

Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, ON BEHALF )  
OF THE NATIONAL OCEANIC AND )  
ATMOSPHERIC ADMINISTRATION AND THE )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR; STATE OF WASHINGTON )  
THROUGH THE WASHINGTON DEPARTMENT )  
OF ECOLOGY; PUYALLUP TRIBE OF INDIANS; )  
MUCKLESHOOT INDIAN TRIBE, )

CIVIL NO. C06-5204RJB  
CONSENT DECREE

Plaintiffs, )

v. )

AOL EXPRESS, INC., ARKEMA INC., )  
EDWARD and MOLLY BARRY, BUFFELEN )  
WOODWORKING CO., CHS INC., CHARLES P. )  
and PATRICIA CURRAN, DUNLAP TOWING )  
COMPANY, ESTATE OF NORMAN NORDLUND, )

1 ESTATE OF LESLIE P. SUSSMAN, F.O.F., INC., )  
2 HYLEBOS BOAT HAVEN, HYLEBOS MARINA )  
3 INC., JUDY JOHNSON, JONES CHEMICALS, )  
4 INC., JOSEPH SIMON & SONS/RAIL & )  
5 LOCOMOTIVE EQUIPMENT CO., )  
6 LOUISIANA-PACIFIC CORPORATION, PHYLLIS )  
7 NORDLUND, NORDLUND BOAT COMPANY, )  
8 INC., NORDLUND PROPERTIES, INC., NOVEON )  
9 KALAMA CHEMICAL, INC., DON and ALBA )  
10 OLINE, RONALD OLINE, DONALD S. and )  
11 BARBARA L. OLSON, KAY E. OLSON, OLSON & )  
12 CURRAN BARNACLE STOPPING SALT WATER )  
13 FREE VERTICAL DRY DOCK CO. dba OLE & )  
14 CHARLIE’S MARINAS, PORTAC, INC., )  
15 RAYONIER PROPERTIES, LLC, PAULA ROSE, )  
16 SUSSMAN ROSE SUSSMAN, ALAN SUSSMAN, )  
17 SOPHIE SUSSMAN, USG INTERIORS, INC., )  
18 WASSER & WINTERS CO., INC., WEST )  
19 WATERWAY ASSOCIATES, P.S., ZIDELL )  
20 MARINE CORPORATION, )  
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Defendants.

I. INTRODUCTION

The United States of America (“United States”), on behalf of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a complaint in this case against defendants AOL Express, Inc., Arkema Inc., Edward & Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles P. and Patricia Curran, Dunlap Towing Company, Estate of

1 Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina,  
2 Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co.,  
3 Louisiana-Pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund  
4 Properties, Inc., Noveon Kalama Chemical, Inc., Don and Alba Oline, Ronald Oline, Donald S. and  
5 Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry  
6 Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman  
7 Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc.,  
8 West Waterway Associates, P.S., and Zidell Marine Corporation ("Defendants") pursuant to Section  
9 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
10 amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D  
11 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A)  
12 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the  
13 "Decree") addresses the claims asserted in the Complaint against Defendants for Natural Resource  
14 Damages (as defined below) in the Commencement Bay Environment (as defined below).  
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## 18 II. RECITALS

19 A. The United States Department of Commerce, acting through NOAA; the United  
20 States Department of the Interior; the Washington Department of Ecology on behalf of the State of  
21 Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively, "the  
22 Trustees" and, individually, a "Trustee"), under the authority of Section 107(f) of CERCLA, 42  
23 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart  
24 G, serve as trustees for natural resources for the assessment and recovery of damages for injury to,  
25 destruction of, or loss of natural resources under their trusteeship.  
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1 B. Investigations conducted by the United States Environmental Protection Agency  
2 (“EPA”), the Trustees, and others have detected hazardous substances in the sediments, soils and  
3 groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony,  
4 cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,  
5 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and  
6 polychlorinated biphenyls (PCBs). Overall, the Trustees have documented the presence of over 30  
7 hazardous substances in the marine sediments of Commencement Bay’s Hylebos Waterway.  
8

9 C. The Trustees began assessing natural resource damages in the Commencement Bay  
10 Environment in October 1991 by finding that hazardous substances had been released into the  
11 Commencement Bay Environment; that public trust natural resources had likely been injured by the  
12 releases; that data sufficient to pursue a natural resource damage assessment were available or could  
13 likely be obtained at a reasonable cost; and that, without further action, implemented and planned  
14 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of  
15 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place  
16 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,  
17 1991). The Trustees notified representatives of known potentially responsible parties (“PRPs”) of  
18 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and  
19 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage  
20 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a  
21 report on the results of Phase 1 of the damage assessment process in June 1995. Those major PRPs  
22 did not participate in subsequent stages of the damage assessment, and the Trustees continued the  
23 process independently. The Trustees have now completed a series of studies during Phase 2 of the  
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1 damage assessment, focusing on impacts of contaminants on marine sediments, benthic organisms,  
 2 flatfish and salmonids. Results of those studies were published in a series of reports, consisting of  
 3 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis  
 4 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish  
 5 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,  
 6 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants  
 7 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.  
 8 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects  
 9 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and  
 10 Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,  
 11 Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway.  
 12 Based on this research, the Plaintiffs and Defendants (collectively, the “Parties” and, individually, a  
 13 “Party”) agree that no further natural resource damage assessment is required to effectuate the  
 14 purposes of this Consent Decree, with respect to Defendants.

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

24 E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned  
 25 and/or operated real property or facilities, identified by the Trustees as:

<u>Defendant</u>	<u>Site Name</u>
------------------	------------------

1	AOL Express, Inc.	AOL EXPRESS
2	Arkema Inc.	ELF ATOCHEM
3		DUNLAP TOWING
4	Buffelen Woodworking Co.	BUFFELEN
5	CHS, Inc.	CENEX AG
6	Edward and Molly Barry, Charles P.	OLE & CHARLIE'S MARINA
7	and Patricia Curran, Donald S. and	
8	Barbara Olson, Kay E. Olson, Olson &	
9	Curran Barnacle Stopping Salt Water	
10	Free Vertical Dry Dock Co. dba Ole &	
	Charlie's Marinas and West Waterway	
	Associates, P.S.	
11	Dunlap Towing Company	DUNLAP TOWING
12	Estate of Norman Nordlund, Hylebos	HYLEBOS MARINA
13	Boat Haven, Phyllis Nordlund,	MANKE LUMBER
14	Nordlund Boat Company, Inc. and	
	Nordlund Properties, Inc.	
15	F.O.F., Inc.	OCCIDENTAL
16		U.S. NAVAL RESERVE
17	Hylebos Marina, Inc.	HYLEBOS MARINA
18		OLINE PROPERTIES (1800 MARINE VIEW DR.)
19		
20	Judy Johnson	DON OLINE AUTOFLUFF SITE
21		HYLEBOS MARINA
		OLINE PROPERTIES (1800 MARINE VIEW DR.)
22	Jones Chemicals, Inc.	JONES CHEMICALS
23	Joseph Simon & Sons/	JOSEPH SIMON & SONS
24	Rail & Locomotive Equipment Co.	
25	Louisiana-Pacific Corporation	LOUISIANA-PACIFIC
26	Noveon Kalama Chemical, Inc.	SOUND REFINING
27		
28		

1	Don and Alba Oline	DON OLINE AUTOFLUFF SITE
2		HYLEBOS MARINA
3		STONE INVESTMENTS
4	Ronald Oline	DON OLINE AUTOFLUFF SITE
5		HYLEBOS MARINA
6		OLINE PROPERTIES (1800 MARINE VIEW DR.)
7	Portac, Inc.	PORT OF TACOMA (3002 TAYLOR WAY)
8	Rayonier Properties, LLC	TAYLOR WAY PROPERTIES
9		GENERAL METALS OF TACOMA
10	Estate of Leslie P. Sussman, Paula	
11	Rose, Sussman Rose Sussman, Alan	
12	Sussman and Sophie Sussman,	US GYPSUM
13	USG Interiors, Inc.	WASSER WINTERS
14	Wasser & Winters Co., Inc.	AK-WA SHIPBUILDING
15	Zidell Marine Corporation	

16 Plaintiffs further allege that from each of such sites storm water, surface water runoff, wastewater,  
17 other process discharges, and/or groundwater have flowed to the Commencement Bay Environment.

18 Plaintiffs also allege that investigations by EPA and others have detected concentrations of hazardous  
19 substances in soils, groundwater or sediments on or in those properties or facilities. Some of these  
20 hazardous substances are found in the sediments of the Commencement Bay Environment.

