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BY *ML* CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

FILED ENTERED
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BY CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
THE STATE OF WASHINGTON, and THE
TULALIP TRIBES OF WASHINGTON,

Plaintiffs,

v.

QUEMETCO, INC., MONSANTO, INC.
BFI WASTE SYSTEMS OF NORTH AMERICA,
INC., and UNIVERSITY OF WASHINGTON,

Defendants.

CIVIL ACTION NO.

CV02 0225^c

RELATED CASES:
C97-152D
C97-1648WD
C98-300R
C99-665R

CONSENT DECREE WITH DEFENDANT UNIVERSITY OF WASHINGTON
FOR NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by the United States of America, on behalf of the Fish and Wildlife Service of the United States Department of the Interior ("FWS") and the National Oceanic and Atmospheric Administration of the United States Department of Commerce ("NOAA"), the Washington Department of Ecology on behalf of the State of Washington, and the Tulalip

Cons. Dec. 1/3, j/b



CV 02-00225 #00000006

U.S. Dept. Justice
c/o NOAA DARC
7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

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1 Tribes of Washington, as their respective interests appear in the
2 complaint, including as trustees for natural resources
3 (collectively referred to as "Plaintiffs") and defendant
4 University of Washington (hereinafter "Settling Defendant").

5 **I. INTRODUCTION**

6 1. The Plaintiffs allege that the Tulalip Landfill is
7 located on Ebey Island between Steamboat Slough and Ebey Slough
8 in the Snohomish River delta system between Everett and
9 Marysville, Washington. Ebey Island is located in Snohomish
10 County, Township 30N, Range 5E, Section 32. The Tulalip Landfill
11 Superfund Site ("the Site"), located within the Tulalip Indian
12 Reservation, occupies approximately 147 acres of the western
13 portion of Ebey Island, just to the west of Interstate 5 and the
14 Burlington Northern Railroad. The landfill area ("the Tulalip
15 Landfill") is bordered by a berm and is surrounded primarily by
16 wetlands in the form of freshwater and brackish water marshes.
17 To the west of the landfill area are approximately 160 acres of
18 salt marsh.

19 2. The Plaintiffs allege that in 1964, The Tulalip Tribes,
20 a Section 17 Corporation federal corporation chartered pursuant
21 to Section 17 of the Indian Reorganization Act, as amended, 25
22 U.S.C. § 477, leased the Site to Seattle Disposal Company for a
23 period of 10 years. The lease was renewed in 1972. From 1964 to
24 1979, Seattle Disposal Company, its general partners J. Razore,
25 J. Banchemo, and other partners, and Marine Disposal Company,

1 operated the Site, then known as the "Big Flats Landfill," as a
2 disposal site for commercial and industrial waste. The
3 Plaintiffs allege that waste material collected in King County,
4 Snohomish County, and communities in and around the Puget Sound
5 region, including waste materials containing hazardous substances
6 generated or transported by the Settling Defendant, was delivered
7 to the Site by a variety of methods. In 1979, the landfill was
8 closed and capped pursuant to the Rivers and Harbors Act of 1899,
9 33 U.S.C. §§ 403 and 407, and the Federal Water Pollution Control
10 Act, 33 U.S.C. §§ 1311, 1319, 1342, and 1344, pursuant to a
11 consent decree entered in the United States District Court for
12 the Western District of Washington on October 19, 1977, No. C77-
13 721M. Additional capping materials, including construction
14 debris and earthen materials, were placed on the source area by
15 other parties after the 1979 consent decree closure, pursuant to
16 the NPDES permit.

17 3. The Plaintiffs allege that hazardous substances within
18 the definition of Section 101(14) of the Comprehensive
19 Environmental Response, Compensation and Liability Act
20 ("CERCLA"), 42 U.S.C. § 9601(14), MTCA, RCW 70.105D.020(7), have
21 been released into the environment from the Site. Hazardous
22 substances have been found in soils in and around the Site, in
23 sediments around the Site, in leachate emanating from the Site,
24 and in ground water at the Site. Hazardous substances of concern
25 found in soils and sediments include benzo(a)anthracene,

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1 benzo(a)pyrene, benzo(b)flouranthene, benzo(k)flouranthene,
2 bis(2-ethylhexyl)phthalate, chrysene, 1,4-dichlorobenzene,
3 flouranthene, fluorine, naphthalene, N-nitroso-di-n-propylamine,
4 polychlorinated biphenyls (PCBs), and pyrene. Metals were also
5 found at the Site, including arsenic, lead, and chromium.
6 Samples of leachate flowing from the Site have shown levels of
7 arsenic, barium, cadmium, iron, zinc, manganese, toluene,
8 ethylbenzene, PCBs, and acenaphthene.

