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Honorable \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, STATE OF )  
WASHINGTON, PUYALLUP TRIBE OF )  
INDIANS and MUCKLESHOOT INDIAN TRIBE, )

CIVIL NO.

Plaintiffs, )

CONSENT DECREE

vs. )

STREICH BROS., INC., )

Defendant. )

1 I. INTRODUCTION

2 The United States of America (“United States”), on behalf of the National Oceanic and  
3 Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State  
4 of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup  
5 Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint  
6 in this case against defendant Streich Bros., Inc. (“Defendant”) pursuant to Section 107 of the  
7 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended  
8 (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D RCW;  
9 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil  
10 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the “Decree”)  
11 addresses the claims asserted in the Complaint against Defendant for Natural Resource Damages (as  
12 defined below) in the Commencement Bay Environment (as defined below).  
13

14 II. RECITALS

15 A. The United States Department of Commerce, acting through NOAA; the United  
16 States Department of the Interior; the Washington State Department of Ecology on behalf of the  
17 State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively,  
18 the “Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42  
19 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart  
20 G, serve as trustees for natural resources for the assessment and recovery of damages for injury to,  
21 destruction of, and loss of natural resources under their trusteeship.  
22

23 B. Investigations conducted by the United States Environmental Protection Agency  
24 (“EPA”), the Trustees and others have detected hazardous substances in the sediments, soils and  
25 groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony,  
26 cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,  
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1 hexachlorobenzine, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated  
2 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in  
3 the marine sediments of Commencement Bay's Hylebos Waterway.

4 C. The Trustees began assessing natural resource damages in the Commencement Bay  
5 Environment in October 1991 by finding that hazardous substances had been released into the  
6 Commencement Bay Environment; that public trust natural resources had likely been injured by the  
7 releases; that data sufficient to pursue a natural resource damage assessment were available or could  
8 likely be obtained at a reasonable cost; and that, without further action, implemented and planned  
9 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of  
10 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place  
11 In and About the Commencement Bay/Nearshore Tideflats (CB/NT) Superfund Site (October 29,  
12 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of  
13 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and  
14 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage  
15 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a  
16 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not  
17 participate in subsequent stages of the damage assessment, and the Trustees continued the process  
18 independently. The Trustees have now completed a series of studies during Phase 2 of the damage  
19 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and  
20 salmonids. Results of those studies were published in a series of reports, consisting of  
21 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis  
22 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish  
23 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,  
24 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants

1 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.  
2 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects  
3 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and  
4 Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,  
5 Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway.  
6 Based on this research, the Plaintiffs and Defendant (collectively, the “Parties” and, individually, a  
7 “Party”) agree that no further natural resource damage assessment is required to effectuate the  
8 purposes of this Consent Decree, with respect to Defendant.  
9

10 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to section 107 of  
11 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and  
12 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,  
13 destruction of, and loss of natural resources resulting from releases of hazardous substances into the  
14 Commencement Bay Environment, including the costs of assessing the damages.

15 E. Plaintiffs allege in the Complaint that Defendant owns or in the past owned and/or  
16 operated real property or facilities, identified by the Trustees as the STREICH BROTHERS site,  
17 from which storm water, surface water runoff, wastewater, other process discharges, and/or  
18 groundwater have flowed to the Commencement Bay Environment. Plaintiffs also allege that  
19 investigations by EPA and others have detected concentrations of hazardous substances in soils,  
20 groundwater and/or sediments on or in those properties or facilities. Some of these hazardous  
21 substances are found in the sediments of the Commencement Bay Environment.  
22

23 F. Plaintiffs further allege that hazardous substances have been or are being released to  
24 the Commencement Bay Environment from properties or facilities owned and/or operated by  
25 Defendant through direct discharge, surface water runoff, groundwater and/or seeps, and that those  
26 hazardous substances have caused injury to, destruction of and loss of natural resources in the  
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1 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish, invertebrates,  
2 birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each of  
3 them and the public have suffered the loss of natural resource services (including ecological services  
4 as well as direct and passive human use losses) as a consequence of those injuries.

5 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator of a vessel or a  
6 facility; (b) a person who at the time of disposal or release of any hazardous substance owned or  
7 operated any facility at which such hazardous substances were disposed of; (c) a person who by  
8 contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter  
9 for transport for disposal or treatment, of hazardous substances owned or possessed by such person,  
10 by any other party or entity, or otherwise generated any hazardous substance disposed of or treated,  
11 at any facility or incineration vessel owned or operated by another party or entity and containing such  
12 hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for  
13 transport to disposal or treatment facilities, incineration vessels or sites selected by such person from  
14 which there is a release or a threatened release of a hazardous substance that causes the incurrence  
15 of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

17 H. Defendant denies all the allegations of the Complaint.

18 I. Although the Trustees have initiated but not yet completed a natural resource damage  
19 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed  
20 information sufficient to support a settlement that is fair, reasonable and in the public interest.

