

1 of any application for a permit, license, or other approval.

2 REMEDIATION OF SEDIMENTS

3 19. Metro and the City each agree to pay into the Registry  
4 Account established under paragraph 4 of this Decree:

5 a. The sum of six million dollars (\$6,000,000); or

6 b. As permitted by the Panel pursuant to

7 paragraph 13, a sum of funds that in combination with in-kind  
8 services has a total value of six million dollars (\$6,000,000),  
9 to be applied to the costs of sediment remediation. The Panel  
10 shall use these funds and services only for sediment remediation,  
11 which shall include administering, planning, designing,  
12 implementing, and monitoring the results of sediment remediation  
13 projects, in Elliott Bay and the Duwamish River, except as  
14 specifically provided in paragraph 22 of this Decree. The sums  
15 provided for herein shall be paid in accordance with paragraphs  
16 20 and 21 of this Decree.

17 20. This Decree obligates Metro and the City each to pay  
18 only up to the following amounts in each of the identified  
19 calendar years for the costs of sediment remediation, except as  
20 otherwise provided for in this paragraph:

21 1992 - \$ 500,000 - Five Hundred Thousand Dollars;  
22 1993 - \$1,000,000 - One Million Dollars;  
23 1994 - \$1,500,000 - One Million Five Hundred Thousand Dollars;  
24 1995 - \$1,500,000 - One Million Five Hundred Thousand Dollars;  
25 1996 - \$1,500,000 - One Million Five Hundred Thousand Dollars  
; and  
26 1997 - Balance of Six Million Dollar contribution.

27 If Metro's or the City's annual payment in any given year is less

1 than that year's annual maximum, its annual maximum in the  
2 successive year may be increased by the difference between the  
3 annual maximum and the annual payment from the preceding year.  
4 Metro and the City may at their discretion waive any one or all  
5 of their respective annual maximums by increasing the amount  
6 paid. Any such payments in excess of the amounts shown above  
7 shall in no way increase the sum total of amounts to be paid by  
8 either Metro or the City beyond its respective six million dollar  
9 (\$6,000,000) obligation.

10 21. Metro and the City agree to each pay a minimum sum of  
11 one hundred fifty thousand dollars (\$150,000) into the Account on  
12 January 15 and on July 15 in each of the years 1992, 1993, 1994,  
13 1995 and 1996 for funding costs of sediment remediation. Such  
14 payments shall constitute partial payment of the maximum amounts  
15 as set forth in paragraph 19 of this Decree. Metro and the City  
16 shall pay any additional amount for sediment remediation, over  
17 and above the minimum sum referenced herein, only as the Panel  
18 budgets for such expenses. Metro and the City shall pay any such  
19 additional amount into the Account on January 15 of the calendar  
20 year for which the Panel plans to incur such an expense.

21 22. The Panel may use funds paid into the Account for  
22 sediment remediation for expenses of habitat development,  
23 including costs of monitoring, if such habitat development is  
24 incidental to sediment remediation projects, or is specifically  
25 required as conditions of permits for sediment remediation

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28 CONSENT DECREE - 27

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Seattle, Washington 98115-0070

1 projects. Such habitat development could include that resulting  
2 from using sediment remediation projects as pilot projects for  
3 techniques or other methodologies of habitat development.

4 23. The Panel shall, to the greatest extent practicable,  
5 select sites for sediment remediation projects that are  
6 geographically and physically associated with Metro or City CSOs  
7 or storm drain outfalls.

8 24. The Panel shall use, if available, Ecology's list of  
9 sites requiring sediment cleanup as a basis for selecting sites  
10 for sediment remediation projects under this Decree, but shall  
11 not be bound by any priorities developed by Ecology for  
12 addressing the list of sites. Metro and the City shall provide  
13 to Ecology all information in their possession useful and  
14 relevant to Ecology's hazard assessment of station clusters of  
15 potential concern.