9 4. The Plaintiffs allege that, as a result of these
10 releases of hazardous substances, injuries to, destruction or
11 losses of natural resources have occurred at the Site, and that
12 such injuries, destruction or losses are compensable under
13 Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and
14 the Model Toxics Control Act ("MTCA"), Ch. 70.105D RCW.

15 5. Plaintiffs have filed, contemporaneously with the
16 lodging of this Consent Decree, a civil complaint alleging that
17 Settling Defendant is liable under Section 107 of CERCLA, 42
18 U.S.C. § 9607, and MTCA Ch. 70.105D RCW, to the Plaintiffs for
19 damages for the injury to, destruction of or loss of natural
20 resources caused by the release of hazardous substances at or
21 from the Site.

22 6. The Settling Defendant denies the allegations in the
23 complaint in this action, including any and all allegations of
24 liability and dispute the waste volumes attributed to it in EPA's
25 volumetric report.

1 7. The purposes of this Consent Decree are to resolve the
2 liability of the Settling Defendant for claims for Natural
3 Resource Damages resulting from releases of hazardous substances
4 at or from the Tulalip Landfill and to protect the Settling
5 Defendant against claims for contribution regarding Covered
6 Matters.

7 8. The parties recognize, and this Court finds, that the
8 parties have negotiated this Consent Decree in good faith, and
9 that implementation of this Consent Decree will avoid lengthy and
10 protracted litigation, is fair, equitable, and in the public
11 interest, and will expedite restoration of natural resources.

12 NOW, THEREFORE, the parties agree, and it is hereby ORDERED
13 ADJUDGED, AND DECREED as follows:

14 **II. PARTIES**

15 9. "United States" means the United States of America, in
16 all its capacities, including inter alia all departments,
17 instrumentalities, administrations, natural resource trustees,
18 and agencies of the Federal Government.

19 10. The "Tulalip Tribes of Washington" is a federally
20 recognized Indian tribe organized under Section 16 of the Indian
21 Reorganization Act of 1934, as amended, 25 U.S.C. § 476, and is
22 the successor in interest to the Snohomish, Snoqualmie, Skykomish
23 and other tribes and bands party to the Treaty of Point Elliot.

24 11. The "Department of Ecology" means the Washington
25 Department of Ecology as designated state trustee pursuant to

1 Section 107(f) of CERCLA, and 40 C.F.R. Part 300, Subpart G, and
2 in its statutory role under MTCA, Ch. 70.105D, RCW.

3 12. "The State of Washington" or "the State" means the
4 State of Washington, including inter alia all departments,
5 administrations, natural resource trustees and agencies thereof.

6 13. "Settling Defendant" means defendant and signatory to
7 this the University of Washington.

8 **III. JURISDICTION**

9 14. This Court has jurisdiction over this Consent Decree
10 under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a)
11 & 9613(b), 28 U.S.C. §§ 1331 & 1345, and supplemental
12 jurisdiction over state law claims as set forth in 28 U.S.C. Sec.
13 1367.

14 **IV. DEFINITIONS**

15 15. Whenever the following capitalized terms are used in
16 this Consent Decree, they shall have the following meaning:

17 a. "Natural Resources" include land, fish, wildlife,
18 biota, air, water, groundwater, drinking water supplies, and
19 other such resources belonging to, managed by, held in trust by,
20 appertaining to, or otherwise controlled by the United States
21 (including the resources of the exclusive economic zone), the
22 State of Washington or the Tulalip Tribes of Washington.

23 b. "Natural Resource Damages" means compensatory and
24 remedial relief recoverable by the Federal, State and Tribal
25 Trustees of Natural Resources on behalf of the public or tribal

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1 members for injury to, destruction of, or loss of use of any and
2 all Natural Resources resulting from the release of hazardous
3 substances, including (1) costs of damage assessment; (2)
4 compensation for loss, injury, impairment, damage or destruction
5 of Natural Resources, whether temporary or permanent, or for loss
6 of use value, non-use value, passive value, option value, amenity
7 value, bequest value, existence value, consumer surplus, economic
8 rent, or any similar value of Natural Resources; (3) any
9 diminution in value of Natural Resources pending restoration; and
10 (4) costs of restoring, rehabilitating, replacing, or acquiring
11 the equivalent of the Natural Resources.

