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600



1  
2 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
3 comment periods shall be promptly placed in these repositories. A copy of all documents related  
4 to this Site shall be maintained in the repository at Ecology's Industrial Section Office in Lacey,  
5 Washington.

#### 6 **XXVIII. DURATION OF DECREE**

7 The remedial program required pursuant to this Decree shall be maintained and continued  
8 until the Owner and Operator have received written notification from Ecology that the  
9 requirements of this Decree have been satisfactorily completed. Prior to such a notification,  
10 Ecology will provide for public notice and comment on the agency's determination that remedial  
11 action is complete at the facility. This Decree shall remain in effect until dismissed by the Court.  
12 When dismissed, [Section XII \(Retention of Records\)](#), Section XVIII (Covenant Not to Sue) and  
13 Section XIX (Contribution Protection) shall survive.

#### 14 **XXIX. CLAIMS AGAINST THE STATE**

15 Except for claims the Owner and Operator may have against the State of Washington,  
16 Department of Natural Resources, and other State agencies arising from their ownership or  
17 operation of the Site, the Owner and Operator hereby agree that they will not seek to recover any  
18 costs accrued in implementing the remedial action required by this Decree from the State of  
19 Washington or any of its agencies; and further, that the Owner and Operator will make no claim  
20 against the State Toxics Control Account, the Environmental Legacy Stewardship Account, or  
21 any local Toxics Control Account for any costs incurred in implementing this Decree. The  
22 Owner and Operator expressly reserve their right to seek to recover any costs incurred in  
23 implementing this Decree from any other PLP. This section does not limit or address funding  
24 that may be provided under WAC 173-322A.

#### 25 **XXX. EFFECTIVE DATE**

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

1 **XXXI. WITHDRAWAL OF CONSENT**

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

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

8 \_\_\_\_\_  
9 Laurie G. Davies  
10 Program Manager  
11 Solid Waste Management ~~Waste-2~~ Resources Program  
12 (360) 407-6103

\_\_\_\_\_   
Ivy Anderson, WSBA #30652  
Assistant Attorney General  
(360) 584-4619

11 Date: \_\_\_\_\_

Date: \_\_\_\_\_

12 NORTHWEST ALLOYS, INC (“Owner”).

MILLENNIUM BULK TERMINALS-  
LONGVIEW, LLC (“Operator”).

13 \_\_\_\_\_  
14 Mark A. Stiffler, President  
15 Northwest Alloys, Inc.  
16 201 Isabella St.  
17 Pittsburgh, PA 15212-5858  
18 (412) ~~553-1658~~  
\_\_\_\_\_   
\_\_\_\_\_360)425-2800

\_\_\_\_\_   
Bill Chapman  
Millennium Bulk Terminals-Longview, LLC  
4029 Industrial Way  
Longview, WA 98632  
~~(315-2788)~~

19 Date: \_\_\_\_\_

Date: \_\_\_\_\_

20 ENTERED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

21 \_\_\_\_\_  
22 JUDGE  
23 Cowlitz County Superior Court  
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