16 25. For each sediment remediation project, the Panel shall  
17 conduct a site cleanup study, determine the site-specific cleanup  
18 standard, and select a site cleanup action. In no event shall  
19 the Panel set a site specific cleanup standard for a project that  
20 is less stringent than the minimum cleanup level as set forth in  
21 the State of Washington's Sediment Management Standards,  
22 Chapter 173-204 WAC, as that standard exists at the time the  
23 Panel selects a project. In establishing site-specific cleanup  
24 standards, the Panel shall, consistent with the purposes of this  
25 Decree, set a cleanup objective of no adverse effects pursuant to

1 WAC 173-204-570(2). If the State of Washington's Sediment  
2 Management Standards, Chapter 173-204 WAC, cease to exist or  
3 otherwise become unenforceable, the Panel may use other  
4 appropriate sediment standards or develop such standards for  
5 sediment remediation as are necessary to carry out the terms of  
6 this Decree.

7 26. The Panel may grant Metro and the City credit against  
8 their respective financial obligations under paragraph 19 for the  
9 Pier 53 sediment remediation project, so long as the site would  
10 otherwise have been on Ecology's list of sites requiring sediment  
11 cleanup, the site would otherwise have been selected as a site  
12 for sediment remediation by the Panel, and the level of  
13 remediation meets the cleanup standard selected by the Panel for  
14 that site. If the Panel decides to grant credit, and after  
15 review of detailed operational and financial information  
16 regarding this project, the Panel shall determine the amount of  
17 credit to be applied.

18 HABITAT DEVELOPMENT AND REAL ESTATE ACQUISITION

19 27. Metro and the City each agree to pay into the Registry  
20 Account, established under paragraph 4 of this Decree:

21 a. The sum of two million five hundred thousand  
22 dollars (\$2,500,000); or

23 b. As permitted by the Panel pursuant to  
24 paragraph 13, a sum of funds that in combination with in-kind  
25 services has a total value of two million five hundred thousand

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1 dollars (\$2,500,000), to be applied to the costs of habitat  
2 development. The Panel shall use these funds and services only  
3 for habitat development, which includes acquiring living natural  
4 resources for the purpose of habitat restoration and replacement  
5 and administering, planning, designing, constructing, and  
6 monitoring the results of habitat development projects, in  
7 Elliott Bay and the Duwamish River. Solely for the purposes of  
8 habitat development, the Panel may consider the Duwamish River to  
9 include tributaries to the Duwamish River. The sums provided for  
10 herein shall be paid in accordance with paragraphs 28 and 29 of  
11 this Decree.

12 28. This Decree obligates Metro and the City each to pay  
13 only up to the following amounts in each of the identified  
14 calendar years:

15 1992 - \$200,000 - Two Hundred Thousand Dollars;  
16 1993 - \$200,000 - Two Hundred Thousand Dollars;  
17 1994 - \$500,000 - Five Hundred Thousand Dollars;  
18 1995 - \$800,000 - Eight Hundred Thousand Dollars;  
19 1996 - \$800,000 - Eight Hundred Thousand Dollars; and  
20 1997 - Balance of Two Million Five Hundred Thousand Dollar  
21 contribution.

22 If Metro's or the City's annual payment in any given year is less  
23 than that year's annual maximum, its annual maximum in the  
24 successive year may be increased by the difference between the  
25 annual maximum and the annual payment from the preceding year.  
26 Metro and the City may at their discretion waive any one or all  
27 of their respective annual maximums by increasing the amount  
28 paid. Any such payments in excess of the amounts shown above

1 shall in no way increase the sum total of amounts to be paid by  
2 either Metro or the City beyond its respective two million five  
3 hundred thousand dollar (\$2,500,000) obligation.

4       29. Metro and the City agree to each pay a minimum sum of  
5 sixty-two thousand five hundred dollars (\$62,500) into the  
6 Account on January 15 and on July 15 in each of the years 1992,  
7 1993, 1994, 1995 and 1996 for funding costs of habitat  
8 development. Such payments shall constitute partial payment of  
9 the maximum amounts as set forth in paragraph 27 of this Decree.  
10 Metro and the City shall pay any additional amount for habitat  
11 development, over and above the minimum sum referenced herein,  
12 only as the Panel budgets for such expenses. Metro and the City  
13 shall pay any such additional amount into the Account on  
14 January 15 of the calendar year for which the Panel plans to  
15 incur such an expense.