21 J. To facilitate resolving natural resource damage claims, the Trustees developed a  
22 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos  
23 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage-assessment  
24 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first  
25 developed an estimate of the amount of injury to natural resources that had occurred as a result of  
26

1 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of  
2 the injuries in terms of the losses of ecological services over affected areas of the waterway and over  
3 time, discounted to the current year. The Trustees used the term discounted ecological service  
4 acre-years (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration  
5 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking  
6 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat  
7 restoration sufficient to compensate for the loss of 1526.77 DSAYs.

8  
9 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have  
10 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be  
11 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos  
12 Waterway contamination make all PRPs who contributed to the contamination jointly and severally  
13 liable for all injuries to natural resources that have resulted from the contamination. As a  
14 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any  
15 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating  
16 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for  
17 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed  
18 existing information from the files of EPA, the Washington State Department of Ecology, and local  
19 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed  
20 to the contamination.

21  
22 L. To insure that all PRPs had an equal opportunity to be informed of and to offer their  
23 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the  
24 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,  
25 revised the report based upon the comments received, and made it available to PRPs in final form.

26 M. The Trustees' report allocated liability for DSAY losses for settlement purposes  
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1 among the various industrial sites along the Hylebos Waterway. As a result of their allocation process,  
2 the Trustees allocated a total of 3.499 DSAYs to the Defendant. The Trustees also allocated a total  
3 of \$20,189.15 in damage assessment costs relating to the Hylebos Waterway to the Defendant.

4 N. The Trustees quantified natural resource damages in their Hylebos Waterway report  
5 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing  
6 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees  
7 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand  
8 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration  
9 projects. The cash damages equivalent of the 3.499 DSAYs allocated to Defendant totals  
10 \$181,948.00. When combined with the damage assessment costs allocated to the Defendant, the  
11 dollar value of the Trustees' claim asserted against Defendant totals \$202,137.15. The Trustees have  
12 agreed to settle their natural resource damage claims against Defendant associated with the  
13 Commencement Bay Environment for cash payments totaling \$202,137.15 in natural resource  
14 damages and damage assessment costs. Defendant has agreed to pay the Trustees the identified sum  
15 in return for the Trustees' covenants not to sue Defendant for Natural Resource Damages as provided  
16 below in Paragraph 16.

17  
18 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or  
19 occurrences alleged in the Complaint.

20  
21 P. Plaintiffs and Defendant agree, and this Court by entering this Decree finds, that this  
22 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid  
23 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and  
24 in the public interest.

25 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,  
26 AND DECREED:

1 III. JURISDICTION AND VENUE

2 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
3 §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has  
4 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying  
5 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the  
6 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this  
7 Court's jurisdiction to enter and enforce this Decree.  
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9 IV. PARTIES BOUND

10 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of  
11 Indians, the Muckleshoot Indian Tribe and upon Defendant and their heirs, successors and assigns.  
12 Any change in ownership or corporate or other legal status, including but not limited to any transfer  
13 of assets or real or personal property, will in no way alter the status or responsibilities of Defendant  
14 under this Decree.

15 V. DEFINITIONS

16 3. Unless otherwise expressly provided, terms used in this Decree that are defined in  
17 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in  
18 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any  
19 attached appendix, the following definitions will apply:

20 a. "Commencement Bay Environment" means the waters of Commencement Bay,  
21 State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas, estuaries  
22 and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point. These  
23 waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul  
24 Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee Waterway,  
25 Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is not limited to  
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1 the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the EPA,  
2 including the B&L Landfill, and areas affected by releases of hazardous substances within the  
3 Commencement Bay Nearshore/Tideflats Superfund Site.

4 b. “Commencement Bay Restoration Account” means the Commencement Bay  
5 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural  
6 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.  
7 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

8 c. “DSAYs” means discounted ecological service acre-years, the metric  
9 established by the Trustees to determine the scale of Natural Resource Damages liability associated  
10 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for  
11 injury to, destruction or loss of natural resources giving rise to liability.

12 d. “Defendant” means Streich Bros., Inc.

13 e. “Natural Resource Damages” means damages, including costs of damage  
14 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;  
15 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil  
16 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of  
17 natural resources resulting from releases of hazardous substances or discharges of oil to the  
18 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos  
19 Waterway.  
20

21 f. “Parties” mean the United States, the State of Washington, the Puyallup Tribe  
22 of Indians, the Muckleshoot Indian Tribe and Streich Bros., Inc.