21 F. Plaintiffs further allege that hazardous substances have been or are being released to  
22 the Commencement Bay Environment from properties or facilities owned and/or operated by each  
23 Defendant through direct discharge, surface water runoff, groundwater and seeps, and that those  
24 hazardous substances have caused injury to, destruction of and loss of natural resources in the  
25 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish, invertebrates,  
26  
27

1 birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each of  
2 them and the public have suffered the loss of natural resource services (including ecological services  
3 as well as direct and passive human use losses) as a consequence of those injuries.  
4

5 G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a vessel  
6 or a facility; (b) a person who at the time of disposal or release of any hazardous substance owned  
7 or 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.  
16  
17

18 H. Defendants each deny all the allegations of the Complaint, and the allegations  
19 contained in Paragraphs E, F, G, K, M and O of this Section.  
20

21 I. Although the Trustees have initiated but not yet completed a natural resource damage  
22 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed  
23 information sufficient to support a settlement that is fair, reasonable and in the public interest.  
24

25 J. To facilitate resolving natural resource damage claims, the Trustees developed a  
26 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos  
27 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage assessment  
28



1 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first  
2 developed an estimate of the amount of injury to natural resources that had occurred as a result of  
3 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of  
4 the injuries in terms of the losses of ecological services over affected areas of the waterway and over  
5 time, discounted to the current year. The Trustees used the term *discounted ecological service*  
6 *acre-years* (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration  
7 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking  
8 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat  
9 restoration sufficient to compensate for the loss of 1526.77 DSAYs.  
10  
11

12 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have  
13 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be  
14 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos  
15 Waterway contamination make all PRPs who contributed to the contamination jointly and severally  
16 liable for all injuries to natural resources that have resulted from the contamination. As a  
17 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any  
18 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating  
19 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for  
20 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed  
21 existing information from the files of EPA, the Washington State Department of Ecology, and local  
22 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed  
23 to the contamination.  
24  
25

26 L. To ensure that all PRPs had an equal opportunity to be informed of and to offer their  
27  
28

1 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the  
2 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,  
3 revised the report based upon the comments received, and made it available to PRPs in final form.  
4

5 M. After evaluating available information, the Trustees have determined, solely for  
6 purposes of this settlement and without any bearing on or applicability in any other context, that  
7 Defendants should be allocated liability for a total of 257.849 DSAY losses and \$1,793,888.46 in  
8 damage assessment costs as a consequence of Defendants' respective industrial and commercial  
9 processes and activities resulting in alleged hazardous substances releases in connection with the  
10 above-named facilities.  
11

12 N. In settlement of this action Defendants have agreed, in lieu of and as equivalent to  
13 monetary damages, to contract with Pierce County to secure permanently the right to use real  
14 property for the purpose of natural resource restoration, to construct thereon the habitat restoration  
15 project described in Appendix A ("Old Soldier's Home Setback Levee Project" or "Project"),  
16 attached hereto and by this reference incorporated herein and perform any additional activities  
17 described in Appendix A. Defendants have also agreed to contribute funds to support project  
18 oversight by the Trustees, and to reimburse natural resource damage assessment costs incurred by  
19 the Trustees.  
20

21 O. The Trustees have determined that the timely actions and expenditures to be  
22 undertaken by Defendants under this Consent Decree are appropriate and necessary to protect and  
23 restore the natural resources allegedly injured as a result of alleged actions or omissions of  
24 Defendants that are addressed herein, and that such timely actions and expenditures are adequate to  
25 redress Defendants' responsibility for the Natural Resource Damages that are the subject of this  
26  
27  
28

1 proceeding.

2 P. Defendants do not admit any liability to Plaintiffs arising out of the transactions or  
3 occurrences alleged in the Complaint and the matters alleged in this Consent Decree.

4 Q. Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this  
5 Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid  
6 prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and  
7 in the public interest.  
8

9 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:  
10

11 III. JURISDICTION AND VENUE

12 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
13 §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court  
14 has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying  
15 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the  
16 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this  
17 Court's jurisdiction to enter and enforce this Decree.  
18

19 IV. PARTIES BOUND

20 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of  
21 Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns. Any  
22 change in ownership or corporate or other legal status, including but not limited to any transfer of  
23 assets or real or personal property, will in no way alter the status or responsibilities of the Parties  
24 under this Decree.  
25

26 3. Defendants shall provide a copy of this Consent Decree to Pierce County as the party  
27  
28

1 that will be performing the work required by this Consent Decree, to each contractor hired by  
2 Defendants to perform any of the work required by this Consent Decree, and to each person  
3 representing Defendants with respect to any such work, and shall condition all future contracts  
4 entered into by Defendants hereunder upon performance of the work in conformity with the terms  
5 of this Consent Decree. Defendants or their contractors shall provide written notice of the Consent  
6 Decree to all subcontractors hired by Defendants' contractors to perform any portion of the work.  
7 Defendants shall be responsible for ensuring that all work performed by their contractors and  
8 subcontractors and by Pierce County, including that performed by its contractors and subcontractors,  
9 is performed in accordance with this Consent Decree.  
10  
11

12 V. DEFINITIONS

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

18 a. "CERCLA" means the Comprehensive Environmental Response Compensation  
19 and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

20 b. "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  
26  
27  
28

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

5 c. “Commencement Bay Restoration Account” means the Commencement Bay  
6 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural  
7 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.  
8 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix B).  
9

10 d. “Consent Decree” or “Decree” means this Consent Decree and all attached  
11 appendices. In the event of a conflict between this Consent Decree and any Appendix, the Consent  
12 Decree will control.

13 e. “Day” means a calendar day. In computing any period of time under this  
14 Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time  
15 will run until the close of business of the next working day.  
16

17 f. “DSAYs” means discounted ecological service acre-years, the metric  
18 established by the Trustees to determine the scale of Natural Resource Damages liability associated  
19 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for  
20 injury to, destruction or loss of natural resources giving rise to liability.  
21

22 g. “Defendant” means each one of, and “Defendants” means all of, AOL Express,  
23 Inc., Arkema Inc., Edward and Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles P. and  
24 Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P. Sussman,  
25 F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals, Inc., Joseph  
26 Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-Pacific Corporation, Phyllis Nordlund,  
27  
28

1 Nordlund Boat Company, Inc., Nordlund Properties, Inc., Noveon Kalama Chemical, Inc. (and its  
2 predecessor Kalama Chemical, Inc.), Don and Alba Oline, Ronald Oline, Donald S. and Barbara L.  
3 Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba  
4 Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman Rose  
5 Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc., West  
6 Waterway Associates, P.S., and Zidell Marine Corporation.  
7

8 h. "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

9 I. "Natural Resources" means that definition as provided in 42 U.S.C. §  
10 9601(16).  
11

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

20 k. "Parties" mean the United States, the State of Washington, the Puyallup Tribe  
21 of Indians, the Muckleshoot Indian Tribe and Defendants.  
22

23 l. "Plaintiffs" means the United States, the State, the Puyallup Tribe of Indians,  
24 and the Muckleshoot Indian Tribe.

25 m. "Project" means the Old Soldier's Home Setback Levee Project described in  
26 Appendix A.  
27

1 n. "Project Site" means the approximately 92-acre site composed of all or a  
2 portion of Pierce County tax parcels 051932-3-041, 051931-4-031, 051931-4-029, 051932-3-020,  
3 051932-3-010, 051932-3-025, 051805-2-000 and 051805-2-001 near Orting, Washington, as  
4 indicated in Appendix A, that is owned by Pierce County and on which the Project is to be developed  
5 according to the terms of this Consent Decree.  
6

7 o. "Trustees" mean the United States Department of Commerce, acting through  
8 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of  
9 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.  
10

11 VI. GENERAL PROVISIONS

12 5. The Complaint states claims upon which relief may be granted.

13 6. Nothing in this Consent Decree shall be construed as an admission of liability by any  
14 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.  
15

16 7. Except where otherwise expressly provided, each Defendant shall be jointly and  
17 severally responsible for performing the obligations undertaken by Defendants under this Consent  
18 Decree. Plaintiffs may take such actions as provided below to enforce the terms of this Consent  
19 Decree against any one or more of Defendants as Plaintiffs may choose.  
20

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

23 9. All activities undertaken by Defendants pursuant to this Consent Decree shall be  
24 performed in accordance with the requirements of all applicable laws and permits.

