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JAN 30 1997

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

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

Plaintiffs,

v.

ACE GALVANIZING, ACE TANK COMPANY,
ALASKAN COPPER & BRASS, ALL CITY FENCE
COMPANY, et al.

Defendants.

CIVIL ACTION NO.

C97-152 ⊕

DE MINIMIS
CONSENT DECREE
FOR NATURAL RESOURCE
DAMAGES

DE MINIMIS CONSENT DECREE FOR NATURAL RESOURCE DAMAGES

This Consent Decree is made and entered into by the United States of America, the Washington Department of Ecology on behalf of the State of Washington, and the Tulalip Tribes of Washington, as their respective interests appear in the complaint, including

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NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

1 as trustees for natural resources (collectively referred to as
2 "Plaintiffs"), the above-named defendants (collectively referred
3 to as "Participating Parties"), and certain federal and state
4 agencies ("the Participating Agencies").

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 Section
20 17 Corporation, a federal corporation chartered pursuant to
21 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. From 1964 to 1979, Seattle Disposal Company,
24 its general partners J. Razore, J. Banchemo, and other partners,
25 and Marine Disposal Company, operated the Site, then known as the

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

22 3. The Plaintiffs allege that hazardous substances within
23 the definition of Section 101(14) of the Comprehensive
24 Environmental Response, Compensation and Liability Act
25 ("CERCLA"), 42 U.S.C. § 9601(14), have been released into the

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1 environment from the Site as a result of Participating Parties'
2 disposal activities. Hazardous substances have been found in
3 soils in and around the Site, in sediments around the Site, in
4 leachate emanating from the Site, and in ground water at the
5 Site. Hazardous substances of concern found in soils and
6 sediments include benzo(a)anthracene, benzo(a)pyrene,
7 benzo(b)flouranthene, benzo(k)flouranthene, bis(2-
8 ethylhexyl)phthalate, chrysene, 1,4-dichlorobenzene,
9 flouranthene, fluorine, naphthalenè, N-nitroso-di-n-propylamine,
10 polychlorinated biphenyls (PCBs), and pyrene. Metals were also
11 found at the Site, including arsenic, lead, and chromium.
12 Samples of leachate flowing from the Site have shown levels of
13 arsenic, barium, cadmium, iron, zinc, manganese, toluene,
14 ethylbenzene, PCBs, and acenaphthene.

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

21 5. Plaintiffs have filed, contemporaneously with the
22 lodging of this Consent Decree, a civil complaint alleging that
23 Participating Parties are liable under Section 107 of CERCLA, 42
24 U.S.C. § 9607, and Ch. 70.105D RCW, to the Plaintiffs for damages
25 for the injury to, destruction of or loss of natural resources

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1 caused by the release of hazardous substances at or from the
2 Site.

3 6. Information currently known to the Plaintiffs,
4 including the United States Environmental Protection Agency
5 ("EPA"), indicates that the amount of hazardous substances
6 contributed to the Site by each Participating Party is minimal
7 when compared to the total amount of the hazardous substances at
8 the Site, and that the toxic or other hazardous effects of the
9 substances contributed by each Participating Party to the Site do
10 not contribute disproportionately to the cumulative toxic or
11 other hazardous effects of the hazardous substances at the site.
12 This includes any materials contributed by a Participating Party
13 that were placed on the source area after the 1979 consent decree
14 closure of the Site. Attachment A to this Consent Decree lists
15 the volume and general nature of hazardous substances contributed
16 to the Site by each Participating Party, based on available
17 information.

18 7. The Purposes of this Consent Decree are to resolve the
19 liability of the Participating Parties and the Participating
20 Agencies for claims for Natural Resource Damages resulting from
21 releases of hazardous substances at or from the Tulalip Landfill,
22 and to resolve all counter-claims and cross-claims which may
23 arise out of or relate to such claims, including all claims
24 against the Participating Agencies, and to protect the

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1 Participating Parties and the Participating Agencies against
2 claims for contribution regarding Covered Matters.

3 8. The parties recognize, and this Court finds, that the
4 parties have negotiated this Consent Decree in good faith, and
5 that implementation of this Consent Decree will avoid lengthy and
6 protracted litigation, is fair, equitable, and in the public
7 interest.

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

10 II. PARTIES

11 A. Plaintiffs

12 9. "United States" means the United States of America, in
13 all its capacities, including inter alia all departments,
14 administrations, natural resource trustees, and agencies of the
15 Federal Government.

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

21 11. The "Department of Ecology" means the Washington
22 Department of Ecology as designated state trustee pursuant to
23 Section 107(f) of CERCLA, and 40 C.F.R. Part 300, Subpart G, and
24 in its statutory role under MTCA, Ch. 70.105D, RCW.