16       30. In addition to the contribution specified in  
17 paragraph 27 of this Decree, Metro and the City each shall make  
18 permanently available real property with a value of up to two  
19 million five hundred thousand dollars (\$2,500,000) for use as  
20 sites for habitat development projects selected by the Panel.  
21 Metro and the City each shall receive credit toward its  
22 respective maximum obligation under this paragraph for any  
23 donation by Metro or the City of any right of access, lease,  
24 easement, fee title, or any other real property interest,  
25 sufficient to permanently secure a site for any habitat

1 development project under this Decree. The Panel shall attempt  
2 to determine by consensus the value of any property interest made  
3 available pursuant to this paragraph. If the Panel cannot so  
4 determine the value of any such property, then the value of the  
5 property shall be determined by the following procedure. The  
6 Trustees and donor of the property shall each retain or select a  
7 qualified real estate appraiser to determine the value of the  
8 property. Within sixty (60) days thereafter, the two appraisers  
9 shall attempt in good faith to reach agreement on the value of  
10 the donated property. If these appraisers cannot agree, then  
11 they shall within thirty (30) days select a third appraiser.  
12 This third appraiser shall determine within thirty (30) days  
13 which of the two appraisals most closely approximates the value  
14 of the selected property and he or she shall select that  
15 appraisal value as the value of the donated property. All  
16 appraisers retained or selected shall be competent, impartial and  
17 members of the American Institute of Real Property Appraisers (or  
18 successor association or body of comparable standing). The  
19 parties agree that the value established by this procedure shall  
20 be final, and there shall be no further review or appeal. Full  
21 public access to such areas shall be preserved to the maximum  
22 extent practicable, except as restrictions are necessitated by  
23 construction activities.

24 31. The Panel shall, to the greatest extent practicable  
25 consistent with the goal of creating or enhancing aquatic or  
26

1 benthic habitat for natural resources, select sites for habitat  
2 development projects that are geographically and physically  
3 associated with existing public facilities, such as parks and  
4 fishing piers, in Elliott Bay and the Duwamish River.

5 32. Metro and the City each agree to pay NOAA the sum of  
6 one hundred twenty-five thousand dollars (\$125,000) within sixty  
7 (60) days of entry of this Consent Decree to reimburse NOAA for  
8 the costs of natural resource damage assessment and habitat  
9 restoration planning for Elliott Bay and the Duwamish River  
10 incurred prior to the entry of this Decree. NOAA will provide  
11 Metro and the City with documentation describing the manner in  
12 which the funds are applied.

13 SOURCE CONTROL

14 33. The Panel shall establish source control goals to  
15 protect natural resources and prevent recontamination of sites  
16 selected for sediment remediation or habitat development in the  
17 covered area. Metro and the City shall determine for their  
18 respective source control programs what actions or changes, if  
19 any, are needed in addition to, or from, their ongoing source  
20 control programs to achieve such goals. Metro and the City shall  
21 propose such additional actions or changes to the Panel for its  
22 review, comment and approval. Metro and the City shall then take  
23 such actions approved by the Panel. The Panel shall not require  
24 Metro and the City to use or undertake any type or manner of  
25 source control that is beyond Metro's and the City's authority,



1 or otherwise inconsistent with law.

2 34. Metro and the City each shall make available in-kind  
3 services with a value of up to one million dollars  
4 (\$1,000,000) to cover the costs of the additional actions or  
5 changes needed to achieve the Panel's goals and to monitor the  
6 effectiveness of such source control efforts. Metro and the City  
7 each may fulfill its entire and respective obligation under this  
8 paragraph by providing in-kind services. Within ninety (90) days  
9 after the close of each calendar year in which such in-kind  
10 services have been provided, Metro and the City shall cause an  
11 accounting of such services to be prepared and made available to  
12 all members of the Panel.

13 INDEPENDENT CONTRACTOR

14 35. It is understood and agreed that Metro, the City, and  
15 the agents, officers, employees, and contractors of either of  
16 them, in the performance of the work and services provided under  
17 this Decree as in-kind contributions shall act as independent  
18 contractors and not as agents or employees of any other party to  
19 this Decree.