12 c. "Covered Matters" means any civil or
13 administrative liability Settling Defendant may have to the
14 United States, the State of Washington (including the Washington
15 Department of Ecology), the Tulalip Tribes of Washington, or any
16 other individual or entity for any claim under 42 U.S.C. §§
17 9607(a)(4)(c) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§ 2702,
18 2706, chapter 70.105D RCW, chapter 90.48 RCW, or any other
19 federal, state, tribal or common law, for Natural Resource
20 Damages resulting from releases of hazardous substances at or
21 from the Tulalip Landfill.

22 **V. PAYMENT AND RELATED MATTERS**

23 16. Within 30 days of receiving notice of the entry of
24 this Consent Decree, Settling Defendant shall deliver to:

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1 Registry of the U.S. District Court
2 c/o Clerk, United States District Court
3 Western District of Washington
1010 Fifth Avenue, Room 215
Seattle, WA 98104

4 a certified check payable to the Clerk of the United States
5 District Court for the Western District of Washington in the
6 amount of THIRTY-NINE THOUSAND ONE-HUNDRED AND THIRTY-NINE
7 DOLLARS AND NO CENTS (\$39,139.00). The certified check submitted
8 by Settling Defendant shall reference the "Tulalip Landfill NRD
9 Settlement" and the civil action number assigned to this case.

10 17. Within 5 business days of making the payment specified
11 in Paragraph 16, Settling Defendant shall provide written
12 notification of the aforesaid delivery to the persons designated
13 in Paragraph 27.

14 18. The amount deposited into the Registry of the Court
15 shall be managed pursuant to the Order Directing the Deposit of
16 Funds into the Registry of the Court issued by Judge Dimmick in
17 United States v. Ace Galvanizing, Inc., No. C97-152D (Attachment
18 A hereto), which is hereby incorporated into this Decree. These
19 funds shall be used by Plaintiffs only for assessing, restoring,
20 rehabilitating, replacing or acquiring the equivalent of the
21 natural resources injured, destroyed, or lost as a result of
22 releases at or from the Site, as provided in 42 U.S.C. §
23 9607(f)(1).

24 19. If Settling Defendant fails to timely make any payment
25 required under this Consent Decree, it shall be liable,

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1 commencing the day after payment is due, for interest on the
2 unpaid balance at the federal judgment interest rate computed in
3 accordance with 28 U.S.C. § 1961 as of the date payment is due,
4 and, if incurred, the costs of enforcement and collection
5 pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C.
6 § 3001 et seq.

7 **VI. COVENANTS NOT TO SUE**

8 20. In consideration of the Settling Defendant's timely
9 compliance with the terms of this Consent Decree, the United
10 States, the State of Washington (including the Washington
11 Department of Ecology) and the Tulalip Tribes of Washington
12 covenant not to sue or take any other civil or administrative
13 action, after entry of this Consent Decree, against Settling
14 Defendant for Covered Matters. This covenant not to sue shall
15 extend to, and inure to the benefit of, the Settling Defendant
16 and its past, present and future directors, officers, employees,
17 acting in those capacities, and its successors and assigns. This
18 covenant not to sue is subject to the reservations in Section
19 VIII of this Decree.

20 21. In consideration of the Plaintiffs' covenants not to
21 sue in this Section VI of this Consent Decree, Settling Defendant
22 agrees not to assert any claim or cause of action against any of
23 the Plaintiffs arising out of injuries to Natural Resources
24 resulting from releases of hazardous substances at or from the
25 Site, or to seek any costs, damages or attorneys' fees from any
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1 Plaintiff in connection with injuries to natural resources
2 resulting from releases of hazardous substances at or from the
3 Site.