25 10. Defendants shall ensure that all work performed under this Consent Decree shall be  
26 conducted pursuant to the design and schedule approved by the Trustees in Appendix A attached  
27

1 hereto and shall be subject to review by the Trustees. If the Trustees determine that Defendants or  
2 Pierce County are not complying with the design and schedule set forth in Appendix A, the Trustees  
3 shall provide prompt written notice to Defendants specifying the basis for their determination of  
4 noncompliance. Defendants may correct the noncompliance or invoke the dispute resolution  
5 procedures set forth in Section XV below. Subject to the right of Defendants to invoke the dispute  
6 resolution provisions, the Trustees may require Defendants to take actions, to alter, suspend or cease  
7 ongoing activities, and to alter, postpone or refrain from taking proposed actions, as the Trustees  
8 reasonably deem necessary to ensure compliance with the terms of this Consent Decree and any plans  
9 or proposals adopted hereunder.  
10  
11

12 11. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant  
13 to any law.

14 12. Where any portion of the activities undertaken pursuant to this Consent Decree  
15 requires a federal, state or local permit or approval, Defendants or Pierce County shall submit timely  
16 and complete applications and take all other actions necessary to obtain all such permits or approvals.  
17 Defendants or Pierce County shall use best efforts to obtain any necessary permits.  
18

19 13. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or  
20 aver in any manner that Defendants' compliance with this Consent Decree will result in compliance  
21 with CERCLA or any other law. Compliance with this Consent Decree does not diminish or affect  
22 Defendants' responsibility to comply with any applicable federal, state or local law or regulation. The  
23 Parties agree that Defendants are responsible for achieving and maintaining complete compliance with  
24 all applicable federal, state and local laws, regulations and permits.  
25

26 **VII. PROJECT SITE**  
27  
28



1 14. Pierce County, as the owner of the Project Site, has conveyed and granted to the State  
2 of Washington the right to use the Project Site forever for salmon recovery and conservation  
3 purposes. Pierce County has recorded deed restrictions for the Project Site, which are attached as  
4 Appendix C hereto.  
5

6 **VIII. PROJECT DEVELOPMENT**

7 15. Defendants shall provide the funds and services to ensure that all necessary steps are  
8 taken to construct the Project and to perform any additional activities in accordance with the details,  
9 specifications and project development schedule set out in Appendix A.  
10

11 16. Defendants shall avoid taking any action on the Project Site property or adjacent  
12 property owned or controlled by Defendants that is inconsistent with this Consent Decree and that  
13 would interfere with the Project such that it would substantially decrease the likelihood of success  
14 of the Project. Defendants shall notify the Trustees in writing at least 30 days prior to entering into  
15 any contracts for or applying for any permits for the taking of any actions on the Project Site other  
16 than those identified in Appendix A. Such notice shall include a narrative description of the proposed  
17 actions plus a site diagram indicating the location of the proposed actions.  
18

19 17. Within 60 days after completion of construction of the Project, Defendants shall  
20 submit a written Notice of Completion to the Trustees. The Trustees shall review the course and  
21 results of the development of the Project to determine whether the Project has been completed in  
22 accordance with Appendix A. Within 60 days after receiving the Notice of Completion, the Trustees  
23 shall submit to Defendants either (a) a written notice identifying specific deficiencies the Trustees  
24 determine must be satisfied for the Project to be completed in accordance with Appendix A (Notice  
25 of Deficiencies); or (b) a written notice of the Trustees' determination that the Project has been so  
26  
27  
28

1 completed (Notice of Approval of Completion). Following receipt of a Notice of Deficiencies,  
2 Defendants shall correct the identified deficiencies and complete the Project in accordance with  
3 Appendix A, and submit to the Trustees an amended Notice of Completion for review and response  
4 in accordance with this Paragraph. Any delay in completing Project construction as a result of the  
5 operation of this Paragraph shall not in and of itself constitute grounds for relief from the requirement  
6 to pay stipulated penalties under Section XVI for compliance delays.  
7

8 18. Within 180 days following receipt of the Trustees' Notice of Approval of Completion  
9 for the Project, Defendants shall submit to the Trustees a Project Completion Accounting. The  
10 Project Completion Accounting shall itemize the costs incurred by Defendants in developing the  
11 Project.  
12

13 IX. POST-CONSTRUCTION ALTERATIONS;  
14 FURTHER RESTORATION ACTIONS

15 19. In addition to any measures undertaken in connection with the Project monitoring plan  
16 identified in Appendix A, following construction of the Project the Trustees may at any time make  
17 such post-construction alterations or implement such further restoration actions on the Project site  
18 as they determine appropriate. Such post-construction alterations or further restoration actions shall  
19 only be taken with the approval of Defendants and Pierce County, which approval may be withheld  
20 only upon a showing that the proposed activity would be inconsistent with the purposes of the Project  
21 as described in Appendix A (including the Project's flood control purposes), would be inconsistent  
22 with other provisions of this Consent Decree or other applicable law, or would impose costs upon  
23 Defendants.  
24

25 X. ACCESS TO INFORMATION AND PROJECT SITE

26 20. To facilitate their oversight responsibilities, the Trustees shall have full access to all  
27  
28

1 work in progress required under this Consent Decree.

2         21. Commencing upon the date of lodging of this Consent Decree, Defendants agree to  
3 provide the Trustees and their contractors access at all reasonable times to the Project Site and to any  
4 property under the control of Defendants to which access is required for the oversight or  
5 implementation of this Consent Decree. Where the property to which access is sought is not  
6 otherwise open to public access, the Trustees shall give notice prior to access. Each Trustee shall  
7 have the authority to enter freely and move about such property at all reasonable times for the  
8 purposes of overseeing the requirements of this Consent Decree, including, but not limited to:  
9

- 10
- 11             a. Monitoring and assessing progress on the planning, development, maintenance  
12                 and monitoring of the Projects;
  - 13             b. Verifying any data or information submitted to the Trustees;
  - 14             c. Inspecting and copying records, operation logs, contracts or other documents  
15                 maintained or generated by Defendants or their contractors hereafter retained  
16                 to perform work undertaken pursuant to this Consent Decree;
  - 17             d. Conducting such tests, investigations or sample collections as deemed  
18                 necessary to monitor compliance with this Consent Decree or to assist in  
19                 further identifying and quantifying natural resource injuries requiring  
20                 restoration actions and in planning and carrying out further restoration  
21                 actions;
  - 22             e. Using a camera, sound recording device or other type equipment to record the  
23                 work done under this Consent Decree or injury to natural resources;
  - 24             f. Undertaking any maintenance action or post-construction alterations or  
25                 further restoration actions in accordance with Paragraph 19.

26         22. Defendants shall have the right to accompany any Trustee or its representative on the  
27

1 property. Anyone provided access through this Consent Decree shall comply with applicable health  
2 and safety requirements and shall not interfere with ongoing operations.

3  
4 XI. SELECTION OF CONTRACTORS

5 23. The selection of any contractor hereafter retained by Defendants to perform any of  
6 the work required under this Consent Decree shall be subject to Trustee approval. Defendants shall  
7 notify the Trustees in writing of the name, title and qualifications of any contractor Defendants  
8 propose to retain, and of any proposed changes in the selection of a contractor. The Trustees will  
9 notify Defendants in writing of the approval or disapproval of a proposed contractor. The Trustees'  
10 assent to the proposed selection or change of a contractor may be presume unless the Trustees notify  
11 Defendants in writing of their objection to the proposed selection or change within 30 days of  
12 Defendants' written selection notice. Defendants shall notify the Trustees in writing of the contractor  
13 and of any subcontractors that have been retained by Pierce County to perform any of the work  
14 required under this Consent Decree.

15  
16  
17 XII. REIMBURSEMENT OF RESTORATION OVERSIGHT COSTS

18 24. Defendants shall reimburse Trustee costs incurred in the oversight of the development  
19 and maintenance of the Project and in monitoring Project performance in the total amount of  
20 \$150,000. Sums paid under this Paragraph shall be deposited in the Commencement Bay Restoration  
21 Account for use as the Trustees shall determine in accordance with the terms of this Consent Decree  
22 and other applicable law. Payment shall be deposited within 30 days following the entry of this  
23 Consent Decree with the Registry of the Court by certified check, bearing the notation "Hylebos  
24 NRDA Mediation Group - Oversight and Monitoring Costs" and the civil action number assigned to  
25 this Consent Decree, made payable and addressed as follows:  
26  
27  
28

1 Payee: Clerk of the Court

2 Address: Clerk, U.S. District Court  
3 U.S. Courthouse, Room 215  
4 1010 Fifth Avenue  
5 Seattle, WA 98104

6 Memo: For Deposit into the Commencement Bay Natural Resource Restoration Account  
7 C93-5462 [INSERT THIS CASE DOCKET NUMBER]

8 Defendants shall send photocopies of each check and any transmittal letter to: Chief, Environmental  
9 Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C.  
10 20044; and to Robert A. Taylor, NOAA GCNR/NW, 7600 Sand Point Way NE, Seattle, WA 98115-  
11 0070. Any funds paid pursuant to this Paragraph that are not utilized by the Trustees to cover  
12 oversight costs or costs of maintenance, monitoring or adaptive management for the Project may be  
13 applied by the Trustees toward one or more additional restoration projects in the Commencement Bay  
14 Environment.  
15 Environment.