20 COVENANTS NOT TO SUE

21 36. Except as specifically provided in paragraphs 39 and  
22 40, the United States, the State of Washington, the Suquamish  
23 Indian Tribe and the Muckleshoot Indian Tribe covenant not to sue  
24 or to take any other civil or administrative action against the  
25 City or Metro for covered matters.

1 37. Except as specifically provided in paragraph 41, the  
2 City and Metro hereby covenant not to sue or to take any other  
3 civil or administrative action against the United States, the  
4 State of Washington, the Suquamish Indian Tribe and the  
5 Muckleshoot Indian Tribe for any claims relating to or arising  
6 from the filing of the United States' complaint referenced  
7 herein, the conduct of this litigation, including but not limited  
8 to any claims for contribution or indemnification, and the  
9 negotiation, terms, approval, and implementation of this Consent  
10 Decree.

11 38. These covenants not to sue and the following  
12 reservation of rights shall take effect upon entry of this  
13 Consent Decree by the Court, subject to the parties' rights to  
14 void the Consent Decree pursuant to paragraph 54 if the Court  
15 declines to approve the Consent Decree as presented. These  
16 covenants not to sue remain in effect so long as the City and  
17 Metro are fulfilling or have fulfilled their obligations under  
18 this Consent Decree.

19 RESERVATION OF RIGHTS

20 39. Notwithstanding any other provision of this Consent  
21 Decree, the United States, the State of Washington, the Suquamish  
22 Indian Tribe and Muckleshoot Indian Tribe reserve the right to  
23 institute proceedings against Metro and the City in this action  
24 or a new action for the following claims: (a) claims for  
25 recovery of natural resource damages in the covered area based on

1 conditions resulting from a release of hazardous substances from  
2 the CSO and/or storm water outfall systems after the effective  
3 date of this Consent Decree and that are actionable under treaty,  
4 federal, state or tribal law; (b) claims based on a failure by  
5 Metro or the City to satisfy requirements of this Consent Decree;  
6 and (c) claims for criminal liability.

7 40. Notwithstanding any other provision of this Consent  
8 Decree, the State of Washington reserves its right to institute  
9 proceedings against Metro and the City for claims pursuant to the  
10 Model Toxics Control Act, Chapter 70.105D RCW, based, in whole or  
11 in part, on factors not known at the time of entry of this  
12 Consent Decree that indicate a previously unknown threat to human  
13 health or the environment.

14 41. Notwithstanding any other provision of this Consent  
15 Decree, Metro and the City reserve the right to institute  
16 proceedings against the United States, the State of Washington,  
17 the Suquamish Indian Tribe and the Muckleshoot Indian Tribe for  
18 the following claims: (a) claims based on a failure by the  
19 United States, the State of Washington, the Suquamish Indian  
20 Tribe and the Muckleshoot Indian Tribe to fulfill their  
21 obligations under this Decree; and (b) claims based on a  
22 challenge to any decision by the Panel. Metro's and the City's  
23 reservations of rights pursuant to this paragraph do not include  
24 claims against the Trustees for monetary relief. Nothing in this  
25 paragraph is intended to constitute a waiver of any sovereign

1 immunity defense that may be available to any of the Trustees.

2 42. The United States' consent to this Decree and  
3 participation in this settlement is solely on its own behalf and  
4 not as a trustee for any Indian Tribe.

5 CONTRIBUTION PROTECTION

6 43. The United States, the State of Washington, the  
7 Suquamish Indian Tribe and the Muckleshoot Indian Tribe  
8 acknowledge and agree that the payments to be made and commitment  
9 of work by Metro and the City pursuant to this Decree represent a  
10 good faith settlement and compromise of disputed claims and that  
11 the settlement represents a fair, reasonable and equitable  
12 discharge of liability for covered matters. Metro and the City  
13 shall have the benefits of Section 113(f) of CERCLA, 42 U.S.C. §  
14 9613(f), and any other applicable statute or other law limiting  
15 or extinguishing their liability to persons not a party to this  
16 Decree or affording them rights of contribution or other rights  
17 to recover from such persons costs or damages.