23 g. “Plaintiffs” mean the United States, the State, the Puyallup Tribe of Indians,  
24 and the Muckleshoot Indian Tribe.

25 h. “Trustees” mean the United States Department of Commerce, acting through  
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1 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of  
2 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

3 VI. GENERAL PROVISIONS

4 4. The Complaint states claims upon which relief may be granted.

5 5. Nothing in this Consent Decree shall be construed as an admission of liability by the  
6 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

7 6. This Consent Decree shall not be used as evidence against any Party in any action or  
8 proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

9 VII. PAYMENT OF NATURAL RESOURCE DAMAGES

10 AND DAMAGE ASSESSMENT COSTS

11 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees  
12 \$181,948.00 for Natural Resource Damages. This payment will be made by a certified check made  
13 payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Natural  
14 Resource Restoration Account.

15 8. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums  
16 totaling \$20,189.15 in damage assessment costs. These sums shall be paid in the following amounts  
17 and particulars:

18 Trustee: National Oceanic and Atmospheric Administration

19 Amount: \$16,286.56

20 Trustee: U.S. Department of the Interior

21 Amount: \$2,722.88

22 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic  
23 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT  
24 procedures. Payment shall be made in accordance with instructions provided to Defendant by the  
25 Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any  
26

1 payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be  
2 credited on the next business day. Defendant shall provide at least five days notice to the Financial  
3 Litigation Unit before making the transfer.

4           Payments to the other Trustees shall be made by certified checks, bearing the notation  
5 “Streich Bros., Inc. - Commencement Bay Assessment Costs,” in the amounts indicated and made  
6 payable and addressed as follows:

7  
8 Trustee:           State of Washington  
Amount:           \$335.98

9  
10 Payee:            State of Washington/Department of Ecology  
Address:           State of Washington  
                    Department of Ecology  
                    Attention: Cashiering Section  
                    P.O. Box 5128  
                    Lacey, WA 98503-0210

11  
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13  
14 Trustee:           Puyallup Tribe of Indians  
Amount:           \$768.67  
15 Payee:            Puyallup Tribe of Indians  
16 Address:           Mr. William Sullivan  
                    Environmental Protection Department  
                    Puyallup Tribe of Indians  
                    2002 E. 28th Street  
                    Tacoma, WA 98404

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18  
19 Trustee:           Muckleshoot Indian Tribe  
20 Amount:           \$75.05  
21 Payee:            Muckleshoot Indian Tribe  
Address:           Mr. Rob Otsea  
                    Office of the Tribal Attorney  
                    Muckleshoot Indian Tribe  
                    39015 172nd Avenue S.E.  
                    Auburn, WA 98002

22  
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25           9.       At the time of each payment Defendant will send notice that payment has been made  
26 to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). Such notice  
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1 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action  
2 number.

3 VIII. FAILURE TO COMPLY WITH CONSENT DECREE

4 10. Interest on Late Payments. If Defendant fails to make any payment under  
5 Paragraphs 7 and 8 by the required due date, interest shall be assessed at the rate specified for interest  
6 on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,  
7 compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The  
8 applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is  
9 subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance  
10 through the date of payment.

11 11. Stipulated Penalties.

12 a. If any amounts due under Paragraphs 7 and 8 are not paid by the required date,  
13 Defendant will be in violation of this Decree and, as a stipulated penalty, in addition to the interest  
14 required by Paragraph 10, will increase the financial contributions it makes under this Consent Decree  
15 to fund habitat restoration actions by paying the Trustees \$1,000 per violation per week that such  
16 payment is late. After the second week that such payment is late, the stipulated penalty shall apply  
17 to each additional day that the payment is late.

18 b. Stipulated penalties are due and payable within 30 days of the date of the  
19 demand for payment of the penalties by the Trustees. All payments to the Trustees under this  
20 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will  
21 be deposited in the Commencement Bay Restoration Account.

22 c. At the time of each payment, Defendant will send notice that payment has been  
23 made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). This  
24 notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the civil  
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1 action number.

2 d. Penalties will accrue as provided in this Paragraph regardless of whether the  
3 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties  
4 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due  
5 and will continue to accrue through the date of payment. Nothing in this Decree prevents the  
6 simultaneous accrual of separate penalties for separate violations of this Decree.

7  
8 12. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse Plaintiffs  
9 for all costs of such action, including but not limited to costs of attorney time.

10 13. Payments made under this Section are in addition to any other remedies or sanctions  
11 available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this Decree.