4 **VII. CONTRIBUTION PROTECTION**

5 22. Subject to the Reservation of Rights in Section VIII of
6 this Consent Decree, Plaintiffs agree that by entering into this
7 Consent Decree, Settling Defendant will have resolved its
8 liability for Covered Matters, as described in Paragraphs 15(c)
9 and 20 of this Consent Decree, pursuant to Sections 122(g)(5) and
10 113(f)(2) of CERCLA, 42 U.S.C. § 9622(g)(5) and 9613(f)(2), MTCA,
11 RCW Chapter 70.105D.040(1), (2) and RCW 90.48.142, and shall be
12 protected against claims for contribution regarding Covered
13 Matters as provided in Sections 122(g)(5) and 113(f)(2) of
14 CERCLA, 42 U.S.C. §§ 9622(g)(5) and 9613(f)(2), RCW
15 70.105D.040(d). Contribution protection shall extend to, and
16 inure to the benefit of, the Settling Defendant and its past,
17 present and future directors, officers, employees, to the extent
18 they were acting in those capacities, and successors and assigns.

19 **VIII. RESERVATION OF RIGHTS**

20 23. Nothing in this Consent Decree is intended to be nor
21 shall it be construed as a release or covenant not to sue for any
22 claim or cause of action, administrative or judicial, civil or
23 criminal, past or future, at law or in equity, which the
24 Plaintiffs may have against Settling Defendant for:

25 a. Any claims and liability as a result of failure to
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1 make the payments required by this Consent Decree;

2 b. Any liability arising from the past, present, or
3 future disposal, release, or threat of release of any hazardous
4 substance, hazardous waste, or solid waste other than releases or
5 threats of releases at or from the Site; or

6 c. Any criminal liability.

7 24. As required by MTCA, RCW 70.105D.040(4)(c), nothing in
8 this Consent Decree is intended to be nor shall it be construed
9 as a release or covenant not to sue by the State of Washington
10 for any claim or cause of action, administrative or judicial,
11 civil or criminal, past or future, at law or in equity, which the
12 State of Washington may have against Settling Defendant for
13 factors not known to EPA at the time of entry of the decree that
14 are discovered and present a previously unknown threat to human
15 health or the environment. Factors known and threats known at
16 the time of the entry of the Consent Decree include all facts,
17 documents, evidence and data in the possession of EPA at the time
18 of entry of the Consent Decree, including but not limited to all
19 of the facts set forth in documents in EPA's administrative
20 record for the Site, EPA's Risk Assessment for the Site and EPA's
21 Proposed Plan for Interim Remedial Action for the Site.

22 **IX. DISCLAIMER OF LIABILITY**

23 25. Neither entry of this Consent Decree nor any action in
24 accordance with this Consent Decree shall constitute an admission
25 of liability under any federal, state, tribal or local statute,

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Consent Decree
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1 regulation, ordinance, general maritime law or common law by
2 Settling Defendant, its present or former officers, members,
3 directors, trustees, shareholders, insurers, agents,
4 representatives, employees, subsidiaries, successors, assigns or
5 affiliates, for any fine, penalty, response costs, damages, or
6 claims or any issues of fact or law for releases of hazardous
7 substances at the Site.

8 26. The parties further agree that none of the provisions
9 of this Consent Decree or evidence of negotiations shall be
10 offered or received in evidence in this action or any other
11 action or proceedings by any other party for any purpose, except
12 for enforcement of this Consent Decree or except as specifically
13 provided herein.

14 **X. NOTICES AND SUBMISSIONS**

15 27. Whenever, under the terms of this Consent Decree,
16 written notice is required to be given or a report or other
17 document is required to be sent by one party to the other, it
18 shall be directed to individuals at the addresses specified
19 below, unless those individuals or their successors give written
20 notice of a change. All notices and submissions shall be
21 considered effective upon receipt, unless otherwise provided.

22 As to the United States:

23 Chief
24 Environmental Enforcement Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 P.O. Box 7611
28 Ben Franklin Station

U.S. Dept. Justice
c/o NOAA DARC
7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