16 XIII. PAST COST REIMBURSEMENT

17 25. Within 30 days of entry of this Decree, Defendants will pay to the Trustees sums  
18 totaling \$1,793,888.46 in damage assessment costs. These sums shall be paid in the following  
19 amounts and particulars:  
20

21 Trustee: National Oceanic and Atmospheric Administration  
22 Amount: \$1,447,127.08

23 Trustee: U.S. Department of the Interior  
24 Amount: \$241,939.29

25 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic  
26 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT  
27

1 procedures. Payment shall be made in accordance with instructions provided to Defendants by the  
2 Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any  
3 payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be  
4 credited on the next business day. Defendants shall provide at least five days notice to the Financial  
5 Litigation Unit before making the transfer.  
6

7 Payments to the other Trustees shall be made by certified checks, bearing the notation  
8 "Hylebos NRDA Mediation Group - Commencement Bay Assessment Costs," in the amounts  
9 indicated and made payable and addressed as follows:  
10

11 Trustee: State of Washington  
12 Amount: \$29,853.49  
13 Payee: State of Washington/Department of Ecology  
14 Address: State of Washington  
15 Department of Ecology  
16 Attention: Cashiering Section  
17 P.O. Box 5128  
18 Lacey, WA 98503-0210

19 Trustee: Puyallup Tribe of Indians  
20 Amount: \$68,299.79  
21 Payee: Puyallup Tribe of Indians  
22 Address: Mr. William Sullivan  
23 Environmental Protection Department  
24 Puyallup Tribe of Indians  
25 2002 E. 28th Street  
26 Tacoma, WA 98404

27 Trustee: Muckleshoot Indian Tribe  
28 Amount: \$6,668.81  
Payee: Muckleshoot Indian Tribe  
Address: Mr. Rob Otsea  
Office of the Tribal Attorney

1 Muckleshoot Indian Tribe  
2 39015 172nd Avenue S.E.  
3 Auburn, WA 98002

4 26. At the time of each payment Defendants will send notice that payment has been made  
5 to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions). Such notice  
6 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action  
7 number.

8  
9 XIV. FAILURE TO MAKE TIMELY PAYMENTS

10 27. If Defendants fail to make any payment under Paragraphs 24 and 25 by the required  
11 due date, interest shall be assessed at the rate specified for interest on investments of the EPA  
12 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October  
13 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest is the rate in  
14 effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each  
15 year. Interest will continue to accrue on the unpaid balance through the date of payment.

16  
17 XV. DISPUTE RESOLUTION

18 28. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution  
19 procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with  
20 respect to this Consent Decree.

21  
22 29. Any dispute which arises under or with respect to this Consent Decree shall in the first  
23 instance be the subject of informal negotiations between the Trustees and Defendants. The period for  
24 informal negotiations shall not exceed twenty-one (21) days from the time the dispute arises, unless  
25 the parties to the dispute agree otherwise in writing. The dispute shall be considered to have arisen  
26 when the Trustees send Defendants a written notice specifying the nature of the dispute and requested  
27

1 relief (“Notice of Dispute”) or Defendants sends the Trustees a written Notice of Dispute.

2           30.    a.     If the Parties cannot resolve a dispute by informal negotiations under the  
3 preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless,  
4 within twenty-one (21) days after the conclusion of the informal negotiation period, Defendants  
5 invoke the formal dispute resolution procedures of this Section by serving on the Trustees a written  
6 Statement of Position on the matter in dispute, including, but not necessarily limited to, any factual  
7 data, analysis or opinion supporting that position and any supporting documentation relied upon by  
8 Defendants.  
9

10                   b.     Within twenty-one (21) days after receipt of Defendants’ Statement of  
11 Position, the Trustees shall serve on Defendants their written Statement of Position, including, but  
12 not necessarily limited to, any factual data, analysis or opinion supporting that position and all  
13 supporting documentation relied upon by the Trustees.  
14

15                   c.     An administrative record of the dispute shall be maintained by the Trustees and  
16 shall contain all Statements of Position, including supporting documentation, submitted pursuant to  
17 this Section.  
18

19                   d.     The Formal Dispute Resolution Representatives for Defendants and the  
20 Trustees shall meet to discuss the matter in dispute at the earliest available opportunity and will work  
21 in good faith to resolve the matter in dispute. If the Parties fail to resolve the dispute within twenty-  
22 one (21) days after the initial meeting of the Formal Dispute Resolution Representatives, then the  
23 position advanced by the Trustees in their Statement of Position shall be considered binding upon  
24 Defendants, subject to any agreements the Formal Dispute Resolution Representatives may have  
25 reached on one or more issues and further subject to Defendants’ right to seek judicial review  
26  
27  
28



1 pursuant to the following Subparagraph. In such event the Trustees shall within five (5) days of the  
2 conclusion of the formal dispute resolution process notify Defendants in writing that the formal  
3 dispute resolution process has concluded.

4  
5 e. Any matter in dispute shall be reviewable by this Court, provided that a motion  
6 for judicial review of the decision is filed by Defendants with the Court and served on all Parties  
7 within twenty-one (21) days of receipt of the Trustees' letter notifying Defendants of the conclusion  
8 of the formal dispute resolution process. The motion shall include a description of the matter in  
9 dispute, the relief requested and the schedule, if any, within which the dispute must be resolved to  
10 ensure orderly implementation of this Consent Decree. The Plaintiffs may file a response to  
11 Defendants' motion within twenty-one (21) days of receipt of the motion or within any different time  
12 frame that the local rules of court may provide, and Defendants may file a reply brief within five (5)  
13 days of receipt of the response or such different time that the local rules of court may provide.

14  
15 f. The Court may rule based on the written record, with or without oral  
16 argument. The burden of proving entitlement to the requested relief with respect to the matter in  
17 dispute shall be on the Party requesting it.

18  
19 g. The foregoing notwithstanding, the Parties acknowledge that disputes may  
20 arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an  
21 expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition the  
22 Court for the imposition of an expedited schedule.

23  
24 31. The invocation of formal dispute resolution procedures under this Section shall not  
25 extend, postpone or affect in any way any obligation of any Party under this Consent Decree not  
26 directly in dispute or contingent on issues in dispute, unless the Trustees or the Court agrees  
27

1 otherwise. Defendants' obligations to pay stipulated penalties as provided in Section XVI with  
2 respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution  
3 of the dispute. Notwithstanding the stay of payment, the obligation to pay stipulated penalties shall  
4 accrue from the first day of noncompliance with any applicable provision of this Consent Decree,  
5 subject agreement of the Parties or to the decision of the Court on Defendants' motion. If Defendants  
6 do not prevail on a disputed issue, stipulated penalties shall be assessed and paid as provided in  
7 Section XVI.  
8

9  
10 XVI. STIPULATED PENALTIES

11 32. The Parties stipulate that time is of the essence in the implementation of the  
12 requirements of this Consent Decree and that delays in carrying out the activities required herein may  
13 diminish the compensatory value attributable to those activities. Consequently, in the event that  
14 Defendants exceed the deadline provided for one of the activities described below (subject to any  
15 modifications agreed to under Section XXVIII) and such delay is not excused through operation of  
16 the dispute resolution provisions (Section XV) and/or the force majeure provisions (Section XVII),  
17 Defendants shall, as a stipulated penalty, increase the financial contributions it makes under this  
18 Consent Decree to fund habitat restoration actions, over and above any payments required elsewhere  
19 under this Consent Decree, as follows:  
20