18 44. The United States, the State of Washington, the  
19 Suquamish Indian Tribe and the Muckleshoot Indian Tribe certify  
20 that the payments to be made and the work to be undertaken by  
21 Metro and the City pursuant to this Decree will be appropriate  
22 actions necessary to protect and restore the natural resources  
23 allegedly damaged by the release by Metro and the City of  
24 hazardous substances in the covered area and that the payments  
25 and work satisfy the requirements of Section 122(j)(2) of CERCLA,

1 42 U.S.C. § 9622(j)(2).

2 GENERAL

3 45. If for any reason the Court should decline to approve  
4 this Consent Decree in the form presented, any statements made in  
5 negotiation and the terms herein may not be used as evidence in  
6 any litigation or administrative proceeding.

7 46. This Consent Decree shall not be construed in any way  
8 to relieve the parties to this Decree or any other person or  
9 entity from the obligation to comply with any federal, state or  
10 local law.

11 47. This Consent Decree does not relieve or otherwise  
12 satisfy any obligation or liability of any person or entity not  
13 party to this Decree.

14 48. The Consent Decree may be executed in any number of  
15 counterparts and each executed counterpart shall have the same  
16 force and effect as an original instrument.

17 49. Each undersigned representative of the parties to the  
18 Consent Decree certifies that he or she is fully authorized to  
19 enter into the terms and conditions of the Consent Decree and to  
20 legally execute, and bind such party to, this Consent Decree.

21 MODIFICATION

22 50. The terms of this Consent Decree may be modified only  
23 by a subsequent written agreement by all of the parties signatory  
24 hereto, and approved by the Court as a modification to this  
25 Consent Decree.

1 51. If a court of competent jurisdiction finds unlawful any  
2 provision of this Consent Decree, including subparagraphs a-c of  
3 paragraph 4, the parties shall return the Decree to the Court for  
4 reformation consistent with the intent of the parties at the time  
5 they lodged the Decree with the Court.

6 PUBLIC COMMENT

7 52. This Decree will be subject to a 30-day public comment  
8 period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.  
9 § 9622(d)(2), and 28 C.F.R. 50.7. The United States reserves the  
10 right to withdraw its consent to the Decree if comments received  
11 disclose facts or considerations which show that the Decree is  
12 inappropriate, improper or inadequate. Metro and the City  
13 consent to the entry of this Consent Decree without further  
14 notice.

15 53. The Suquamish Indian Tribe, the Muckleshoot Indian  
16 Tribe and the State of Washington each reserve the right to  
17 withdraw their consent from this Decree and from participation in  
18 this settlement if comments received during the public comment  
19 period disclose facts or considerations which show that the  
20 Decree is inappropriate, improper or inadequate as to the  
21 Suquamish Indian Tribe, the Muckleshoot Indian Tribe and the  
22 State of Washington, respectively. To exercise its right to  
23 withdraw, each of these parties shall file with the Court a  
24 written statement expressly indicating its intent to withdraw.  
25 These parties must exercise their right to withdraw before the

1 United States Department of Justice files its motion to enter  
2 this Decree with the Court. Withdrawal by any one or all of  
3 these parties shall not in any way affect the rights and  
4 obligations of any other party to this Decree. If any one or all  
5 of these parties withdraws, any and all references to such a  
6 party or parties in the Decree, except those in paragraphs L,  
7 M(3), 15, 24, 25 and 26, shall by implication be stricken from  
8 the Decree and shall have no meaning or bearing on the operation  
9 of any term of this Decree. Withdrawal by any of these parties  
10 shall not impose any obligation on any other party to also  
11 withdraw nor shall any inference be made as to the propriety of  
12 any other party's continued consent to this Decree and  
13 participation in this settlement. If either or both the  
14 Suquamish Indian Tribe or the Muckleshoot Indian Tribe withdraws,  
15 the continued participation by the United States in this  
16 settlement is not intended to nor shall it constitute a  
17 settlement or waiver of any rights under statute, treaty or  
18 common law of such Tribe or Tribes.