1 Washington, D.C. 20044

2 As to the State of Washington:

3 Michelle Wilcox
4 Toxics Cleanup Program
5 State of Washington
6 P.O. Box 47600
7 Olympia, Washington 98504-7600

8 As to the Tulalip Tribes of Washington:

9 Tom McKinsey
10 Tulalip Tribes of Washington
11 6326 33rd Ave., N.E.
12 Marysville, Washington 98271

13 **XI. ENTRY OR DISAPPROVAL OF DECREE**

14 28. This Consent Decree shall be lodged with the Court for
15 a period of not less than thirty (30) days and shall be made
16 available for public notice and comment in accordance with
17 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. §
18 50.7, and RCW 70.105D.040(4)(a). The United States, the State of
19 Washington and the Tulalip Tribes of Washington intend to defend
20 the settlement embodied in this Consent Decree, unless comments
21 regarding the Consent Decree disclose facts or considerations
22 that indicate that the Consent Decree is not fair, reasonable or
23 in the public interest, in which case the United States and the
24 Tulalip Tribes of Washington reserve the right to withdraw or
25 withhold their consent to the Consent Decree. The State of
26 Washington reserves the right to withdraw or withhold its consent
27 if the comments regarding the Consent Decree disclose facts or
28 considerations that demonstrate that the proposed settlement
would not lead to a more expeditious restoration of natural

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1 resources. Settling Defendant consents to the entry of this
2 Consent Decree without further notice.

3 29. After its entry by the Court, this Consent Decree shall
4 be considered an enforceable judgement for purposes of post-
5 judgement collection in accordance with Rule 69 of the Federal
6 Rules of Civil Procedure and other applicable federal statutory
7 authority.

8 30. Settling Defendant hereby waives the 60-day notice
9 requirement applicable to the trustees by virtue of Section
10 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), and agrees that any
11 failure by Plaintiffs to give the notice required by that section
12 shall not constitute a deficiency in the Complaint or in this
13 Consent Decree.

14 31. This Court retains jurisdiction over both the subject
15 matter of this Consent Decree and the Parties hereto for the
16 duration of the performance of the terms and conditions of this
17 Consent Decree solely for the purpose of enforcing those terms
18 and conditions.

19 **XII. MISCELLANEOUS**

20 32. In any subsequent administrative or judicial proceeding
21 initiated by the United States for injunctive relief, recovery of
22 response costs, or other appropriate relief relating to the Site,
23 Settling Defendant shall not assert, and may not maintain, any
24 defense or claim based upon the principles of waiver, res
25 judicata, collateral estoppel, issue preclusion, claim-splitting,
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1 or other defenses based upon any contention that the claims
2 raised by the United State in the subsequent proceeding were or
3 should have been brought in the instant case; provided, however,
4 that nothing in this paragraph affects the enforceability of the
5 covenants not to sue set forth in Section VI.

6 33. Settling Defendant shall not reference or rely upon its
7 payment under this Consent Decree in any application for dredged
8 or fill material under Section 404 of the Federal Water Pollution
9 Control Act, or in any proceeding arising out of the Settling
10 Defendant's application, or failure to apply, for such a permit.

11 34. This Consent Decree shall not affect any party's rights
12 against any person or entity not a party to this Consent Decree,
13 except for the contribution protection provisions of Section VII.
14 No person or entity other than the parties hereto shall have the
15 authority to seek to enforce the terms of this Consent Decree.

16 35. This Consent Decree constitutes the entire agreement
17 among the parties with regard to the subject matter hereof and
18 can be modified or amended only with the express written consent
19 of all the parties to this Consent Decree.

20 36. Each of the undersigned representatives of Plaintiffs
21 and Settling Defendant certifies that he or she is fully
22 authorized to enter into the terms and conditions of this Consent
23 Decree and to execute and legally bind the party whom he or she
24 represents to this Consent Decree.

25 37. The Tulalip Tribes of Washington's joinder to this
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1 Decree is solely in its capacity as a trustee for natural
2 resources and constitutes a limited waiver of the Tulalip Tribes
3 of Washington's sovereign immunity for the sole and limited
4 purpose of enforcing the terms of this Consent Decree; provided
5 that, this Consent Decree shall not act as a general waiver of
6 sovereign immunity nor shall it in any way impair treaty-reserved
7 hunting and fishing rights.

8 38. This Consent Decree may be executed in several
9 counterparts and by facsimile and, as executed, shall constitute
10 one agreement, binding on all parties hereto, even though all
11 parties do not sign the original or the same counterpart.

12 39. Except as otherwise provided herein each party to this
13 Consent Decree shall bear his, her or its own costs, attorneys
14 fees and disbursements.