21 a. For each week Defendants fail to comply with a deadline under Paragraph 24  
22 or 25 for making any payment; in the Project Development Schedule included in Appendix A; under  
23 Paragraph 17 for submitting a Notice of Completion; under Paragraph 18 for submitting a Project  
24 Completion Accounting; or under Paragraph 40, if applicable, for providing copies of certificates of  
25 insurance and insurance policies, Defendants shall pay a stipulated penalty in the amount of \$1,000.  
26  
27  
28

1 Where the delay extends beyond the second week, the stipulated penalty shall apply to each additional  
2 day of delay for each such missed deadline. For purposes of this Subparagraph, a week shall equal  
3 a continuous period of seven days.  
4

5 b. Stipulated penalties are due and payable within 30 days of the date of the  
6 demand for payment of the penalties by the Trustees. All payments to the Trustees under this  
7 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will  
8 be deposited in the Commencement Bay Restoration Account.  
9

10 c. At the time of each payment, Defendants will send notice that payment has  
11 been made to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions).  
12 This notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the  
13 civil action number.  
14

15 d. Penalties need only be paid upon demand. Penalties for late payments will  
16 begin to accrue on the day after payment is due. All other penalties will begin to accrue on the day  
17 after the Trustees' notice of noncompliance pursuant to Paragraph 10 and will continue to accrue  
18 through the date of payment. Nothing in this Decree prevents the simultaneous accrual of separate  
19 penalties for separate violations of this Decree.  
20

21 e. Defendants may dispute the Trustees' right to the penalties identified under  
22 Subparagraph a. above by invoking the dispute resolution procedures of Section XV.  
23

24 33. If Plaintiffs bring an action in court to enforce this Decree and prevail, Defendants will  
25 reimburse Plaintiffs for all costs of such action, including but not limited to costs of attorney time.  
26

27 34. Payments made under this Section are in addition to any other remedies or sanctions  
28 available to Plaintiffs by virtue of Defendants' failure to comply with the requirements of this Decree.

1 35. Notwithstanding any other provision of this Section, Plaintiffs may, in their  
2 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued  
3 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants from payment  
4 as required by Sections VIII, XII or XIII or from performance of any other requirement of this  
5 Consent Decree.  
6

7 36. The Trustees may use sums paid as stipulated penalties under Paragraph 32 to pay  
8 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore  
9 Commencement Bay natural resources.  
10

11 XVII. FORCE MAJEURE

12 37. "Force majeure," for purposes of this Consent Decree, is defined as any event arising  
13 from causes beyond the control of Defendants that delays or prevents the performance of any  
14 obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The  
15 requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts  
16 to anticipate any potential force majeure event and use best efforts to address the effects of any  
17 potential force majeure event (1) as it is occurring and (2) following the potential force majeure event,  
18 such that the delay is minimized to the greatest extent possible. "Force majeure" does not include  
19 financial inability to fulfill the obligation. The requirement that Defendants exercise "best efforts to  
20 fulfill the obligation" also includes, where necessary, the filing of legal actions to compel contract  
21 performance in accordance with the design and schedule approved by the Trustees herein.  
22  
23

24 38. a. If any event occurs or has occurred that may delay the performance of any  
25 obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants  
26 shall notify the Trustees within 14 days of when Defendants first knew that the event might cause  
27  
28

1 a delay. Within 30 days thereafter, Defendants shall provide a written explanation and description  
2 of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to  
3 prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent  
4 or mitigate the delay or the effect of the delay; and the rationale for attributing such delay to a force  
5 majeure event (if Defendants intend to assert such a claim). Defendants shall include with any notice  
6 all available documentation supporting their claim that the delay was attributable to a force majeure  
7 event. Failure to comply with the above requirements will preclude Defendants from asserting any  
8 claim of force majeure for that event.  
9

10  
11 b. If the Trustees agree that the delay or anticipated delay is attributable to a  
12 force majeure event, the time for performance of the obligations under this Consent Decree that are  
13 affected by the force majeure event will be extended by the Trustees for such time as is necessary.  
14 An extension of the time for performance of the obligations affected by the force majeure event shall  
15 not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree  
16 that the delay or anticipated delay has been or will be caused by a force majeure event, the Trustees  
17 will notify Defendants in writing of their decision.  
18

19 c. If Defendants elect to invoke the dispute resolution procedures set forth in  
20 Section XV, above, regarding a claimed force majeure event it shall do so no later than 30 days after  
21 receipt of the Trustees' notice of disagreement. In any such proceeding Defendants shall have the  
22 burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has  
23 been or will likely be caused by a force majeure event, that the duration of the delay or the extension  
24 sought was or will be warranted under the circumstances, that Defendants exercised best efforts to  
25 fulfill the obligation in question, and that Defendants complied with the requirements of this  
26  
27  
28

1 Paragraph. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation  
2 by Defendants of the affected obligation of this Consent Decree.

3  
4 XVIII. INDEMNIFICATION; INSURANCE

5 39. a. Defendants shall ensure that any contractor hereafter retained who performs  
6 work for them in carrying out the requirements of this Consent Decree shall indemnify for and hold  
7 harmless each of the Plaintiffs and/or their agents, employees and representatives from any and all  
8 damage claims or causes of action arising from acts or omissions of Defendants and/or their officers,  
9 employees, agents, contractors, subcontractors, representatives and any persons acting on their behalf  
10 or under their control, in carrying out the requirements of this Consent Decree. Further, Defendants  
11 agree to pay the Plaintiffs all costs they incur, including but not limited to attorneys fees and other  
12 expenses of litigation and settlement, arising from or on account of damage claims made against the  
13 Plaintiffs based on acts or omissions of Defendants or their officers, employees, agents, contractors,  
14 subcontractors, representatives and any persons acting on their behalf or under their control, in  
15 carrying out the requirements of this Consent Decree. None of the Plaintiffs shall be held out as a  
16 party to any contract entered into by or on behalf of Defendants or Pierce County in carrying out the  
17 requirements of this Consent Decree. Neither Defendants, Pierce County, nor any such contractor  
18 or representative of them shall be considered an agent of any Plaintiff, and Defendants shall require  
19 any contractor hereafter retained by Defendants who performs work for Defendants in carrying out  
20 the requirements of this Consent Decree to affirmatively acknowledge that it is not acting as an agent  
21 of any Plaintiff.  
22  
23  
24

25 b. Defendants shall ensure that any contractor hereafter retained who performs  
26 work for them in carrying out the requirements of this Consent Decree waive, and shall indemnify and  
27  
28

1 hold harmless each of the Plaintiffs with respect to, any claims for damages or reimbursement from  
2 the Plaintiffs or for set-off against any payments made or to be made to the Plaintiffs, arising from  
3 or on account of any contract, agreement or arrangement between Defendants and any person in  
4 carrying out the requirements of this Consent Decree, including claims on account of construction  
5 delays.  
6

7 40. In the event that Defendants elect to perform any portion of the work required to  
8 develop the Project, Defendants shall secure and maintain comprehensive general liability insurance  
9 and automobile liability insurance with limits of \$10,000,000 (ten million dollars), combined single  
10 limit. In addition, for the duration of this Consent Decree Defendants shall satisfy, or shall ensure that  
11 their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision  
12 of worker's compensation insurance for all persons performing any work involved in implementing  
13 this Consent Decree. No later than 15 days before commencing any work involved in implementing  
14 this Consent Decree, Defendants shall provide to the Trustees certificates of such insurance and a  
15 copy of each insurance policy. Defendants shall resubmit such certificates and copies of policies each  
16 year on the anniversary of the effective date of this Consent Decree. If Defendants demonstrates by  
17 evidence satisfactory to the Trustees that any contractor or subcontractor maintains insurance  
18 equivalent to that described above, or insurance covering the same risks but in a lesser amount, then,  
19 with respect to that contractor or subcontractor, Defendants need provide only that portion of the  
20 insurance described above that is not maintained by the contractor or subcontractor.  
21  
22  
23

24 41. The Trustees agree to require that any contractor who performs work for them in the  
25 Project area shall agree to indemnify and hold harmless Defendants and their agents, employees and  
26 representatives, against all claims of any nature, including, but not limited to, claims by third parties  
27  
28

1 for death, personal injury, or property damage, and claims for environmental liability that arise as the  
2 result of negligent acts or omissions of such contractor, its employees, representatives and agents in  
3 carrying out the provisions of this Consent Decree. Such indemnity shall be limited to actual damages  
4 only, and shall not extend to consequential damages or any other liability except as stated herein.  
5

6 XIX. COVENANT NOT TO SUE BY PLAINTIFFS

7 42. Except as specifically provided in Section XX (Reservations of Rights) below,  
8 Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to Section  
9 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water  
10 Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.  
11 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon  
12 entry of this Consent Decree by the Court and continue in effect conditioned upon the satisfactory  
13 performance by Defendants of their obligations under this Consent Decree. This covenant not to sue  
14 extends only to each Defendant and its heirs, successors and assigns, and does not extend to any other  
15 person.  
16  
17

18 XX. RESERVATIONS OF RIGHTS

19 43. Plaintiffs reserve, and this Decree is without prejudice to, all rights against any  
20 Defendant with respect to all matters not expressly included within the Covenant Not to Sue by  
21 Plaintiffs in Paragraph 42. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and  
22 this Decree is without prejudice to, all rights against each Defendant with respect to:

- 24 a. liability for failure of the Defendant to meet a requirement of this Decree;  
25 b. liability for costs of response incurred or to be incurred by Plaintiffs, provided,  
26 however, that nothing in this Subparagraph b. shall be deemed to supersede or conflict with the  
27



1 provisions of the consent decree entered in *United States v. Bay Chemical, et al.*, W.D. Wash. case  
2 number C99-5521RJ;

3 c. liability for injunctive relief or administrative order enforcement under Section 106  
4 of CERCLA, 42 U.S.C. § 9606;

5 d. criminal liability to the United States or State.