12 14. Notwithstanding any other provision of this Section, Plaintiffs may, in their  
13 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued  
14 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment  
15 as required by Section VII or from performance of any other requirement of this Consent Decree.

16 15. The Trustees may use sums paid as stipulated penalties under Paragraph 11 to pay  
17 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore  
18 Commencement Bay natural resources.

19  
20 IX. COVENANT NOT TO SUE BY PLAINTIFFS

21 16. Except as specifically provided in Section X (Reservations of Rights) below, Plaintiffs  
22 covenant not to sue or to take administrative action against Defendant pursuant to Section 107(a) of  
23 CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water Act  
24 (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.  
25 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon  
26 receipt by the Registry of the Court and by each of the Trustees of all payments required by  
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1 Paragraphs 7 and 8 of Section VII. This covenant not to sue is conditioned upon the satisfactory  
2 performance by Defendant of its obligations under this Decree. This covenant not to sue extends only  
3 to Defendant and its heirs, successors, and assigns, and does not extend to any other person.

4 X. RESERVATIONS OF RIGHTS

5 17. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant  
6 with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in  
7 Paragraph 16. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree  
8 is without prejudice to, all rights against Defendant with respect to:

- 9
- 10 a. liability for failure of Defendant to meet a requirement of this Decree;
  - 11 b. liability for costs of response incurred or to be incurred by Plaintiffs;
  - 12 c. liability for injunctive relief or administrative order enforcement under Section 106 of
  - 13 CERCLA, 42 U.S.C. § 9606, and
  - 14 d. criminal liability to the United States or State.

15 XI. REOPENERS

16 18. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and  
17 this Consent Decree is without prejudice to, the right to institute proceedings against Defendant in  
18 this action or in a new action for:

- 19
- 20 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent  
21 Decree; and
  - 22 b. Additional claims for Natural Resource Damages if conditions, factors or information  
23 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this  
24 Consent Decree, are discovered that, together with any other relevant information, indicates that there  
25 is a threat to the environment, or injury to, destruction of, or loss of natural resources of a type  
26 unknown, or of a magnitude significantly greater than was known, at the time of entry of this Consent

1 Decree, which is attributable to the Defendant.

2 XII. COVENANT NOT TO SUE BY DEFENDANT

3 19. Defendant covenants not to sue and agrees not to assert any claims or causes of action  
4 against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe  
5 or their contractors or employees, for any civil claims or causes of action relating to Natural Resource  
6 Damages.

7 XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

8 20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any  
9 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly  
10 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,  
11 demands, and causes of action they each may have with respect to any matter, transaction, or  
12 occurrence relating in any way to the Commencement Bay Environment against any person not a  
13 Party hereto.

14 21. The Parties agree, and by entering this Consent Decree this Court finds, that  
15 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution  
16 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW  
17 70.105D.040(4)(d) for Natural Resource Damages.

18 22. Defendant agrees that it will notify the Trustees and the United States in writing no  
19 later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.  
20 Defendant also agrees that it will notify the Trustees and the United States in writing within 10 days  
21 of service of a complaint or claim upon Defendant relating to a suit or claim for contribution for  
22 Natural Resource Damages. In addition, Defendant will notify the Trustees and the United States  
23 within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of  
24 receipt of any order from a court setting a case for trial for matters related to this Decree.  
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1 23. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for  
2 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource  
3 Damages, Defendant shall not assert, and may not maintain, any defense or claim based upon the  
4 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other  
5 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent  
6 proceeding were or should have been brought in the instant case; provided, however, that nothing  
7 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 16 and  
8 19.

9  
10 XIV. NOTICES AND SUBMISSIONS

11 24. Whenever notice is required to be given or a document is required to be sent by one  
12 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses  
13 specified below, unless those individuals or their successors give notice of a change to the other  
14 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice  
15 requirement of the Decree for Plaintiffs and Defendant.

16 As to the United States and as to DOJ:

17  
18 Chief, Environmental Enforcement Section  
19 Environment and Natural Resources Division  
20 U.S. Department of Justice  
21 P.O. Box 7611  
22 Washington, D.C. 20044-7611  
(DJ # 90-11-2-1049)

23 As to NOAA:

24 Robert A. Taylor  
25 NOAA Office of General Counsel GCNR/NW  
26 7600 Sand Point Way NE  
27 Seattle, WA 98115-0070  
28