19 VOIDABILITY

20 54. If for any reason the Court should decline to approve  
21 this Decree in the form presented, this Decree and the settlement  
22 embodied herein shall be voidable at the sole discretion of any  
23 party and the terms herein may not be used as evidence in any  
24 litigation.

1 EFFECTIVE DATE

2 55. This Consent Decree shall be effective upon the date of  
3 its entry by the Court.

4 DENIAL OF LIABILITY

5 56. Metro and the City both deny each of the allegations of  
6 the complaint filed by the United States and further deny  
7 responsibility for the natural resources damages and any other  
8 costs or relief sought by the Trustees. The parties agree that  
9 actions undertaken by the City and Metro in accordance with this  
10 Consent Decree do not constitute an admission of any violation of  
11 treaty, federal or state law or an admission of any liability by  
12 the City or Metro to the United States, the State of Washington,  
13 the Suquamish Indian Tribe and Muckleshoot Indian Tribe. Nor  
14 shall this Consent Decree be used as evidence or as collateral  
15 estoppel against any party to this Decree in any action or  
16 proceeding other than an action or proceeding to enforce the  
17 terms of this Consent Decree.

18 RETENTION OF JURISDICTION

19 57. The Court shall retain jurisdiction of this matter for  
20 purposes of entering such further orders, direction, or relief as  
21 may be appropriate for the construction, implementation, or  
22 enforcement of this Decree.

23 58. By signature below, all parties consent to this  
24 Decree.



For King County

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Pam Bissonette  
Pam Bissonette  
Director  
King County Department of Natural Resources  
400 Yesler Way, Room 700  
Seattle, WA 98104

4/26/99  
Date

1 FOR THE CITY OF SEATTLE

2

3

4

*Mark H. Sidran*  
Mark H. Sidran  
City Attorney  
City of Seattle  
Municipal Building, 10th Floor  
600 Fourth Avenue  
Seattle, Washington 98104

*April 19, 1999*  
Date

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28 CONSENT DECREE - 43

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

1 FOR THE SUQUAMISH INDIAN TRIBE

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4   
Bennie J. Armstrong  
Chairman  
5 Suquamish Tribal Council  
15838 Sandyhook Road  
6 P.O. Box 498  
Suquamish, Washington 98392

24 May 1999  
Date

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28 CONSENT DECREE - 44

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC  
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Seattle, Washington 98115-0070

1 FOR THE MUCKLESHOOT INDIAN TRIBE

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*John Daniels, Jr.*

John Daniels, Jr.  
Chairman  
Muckleshoot Indian Tribe  
39015 172nd Avenue S.E.  
Auburn, Washington 98002

*9/23/99*

Date

CONSENT DECREE - 45

U.S. Department of Justice  
Environmental Enforcement Section  
c/o GC-DOJ DARC  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

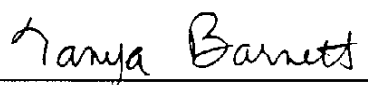
1 FOR THE STATE OF WASHINGTON

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Jim Pendowski  
Program Manager  
Toxics Cleanup Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

4/23/99  
Date



Tanya Barnett  
Assistant Attorney General  
Attorney General of Washington  
Ecology Division  
629 Woodland Square Loop SE, Lacey  
P.O. Box 40117  
Olympia, Washington 98504-0117

4/19/99  
Date

1 FOR THE UNITED STATES OF AMERICA

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*L. J. Schiffer* 9/16/99  
Date  
Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

*J. Nicoll* 10/7/99  
Date  
James L. Nicoll  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
c/o NOAA GC/DOJ Damage Assessment Center  
7600 Sand Point Way N.E.  
Seattle, Washington 98115-0070

*Brian C. Kipnis for* 10/7/99  
Date  
Brian C. Kipnis  
Assistant United States Attorney  
3600 SeaFirst Fifth Avenue Plaza  
800 Fifth Avenue  
Seattle, Washington 98104

*So ordered.*  
*Oct. 13, 1999.*  
*William L. Koyen*  
*U.S. District Judge*