15 40. Settling Defendant shall identify, on the attached
16 signature page, the name, address and telephone number of an
17 agent who is authorized to accept service of process by mail on
18 its behalf with respect to all matters arising under or relating
19 to this Consent Decree. Settling Defendant hereby agrees to
20 accept service in that manner and to waive the formal service
21 requirements set forth in Rule 4 of the Federal Rules of Civil
22 Procedure and any applicable local rules of this Court,

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1 including, but not limited to, service of a summons.

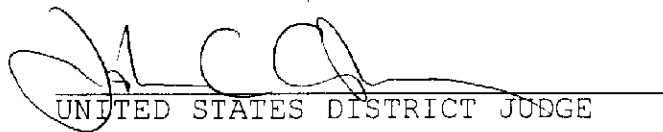
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SO ORDERED THIS 20 DAY OF May 2002

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UNITED STATES DISTRICT JUDGE

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Consent Decree
For Natural Resource Damages

U.S. Dept. Justice
c/o NOAA DARC
7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

1 We hereby consent to the entry of the foregoing Consent
2 Decree:

3 FOR THE UNITED STATES OF AMERICA:
4

5 1.20.02
6 Date:

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C.

10 1-23-02
11 Date

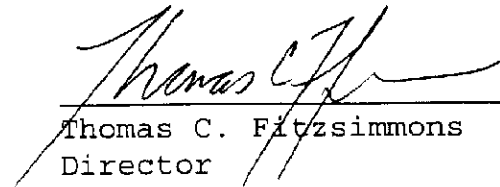
Sean Carman
SEAN CARMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
NOAA DARC - DOJ
7600 Sand Point Way, N.E.
Seattle, Washington 98115-0070
(206) 526-6617

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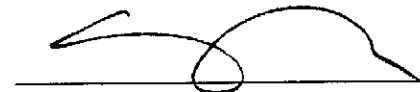
U.S. Dept. Justice
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FOR THE STATE OF WASHINGTON:

1-28-02
Date


Thomas C. Fitzsimmons
Director
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

1-30-02
Date


Steven J. Thiele
Assistant Attorney General
Ecology Division
2425 Bristol Court SW
P.O. Box 40117
Olympia, Washington 98504-0117

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FOR THE TULALIP TRIBES OF WASHINGTON:

Feb 16, 01
Date

By: Stanley G. Jones Sr
Stanley G. Jones
Chairman
Board of Directors

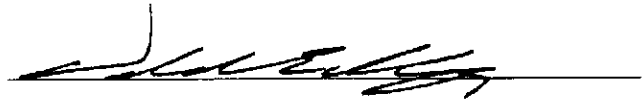
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By the signature on this page, University of Washington agrees to be bound by the terms of this Consent Decree

1 March '01
Date



Agent for Service of Process: Mr. Stevan Phillips
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, Washington 98101-3197

Consent Decree
for Natural Resource Damages

U.S. Dept. Justice
c/o NOAA DARC
7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

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C to C, C.R.D., Carey (cont)

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

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AUG 15 1997
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, AND
THE TULALIP TRIBES OF WASHINGTON

Plaintiff,

v.

ACE GALVANIZING, INC., et al.,

Defendants.

CIVIL ACTION
NO. C97-152-D

ORDER DIRECTING THE
DEPOSIT OF FUNDS
INTO THE REGISTRY
OF THE COURT

This case arises out of the release of hazardous substances from the Tulalip Landfill Superfund site ("the site"), located within the Tulalip Indian Reservation, which occupies approximately 100 acres of the western portion of Ebey Island, just to the west of Interstate 5 and the Burlington Northern Railroad. This Order is entered pursuant to and in furtherance of Consent Decrees and Natural Resource Damages (the "Consent Decree") between Plaintiff United States of America, State of Washington and the Tulalip Tribes of Washington, and the defendants who have signed the

Order Directing the
Deposit of Funds
Into the Registry
of the Court

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1 Consent Decrees in this and all related cases (hereinafter "Participating Parties").

3 Under the Consent Decrees, the Participating Parties have agreed to pay their share of Natural Resource Damages (resulting from the release of hazardous substances at or from the Site) have been estimated for purposes of this de minimis settlement to be \$6.6 million.