1 As to the United States Department of the Interior:

2 Jeff Krausmann  
3 U.S. Fish & Wildlife Service  
4 510 Desmond Dr. SE, Suite 102  
Lacey, WA 98503-1263

5 As to the State:

6 Craig Thompson  
7 Toxics Cleanup Program  
8 State of Washington  
9 P.O. Box 47600  
Olympia, WA 98504-7600

10 As to the Puyallup Tribe of Indians:

11 Bill Sullivan  
12 Environmental Department  
13 Puyallup Tribe of Indians  
14 1850 Alexander Avenue  
Tacoma, WA 98421

15 As to the Muckleshoot Indian Tribe:

16 Mr. Rob Otsea  
17 Office of the Tribal Attorney  
18 Muckleshoot Indian Tribe  
19 39015 172nd Avenue S.E.  
Auburn, WA 98002

20 As to Defendant:

21 John R. Spencer  
22 Spencer Law Firm, LLC  
23 1326 Tacoma Ave. S., Suite 101  
Tacoma, WA 98402

24 XV. EFFECTIVE DATE

25 25. The effective date of this Consent Decree shall be the date upon which this Consent  
26 Decree is entered by the Court, except as otherwise provided herein.

27 XVI. RETENTION OF JURISDICTION

28

1           26.     This Court will retain jurisdiction over this matter for the purpose of interpreting and  
2 enforcing the terms of this Decree.

3   XVII. INTEGRATION/APPENDICES

4           27.     This Decree and its appendices constitute the final, complete, and exclusive agreement  
5 and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge  
6 that there are no representations, agreements, or understandings relating to the settlement other than  
7 those expressly contained in this Decree. The following appendices are attached to and incorporated  
8 into this Consent Decree:  
9

10           Appendix A is the Order Directing the Deposit of Natural Resource Damages into the  
11 Registry of the Court in *United States v. Port of Tacoma*, No. C93-5462B (W.D. Wash. Oct. 8,  
12 1993).

13   XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

14           28.     This Decree will be lodged with the Court for a period of not less than 30 days for  
15 public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their  
16 consent if the comments regarding the Decree disclose facts or considerations that indicate this  
17 Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Decree  
18 without further notice.

19           29.     If for any reason this Court declines to approve this Decree in the form presented, this  
20 agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not  
21 be used as evidence in any litigation between the Parties.

22   XIX. SIGNATORIES/SERVICE

23           30.     The Assistant Attorney General for the Environment and Natural Resources Division  
24 of the United States Department of Justice and each undersigned representative of the State, the  
25 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that he or she is  
26  
27  
28

1 authorized to enter into the terms and conditions of this Decree and to execute and bind legally the  
2 Party that he or she represents to this document.

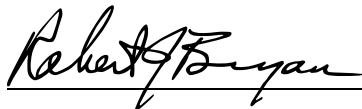
3 31. Defendant agrees not to oppose entry of this Decree by this Court or to challenge any  
4 provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer  
5 supports entry of the Decree.

6 32. Defendant will identify on the attached signature page the name and address of an  
7 agent who is authorized to accept service of process by mail on behalf of it with respect to all matters  
8 relating to this Decree. Defendant agrees to accept service in that manner and to waive the formal  
9 service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable  
10 local rules of this Court, including but not limited to service of a summons.

11  
12 XX. FINAL JUDGMENT

13 33. Upon approval and entry of this Decree by the Court, this Decree will constitute the  
14 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the  
15 Muckleshoot Indian Tribe, and Defendant. The Court finds that there is no just reason for delay and  
16 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

17  
18 IT IS SO ORDERED THIS 20<sup>th</sup> DAY OF JULY, 2007.

19  
20 

21  
22 Robert J. Bryan  
23 United States District Judge  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.  
2 Streich Bros., Inc.

3 FOR THE UNITED STATES OF AMERICA

4  
5 Date: 12/6/06

S/ \_\_\_\_\_

6 Sue Ellen Wooldridge  
7 Assistant Attorney General  
8 Environment and Natural Resources Division  
9 U.S. Department of Justice  
10 Washington, D.C. 20530

11  
12 FOR THE STATE OF WASHINGTON

13 Date: 5/10/06

S/ \_\_\_\_\_

14  
15 Date :5/16/06

\_S/ \_\_\_\_\_

16 Assistant Attorney General  
17 State of Washington

18  
19 FOR THE PUYALLUP TRIBE OF INDIANS

20  
21 Date: 6/8/06

S/ \_\_\_\_\_

22  
23  
24 FOR THE MUCKLESHOOT INDIAN TRIBE

1 Date: 4/28/06 S/ \_\_\_\_\_

2

3 FOR STREICH BROS., INC.  
4

5

6 Date: 3/26/06 S/ \_\_\_\_\_

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10 Agent authorized to receive service of process by mail on behalf of Streich Bros., Inc. with respect  
11 to all matters relating to this Decree:

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