6  
7 **XXI. REOPENERS**

8 44. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and  
9 this Consent Decree is without prejudice to, the right to institute proceedings against each Defendant  
10 in this action or in a new action for:

11 a. Claims based on a failure of the Defendant to satisfy the requirements of this  
12 Consent Decree; and

13 b. Additional claims for Natural Resource Damages if conditions, factors or  
14 information in the Commencement Bay Environment, not known to the Trustees at the time of entry  
15 of this Consent Decree, are discovered that, together with any other relevant information, indicates  
16 that there is a threat to the environment, or injury to, destruction of, or loss of natural resources of  
17 a type unknown, or of a magnitude significantly greater than was known, at the time of entry of this  
18 Consent Decree, which is attributable to the Defendant. For purposes of this Paragraph, information  
19 known to the Trustees shall consist of any information in the files of, or otherwise in the possession  
20 of any one of the individual Trustees, or their contractors or consultants who worked on the Trustees'  
21 natural resource damages assessment and liability allocation projects.

22  
23 **XXII. COVENANT NOT TO SUE BY DEFENDANTS**

24 45. Each Defendant covenants not to sue and agrees not to assert any claims or causes  
25  
26  
27  
28

1 of action against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot  
2 Indian Tribe or their contractors or employees, for any civil claims or causes of action relating to  
3 Natural Resource Damages.  
4

5 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

18 48. Each Defendant agrees that it will notify the Trustees and the United States in writing  
19 no later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.  
20 Each Defendant also agrees that it will notify the Trustees and the United States in writing within 10  
21 days of service of a complaint or claim upon them relating to a suit or claim for contribution for  
22 Natural Resource Damages. In addition, each Defendant will notify the Trustees and the United  
23 States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days  
24 of receipt of any order from a court setting a case for trial for matters related to this Decree.  
25

26 49. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for  
27  
28

1 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource  
2 Damages, no Defendant shall assert, and nor may it maintain, any defense or claim based upon the  
3 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other  
4 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent  
5 proceeding were or should have been brought in the instant case; provided, however, that nothing  
6 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 42 and  
7  
8 45.

9  
10 XXIV. NOTICES AND SUBMISSIONS

11 50. 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 Defendants.

16  
17 As to the United States and as to DOJ:

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

1 As to the United States Department of the Interior:

2  
3 Jeff Krausmann  
4 U.S. Fish & Wildlife Service  
5 510 Desmond Dr. SE, Suite 102  
6 Lacey, WA 98503-1263

7 As to the State:

8  
9 Craig Thompson  
10 Toxics Cleanup Program  
11 State of Washington  
12 P.O. Box 47600  
13 Olympia, WA 98504-7600

14 As to the Puyallup Tribe of Indians:

15  
16 Bill Sullivan  
17 Environmental Department  
18 Puyallup Tribe of Indians  
19 1850 Alexander Avenue  
20 Tacoma, WA 98421

21 As to the Muckleshoot Indian Tribe:

22  
23 Mr. Rob Otsea  
24 Office of the Tribal Attorney  
25 Muckleshoot Indian Tribe  
26 39015 172nd Avenue S.E.  
27 Auburn, WA 98002

28 As to AOL Express, Inc.:

Valerie Lewis  
Asst. V.P. and Asst. Secretary  
Safeway Inc.

1 5918 Stoneridge Mall Road  
2 Pleasanton, CA 94619

3 As to Arkema Inc.:

4  
5 Doug Loutzenhiser  
6 Director, Envmt. & Sustainable Developmt.  
7 Arkema Inc.  
8 900 First Avenue  
9 King of Prussia, PA 19406

Steven T. Parkinson  
Groff Murphy Tractenberg & Everard  
300 East Pine Street  
Seattle, WA 98122

9 As to Buffelen Woodworking Company:

10 Loren Dunn  
11 Riddell Williams P.S.  
12 1001 Fourth Avenue Plaza, #4500  
13 Seattle, WA 98154

14 As to CHS Inc.:

15 Tod Gold  
16 Salter Joyce Ziker, PLLC  
17 1601 Fifth Avenue, Suite 2040  
18 Seattle, WA 98101

19 As to Edward and Molly Barry, Charles and Patricia Curran, Donald S. and Barbara Olson, Kay  
20 E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole &  
21 Charlie's Marinas and West Waterway Associates, P.S.:

22 Gregory A. Jacoby  
23 McGavick Graves  
24 Suite 500  
25 1102 Broadway  
26 Tacoma, WA 98402-3534

26 As to Dunlap Towing Company:

1 James L. Dunlap, President  
2 P.O. Box 593  
3 La Conner, Washington 98257

Guy J. Sternal  
Eisenhower & Carlson  
Wells Fargo Plaza, Suite 1200  
1201 Pacific Avenue  
Tacoma, WA 98402

5 As to Estate of Norman Nordlund, Hylebos Boat Haven, Phyllis Nordlund, Nordlund Boat  
6 Company, Inc., and Nordlund Properties, Inc.:

7  
8 Gregory A. Jacoby  
9 McGavick Graves  
10 Suite 500  
11 1102 Broadway  
12 Tacoma, WA 98402-3534

13 As to FOF, Inc.:

14 Patrick M. Paulich  
15 Thorsrud Cane & Paulich  
16 1325 Fourth Avenue, Suite 1300  
17 Seattle, Washington 98101

18 As to Hylebos Marina Inc.:

19 James V. Handmacher  
20 Morton McGoldrick, P.S.  
21 P.O. Box 1533  
22 820 A Street, Suite 600  
23 Tacoma, WA 98401

24 As to Judy Johnson:

25 James V. Handmacher  
26 Morton McGoldrick, P.S.  
27 P.O. Box 1533  
28 820 A Street, Suite 600

1 Tacoma, WA 98401

2 As to Jones Chemicals, Inc.:

3  
4 Timothy J. Gaffney

5 Executive Vice President

6 JCI Jones Chemicals, Inc.

7 100 Sunny Sol Boulevard

8 Caledonia, New York 14423

9 As to Joseph Simon & Sons and Rail & Locomotive Equipment Company (a Division of Joseph  
10 Simon & Sons):

11 Philip Simon, President

12 2200 East River Street

13 Tacoma, Washington 98421

Guy J. Sternal

Eisenhower & Carlson

Wells Fargo Plaza, Suite 1200

1201 Pacific Avenue

Tacoma, WA 98402

14  
15 As to Louisiana-Pacific Corporation:

16 Bert Krages

17 Attorney at Law

18 6665 SW Hampton St., Suite 200

19 Portland, OR 97223

20  
21 As to Noveon Kalama Chemical, Inc.:

22 John W. Watson

23 Baker & McKenzie LLP

24 One Prudential Plaza

25 130 East Randolph Street, Suite 3700

Chicago, IL 60601

26 As to Don and Alba Oline:

1 Clark J. Davis  
2 Davis Roberts and Johns PLLC  
7525 Pioneer Way, Suite 202  
3 Gig Harbor, WA 98335

4  
5 As to Ronald Oline:

6 James V. Handmacher  
7 Morton McGoldrick, P.S.  
P.O. Box 1533  
8 820 A Street, Suite 600  
9 Tacoma, WA 98401

10 As to Portac, Inc.:

11  
12 Tod Gold  
13 Salter Joyce Ziker, PLLC  
1601 Fifth Avenue, Suite 2040  
14 Seattle, WA 98101

15 As to Rayonier Properties, LLC:

17 R. Paul Beveridge	Donald L. Schwendiman
18 Heller Ehrman	Rayonier Properties, LLC
Suite 6100	3888 NW Randall Way, Suite 204
19 701 Fifth Avenue	Silverdale, WA 98383
20 Seattle, WA 98104	

21 As to Estate of Leslie P. Sussman, Paula Rose, Sussman Rose Sussman, Alan Sussman and  
22 Sophie Sussman:

23 Guy J. Sternal  
24 Eisenhower & Carlson  
25 Wells Fargo Plaza, Suite 1200  
1201 Pacific Avenue  
26 Tacoma, WA 98402

27  
28



1 As to USG Interiors, Inc.

2 Howard (Terry) Hall

3 Wolfstone, Panchot & Bloch, P.S., Inc.

4 801 Second Avenue, Suite 1500

5 Seattle, WA 98104

Christopher J. McElroy

Assistant General Counsel

USG Corp.