8 Participating Parties and certain agencies of the United States Government will pay their respective shares of this de minimis settlement amount to the Registry of the United States District Court for the Western District of Washington, which hold the funds pending Final Approval of the Consent Decrees defined in the Consent Decrees. Upon Final Approval of the Decrees, the funds will remain in the Registry for use by the Natural Resource Trustees (National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, the U.S. Department of the Interior, the Washington Department of Ecology on behalf of the State of Washington, and the Tulalip Tribes of Washington) for assessing, restoring, rehabilitating, replacing or acquiring the equivalent of natural resources injured, destroyed or lost as a result of releases of hazardous substances at the Site. This Order addresses handling and investment of funds by the Registry of the Court.

26 Order Directing the
27 Deposit of Funds
28 Into the Registry
of the Court

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Pursuant to Rule 67 of the Federal Rules of Civil Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with terms of the Consent Decree, it is hereby ORDERED that:

i. An account shall be established in the Registry of United States District Court for the Western District of Washington for payments received in this and all related cases, and that account shall be titled the "Tulalip Landfill NRD Settlement Account."

ii. The Clerk of the Court shall administer all funds received and deposited to the account as follows:

a) Prior to notification by counsel for the United States of Final Approval of the Decree, the funds received shall be used to purchase seven-day government securities, at the highest prevailing interest rate available for such securities;

b) After notification by counsel for the United States of Final Approval of the Decree, the funds shall be used to purchase 91-day government securities, at the highest prevailing interest rate available for such securities;

c) upon maturity of the securities referred to in subparagraph b), the Clerk shall consult with counsel for the United States regarding the purchase of additional short-term securities. Counsel for the United States shall consult with representatives of the Natural Resource Trustees and, dependent upon the Natural Resource Trustees' anticipated funding needs, shall advise the Clerk regarding the desired reinvestment of

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1 government securities. The Clerk may make any such allocat
2 funds as directed by counsel for the United States without
3 Order of the Court.

4 iii. All income earned as interest on funds so investe
5 deposited shall be credited to the Tulalip Landfill NRD Set
6 Account.

7 iv. The Natural Resource Trustees may apply to the Co
8 an Order establishing an investment procedure or vehicle
9 alternative to that identified in paragraph (ii) above that
10 provides a comparable level of security and earnings potent
11 which application may be acted upon by the Court without ne
12 or consent by the Participating Parties.

13 v. The Clerk shall prepare quarterly reports on the
14 and activity of the Tulalip Landfill NRD Settlement Account
15 payments received, disbursements made, income earned, matur
16 dates of securities held, and principal balance, and shall
17 distribute the reports to the following to counsel for the
18 States, the State of Washington and the Tulalip Tribes of
19 Washington at the following addresses:

20 Robert Taylor, Esq.
21 National Oceanic and Atmospheric Administration
22 Damage Assessment Center
23 7600 Sand Point Way, NE
24 Seattle, Washington 98115

25 Colleen Kelley, Esq.
26 Office of the Regional Solicitor
27 United States Department of the Interior
28 500 NE Multnomah Street, Suite 607
Portland, Oregon 97232

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Mary McCrea, Esq.
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Keith Moxon, Esq.
Buck & Gordon
1011 Western Avenue, Suite 902
Seattle, Washington 98104

vi. Funds in the Tulalip Landfill NRD Settlement Account shall remain in the Registry until further order of this Court.

vii. Applications for orders for disbursements from the Tulalip Landfill NRD Settlement Account shall be made by the States on behalf of the Natural Resource Trustees, upon certification by each of the Natural Resource Trustees that determination to make such disbursement was in compliance with terms of the Decree, applicable law and such other decision procedures as the Natural Resource Trustees may adopt. Such applications may be acted upon by the Court without notice or consent by the Participating Parties.

viii. Funds deposited in the Registry Account to this Order subject to the assessment of fees as authorized at 56 Federal Register 53656 (November 4, 1991). In cases where the U.S. Government is a party to the action, the fees so deducted from the Registry Account for this purpose may be restored to the Registry Account upon application filed with the Court by counsel for the United States. The Motion by the United States to enter the Consent Decree and this Order herein constitutes such an

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application and the Court hereby directs the Clerk to exempt the
Tulalip Landfill NRD Settlement Account from the assessment of
fees described above.

ix. A certified copy of this Order shall be served upon
Clerk of this Court.

Dated Aug -15, 1997

Carolyn R. Justice
United States District Judge

Presented by:
Sean Carman
Sean Carman
U.S Department of Justice
c/o NOAA DARC
7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

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