125 S. Franklin Street

Chicago, IL 60606

6  
7 As to Wasser & Winters Co., Inc.:

8 James C. Hanken

9 Law Offices of James C. Hanken

10 999 Third Avenue, Suite 3210

11 Seattle, WA 98104

12 As to Zidell Marine Corporation:

13 Kathryn M. Silva

14 Zidell Marine Corporation

15 3121 SW Moody

16 Portland, OR 97239

Suzanne Lacampagne

Miller Nash LLP

111 SW Fifth Avenue, Suite 3400

Portland, OR 97204

17  
18 **XXV. EFFECTIVE DATE**

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

21 **XXVI. RETENTION OF JURISDICTION**

22 52. This Court will retain jurisdiction over this matter for the purpose of interpreting and  
23 enforcing the terms of this Decree.

24 **XXVII. INTEGRATION/APPENDICES**

25 53. This Decree and its appendices constitute the final, complete, and exclusive agreement  
26  
27  
28

1 and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge  
2 that there are no representations, agreements, or understandings relating to the settlement other than  
3 those expressly contained in this Decree. The following appendices are attached to and incorporated  
4 into this Consent Decree:  
5

6 Appendix A Old Soldier's Home Setback Levee Setback Project Project Description

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

11 Appendix C Project Site deed restrictions

12 XXVIII. MODIFICATION

13 54. No material modifications shall be made to any requirement under this Consent Decree  
14 without written notification to and written approval of the United States Department of Justice and  
15 the Trustees, Defendants and the Court. Modifications to this Consent Decree exclusive of the  
16 appendices incorporated within that do not materially alter the terms of this Consent Decree may be  
17 made by written agreement between the United States Department of Justice, the Trustees and  
18 Defendants. Modifications to any of the appendices to this Consent Decree that do not materially alter  
19 any of the terms of this Consent Decree may be made by written agreement between the Trustees and  
20 Defendants. The following modifications shall be deemed not to materially alter the terms of this  
21 Consent Decree or the appendices incorporated herein:  
22

- 23
- 24 a. Extensions of deadlines contained in Appendix A, provided that the total  
25 of such extensions shall equal one year or less;
  - 26 b. Project design changes that increase the Project scale, or that decrease the  
27

- 1 Project scale by no more than 10% (ten percent) of the Project's area; or  
2 c. Extensions of deadlines for reports, accounts, plans or proposals of 45 days  
3 or less.  
4

5 **XXIX. ENFORCEMENT**

6 55. The requirements of this Consent Decree, including but not limited to deadlines,  
7 schedules and Project designs, are independently enforceable and the delay or failure of the Trustees  
8 to enforce any requirement will not preclude or prejudice the subsequent enforcement of the same  
9 or another requirement.  
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11  
12 **XXX. TERMINATION**

13 56. This Decree shall terminate upon written notice, made in accordance with Section  
14 XXIV, by Defendants to all Plaintiffs that all actions required under Section VIII have been taken,  
15 all payments required under Sections VIII, XII and XIII (and under Sections XIV and XVI, if  
16 applicable) have been made and all other applicable requirements of this Decree have been fulfilled,  
17 and subsequent written notice by the United States confirming the performance by Defendants of their  
18 obligations under this Decree. Such notice by the United States shall be sent within 45 calendar days  
19 of receipt by all Plaintiffs of the required payments and notice from Defendants. If the United States  
20 fails to send such notice, this Decree shall terminate automatically on the 46<sup>th</sup> day following receipt  
21 by all Plaintiffs of the required payments and notice from Defendant. The following provisions of this  
22 Decree shall survive termination: Section IX ("Post-Construction Alterations; Further Restoration  
23 Actions"); Section X ("Access to Information and Project Site"); Section XIX ("Covenant Not to  
24 Sue by Plaintiffs"); Section XX ("Reservations of Rights"); Section XXI ("Reopeners"); Section XII  
25  
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1 (“Covenant Not to Sue by Defendants”); and Section XXIII (“Effect of Settlement; Contribution  
2 Protection”).

3  
4 XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

10  
11 58. If for any reason this Court does not approve this Decree in the form presented, or  
12 does not approve this Decree by June 30, 2006 and Pierce County does not extend the applicable  
13 deadline for performance contained in the Project agreement with Defendants, this settlement  
14 agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not  
15 be used as evidence in any litigation between the Parties.

16  
17 XXXII. SIGNATORIES/SERVICE

18 59. The Assistant Attorney General for the Environment and Natural Resources Division  
19 of the United States Department of Justice and each undersigned representative of the State, the  
20 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies that he or she  
21 is authorized to enter into the terms and conditions of this Decree and to execute and bind legally the  
22 Party that he or she represents to this document.

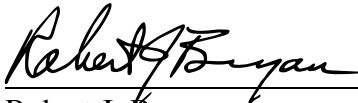
23  
24 60. Each Defendant agrees not to oppose entry of this Decree by this Court or to  
25 challenge any provision of this Decree unless any Plaintiff has notified Defendant in writing that it no  
26 longer supports entry of the Decree.

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

7                                   XXXIII. FINAL JUDGMENT

8           62. Upon approval and entry of this Decree by the Court, this Decree will constitute the  
9 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the  
10 Muckleshoot Indian Tribe, and each Defendant. The Court finds that there is no just reason for delay  
11 and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.  
12  
13

14                                   IT IS SO ORDERED THIS 16<sup>th</sup> DAY OF JUNE, 2006.

15  
16                                     
17                                   Robert J. Bryan  
18                                   United States District Judge  
19  
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v. AOL  
2 Express, Inc., *et al.*

3 FOR THE UNITED STATES OF AMERICA  
4

5  
6 Date: \_\_\_\_\_

\_\_\_\_\_  
Sue Ellen Wooldridge  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

10  
11 FOR THE STATE OF WASHINGTON  
12

13 Date: \_\_\_\_\_  
14

15  
16 Date : \_\_\_\_\_

Assistant Attorney General  
State of Washington

17  
18  
19 FOR THE PUYALLUP TRIBE OF INDIANS  
20

21  
22 Date: \_\_\_\_\_  
23

24  
25 FOR THE MUCKLESHOOT INDIAN TRIBE  
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28

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

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1 FOR SAFEWAY INC., ON BEHALF OF AOL EXPRESS, INC., A WHOLLY-OWNED  
2 INDIRECT SUBSIDIARY

3  
4  
5 Date: \_\_\_\_\_

6  
7  
8  
9 Agent authorized to receive service of process by mail on behalf of AOL EXPRESS, INC. with  
10 respect to all matters relating to this Decree:



1 FOR ARKEMA INC.

2

3

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

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7

8 Agent authorized to receive service of process by mail on behalf of ARKEMA INC. with respect  
9 to all matters relating to this Decree:

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1 FOR EDWARD BARRY

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

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7 Agent authorized to receive service of process by mail on behalf of EDWARD BARRY with  
8 respect to all matters relating to this Decree:

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1 FOR MOLLY BARRY

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

Agent authorized to receive service of process by mail on behalf of MOLLY BARRY with respect to all matters relating to this Decree:

1 FOR BUFFELEN WOODWORKING CO.

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

Agent authorized to receive service of process by mail on behalf of BUFFELEN WOODWORKING CO. with respect to all matters relating to this Decree:

1 FOR CHS INC.

2

3

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

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7

8 Agent authorized to receive service of process by mail on behalf of CHS INC. with respect to all  
9 matters relating to this Decree:

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1 FOR PATRICIA CURRAN

2

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

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8 Agent authorized to receive service of process by mail on behalf of PATRICIA CURRAN with  
9 respect to all matters relating to this Decree:

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1 FOR CHARLES P. CURRAN

2

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

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7

8 Agent authorized to receive service of process by mail on behalf of CHARLES P. CURRAN with  
9 respect to all matters relating to this Decree:

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1 FOR DUNLAP TOWING COMPANY

2

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

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7 Agent authorized to receive service of process by mail on behalf of DUNLAP TOWING  
8 COMPANY with respect to all matters relating to this Decree:

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1 FOR ESTATE OF NORMAN NORDLUND

2  
3 Date: \_\_\_\_\_

4  
5 Personal Representative

6  
7 Agent authorized to receive service of process by mail on behalf of ESTATE OF NORMAN  
8 NORDLUND with respect to all matters relating to this Decree:  
9  
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1 FOR ESTATE OF LESLIE P. SUSSMAN

2  
3 Date: \_\_\_\_\_

4  
5 Personal Representative

6  
7 Agent authorized to receive service of process by mail on behalf of ESTATE OF LESLIE P.  
8 SUSSMAN with respect to all matters relating to this Decree:

9  
10 Guy J. Sternal  
11 Eisenhower & Carlson  
12 Wells Fargo Plaza, Suite 1200  
13 1201 Pacific Avenue  
14 Tacoma, WA 98402

1 FOR F.O.F., INC.

2

3

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

5

6

7

8 Agent authorized to receive service of process by mail on behalf of F.O.F., INC. with respect to  
9 all matters relating to this Decree:

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1 FOR HYLEBOS BOAT HAVEN

2

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

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6

7 Agent authorized to receive service of process by mail on behalf of HYLEBOS BOAT HAVEN  
8 with respect to all matters relating to this Decree:

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1 FOR HYLEBOS MARINA INC.

2

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

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8

9 Agent authorized to receive service of process by mail on behalf of HYLEBOS MARINA INC.  
10 with respect to all matters relating to this Decree:

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1 FOR JUDY JOHNSON

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

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8 Agent authorized to receive service of process by mail on behalf of JUDY JOHNSON with  
9 respect to all matters relating to this Decree:

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1 FOR JONES CHEMICALS, INC.

2

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

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8 Agent authorized to receive service of process by mail on behalf of JONES CHEMICALS, INC.  
9 with respect to all matters relating to this Decree:

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1 FOR JOSEPH SIMON & SONS/RAIL & LOCOMOTIVE EQUIPMENT CO.

2

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

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6

7 Agent authorized to receive service of process by mail on behalf of JOSEPH SIMON &  
8 SONS/RAIL & LOCOMOTIVE EQUIPMENT CO. with respect to all matters relating to this  
9 Decree:

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1 FOR LOUISIANA-PACIFIC CORPORATION

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3 Date: \_\_\_\_\_  
4 \_\_\_\_\_  
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8 Agent authorized to receive service of process by mail on behalf of LOUISIANA-PACIFIC  
9 CORPORATION with respect to all matters relating to this Decree:  
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1 FOR PHYLLIS NORDLUND

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

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8 Agent authorized to receive service of process by mail on behalf of PHYLLIS NORDLUND with  
9 respect to all matters relating to this Decree:

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1 FOR NORDLUND BOAT COMPANY, INC.

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

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8 Agent authorized to receive service of process by mail on behalf of NORDLUND BOAT  
9 COMPANY, INC. with respect to all matters relating to this Decree:

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1 FOR NORDLUND PROPERTIES, INC.

2

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

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8 Agent authorized to receive service of process by mail on behalf of NORDLUND PROPERTIES,  
9 INC. with respect to all matters relating to this Decree:

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1 FOR NOVEON KALAMA CHEMICAL, INC.

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

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Agent authorized to receive service of process by mail on behalf of NOVEON KALAMA  
CHEMICAL, INC. with respect to all matters relating to this Decree:

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1 FOR ALBA OLINE

2

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

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7 Agent authorized to receive service of process by mail on behalf of ALBA OLINE with respect to  
8 all matters relating to this Decree:

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1 FOR DON OLINE

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

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9 Agent authorized to receive service of process by mail on behalf of DON OLINE with respect to  
10 all matters relating to this Decree:

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1 FOR RONALD OLINE

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

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Agent authorized to receive service of process by mail on behalf of RONALD OLINE with  
respect to all matters relating to this Decree:

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1 FOR BARBARA OLSON

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

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8 Agent authorized to receive service of process by mail on behalf of BARBARA OLSON with  
9 respect to all matters relating to this Decree:

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FOR DONALD S. OLSON

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

Agent authorized to receive service of process by mail on behalf of DONALD S. OLSON with respect to all matters relating to this Decree:

1 FOR KAY E. OLSON

2

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

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8 Agent authorized to receive service of process by mail on behalf of KAY E. OLSON with respect  
9 to all matters relating to this Decree:

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1 FOR OLSON & CURRAN BARNACLE STOPPING SALT WATER FREE VERTICAL DRY  
2 DOCK CO. dba OLE & CHARLIE'S MARINAS

3  
4  
5 Date: \_\_\_\_\_

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8  
9 Agent authorized to receive service of process by mail on behalf of OLSON & CURRAN  
10 BARNACLE STOPPING SALT WATER FREE VERTICAL DRY DOCK CO. dba OLE &  
11 CHARLIE'S MARINAS with respect to all matters relating to this Decree:  
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FOR PORTAC, INC.

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

Agent authorized to receive service of process by mail on behalf of PORTAC, INC. with respect to all matters relating to this Decree:

1 FOR RAYONIER PROPERTIES, LLC

2

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

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6 Agent authorized to receive service of process by mail on behalf of RAYONIER PROPERTIES,  
7 LLC with respect to all matters relating to this Decree:

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1 FOR PAULA ROSE

2

3

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

5

Partner

6

7

8 Agent authorized to receive service of process by mail on behalf of PAULA ROSE with respect  
9 to all matters relating to this Decree:

9

10 Guy J. Sternal

11 Eisenhower & Carlson, PLLC

12 1200 Wells Fargo Plaza

13 1201 Pacific Avenue

Tacoma, WA 98402

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1 FOR SUSSMAN ROSE SUSSMAN, a Washington General Partnership composed of Leslie P.  
2 and Sophie Sussman, Paula Rose and Alan Sussman  
3

4  
5 Date: \_\_\_\_\_

6 Sophie Sussman  
7 Partner

8  
9 Agent authorized to receive service of process by mail on behalf of SUSSMAN ROSE  
10 SUSSMAN with respect to all matters relating to this Decree:

11 Guy J. Sternal  
12 Eisenhower & Carlson, PLLC  
13 1200 Wells Fargo Plaza  
14 1201 Pacific Avenue  
15 Tacoma, WA 98402



1 FOR ALAN SUSSMAN

2

3

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

5

6

7

8 Agent authorized to receive service of process by mail on behalf of ALAN SUSSMAN with  
9 respect to all matters relating to this Decree:

9

10 Guy J. Sternal  
11 Eisenhower & Carlson, PLLC  
12 1200 Wells Fargo Plaza  
13 1201 Pacific Avenue  
14 Tacoma, WA 98402

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1 FOR SOPHIE SUSSMAN

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

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8

Agent authorized to receive service of process by mail on behalf of SOPHIE SUSSMAN with respect to all matters relating to this Decree:

9

10

Guy J. Sternal  
Eisenhower & Carlson, PLLC  
1200 Wells Fargo Plaza  
1201 Pacific Avenue  
Tacoma, WA 98402

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1 FOR USG INTERIORS, INC.

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

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8 Agent authorized to receive service of process by mail on behalf of USG INTERIORS, INC. with  
9 respect to all matters relating to this Decree:

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1 FOR WASSER & WINTERS CO., INC.

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

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8 Agent authorized to receive service of process by mail on behalf of WASSER & WINTERS CO.,  
9 INC. with respect to all matters relating to this Decree:

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1 FOR WEST WATERWAY ASSOCIATES, P.S.

2

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

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7 Agent authorized to receive service of process by mail on behalf of WEST WATERWAY  
8 ASSOCIATES, P.S. with respect to all matters relating to this Decree:

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1 FOR ZIDELL MARINE CORPORATION

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

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8 Agent authorized to receive service of process by mail on behalf of ZIDELL MARINE  
9 CORPORATION with respect to all matters relating to this Decree:

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