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

4 B. Participating Parties

5 13. "Participating Parties" means and includes each and
6 every person, company, corporation or other entity which is a
7 signatory-defendant to this Consent Decree by virtue of the
8 signature of the party or his or her or its authorized agent on a
9 signature page of this Consent Decree.

10 C. Participating Agencies

11 14. "Participating Agencies" means the agencies of the
12 United States Government and the State of Washington that have,
13 by the signature of their authorized agents on a signature page
14 of this Consent Decree, agreed to resolve their liability for
15 Natural Resource Damages at the Site by joining and contributing
16 to the settlement embodied in this Consent Decree.

17 III. JURISDICTION

18 15. This Court has jurisdiction over this Consent Decree
19 under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a)
20 & 9613(b), 28 U.S.C. §§ 1331 & 1345, and RCW Ch. 70.105D.

21 IV. DEFINITIONS

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

24 a. "Final Approval" shall mean the earliest date on
25 which all of the following have occurred: (1) the Court has

1 approved and entered the Consent Decree as a judgment, without
2 modifying the Consent Decree prior to or at the time of approval
3 in a manner inconsistent with the parties' intentions; and (2)
4 the time for appeal from that judgment has expired without the
5 filing of an appeal, or the judgement has been upheld on appeal
6 and either the time for further appeal has expired without the
7 filing of a further appeal or no further appeal is allowed.

8 b. "Natural Resources" include land, fish, wildlife,
9 biota, air, water, groundwater, drinking water supplies, and
10 other such resources belonging to, managed by, held in trust by,
11 appertaining to, or otherwise controlled by the United States
12 (including the resources of the exclusive economic zone), the
13 State of Washington or the Tulalip Tribes of Washington.

14 c. "Natural Resource Damages" means compensatory and
15 remedial relief recoverable by the Federal, State and Tribal
16 Trustees of Natural Resources on behalf of the public or tribal
17 members for injury to, destruction of, or loss of use of any and
18 all Natural Resources resulting from the release of hazardous
19 substances, including (1) costs of damage assessment; (2)
20 compensation for loss, injury, impairment, damage or destruction
21 of Natural Resources, whether temporary or permanent, or for loss
22 of use value, non-use value, passive value, option value, amenity
23 value, bequest value, existence value, consumer surplus, economic
24 rent, or any similar value of Natural Resources; (3) any
25 diminution in value of Natural Resources pending restoration; and

1 (4) costs of restoring, rehabilitating, replacing, or acquiring
2 the equivalent of the Natural Resources.

3 d. "Covered Matters" means any civil or
4 administrative liability Participating Parties, individually or
5 collectively, may have to the United States, the State of
6 Washington (including the Washington Department of Ecology), the
7 Tulalip Tribes of Washington, or any other individual or entity
8 for any claim under 42 U.S.C. §§ 9607(a)(4)(c) & 9607(f), 33
9 U.S.C. § 1321, 33 U.S.C. § 2701, chapter 70.105D RCW, chapter
10 90.48 RCW, or any other federal, state, tribal or common law, for
11 Natural Resource Damages resulting from releases of hazardous
12 substances at or from the Tulalip Landfill, and any liability the
13 Participating Agencies may have to the United States, the State
14 of Washington (including the Washington Department of Ecology),
15 the Tulalip Tribes of Washington, or any other individual or
16 entity for any claim under 42 U.S.C. §§ 9607(a)(4)(c) & 9607(f),
17 33 U.S.C. § 1321, chapter 70.105D RCW, chapter 90.48 RCW, or any
18 other federal, state, tribal or common law, for Natural Resource
19 Damages resulting from releases of hazardous substances at or
20 from the Tulalip Landfill.

21 **V. PAYMENT AND RELATED MATTERS**

22 17. Within 30 days of the entry of this Consent Decree,
23 each Participating Party shall deliver a certified check payable
24 to Clerk, United States District Court, Western District of
25 Washington, in the amount corresponding to the de minimis tier to

26 U.S. Department of Justice
27 NOAA DARC/DOJ
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1 | which it belongs as set forth in Attachment B hereto, to:

2 | Barbara Brouner
3 | Financial Litigation Unit
4 | Office of the United States Attorney
5 | 3600 SeaFirst Fifth Avenue Plaza
6 | 800 Fifth Avenue
7 | Seattle, WA 98104

8 | Each certified check submitted by each Participating Party shall
9 | reference the "Tulalip Landfill de minimis NRD Settlement." Each
10 | Participating Agency shall, within a reasonable time after entry
11 | of this Consent Decree, cause to be delivered to Barbara Brouner
12 | at the address above the amount corresponding to the de minimis
13 | tier to which it belongs as set forth in Attachment B. Payments
14 | by or on behalf of the Participating Federal Agencies are subject
15 | to the availability of appropriated funds. No provision of this
16 | Consent Order shall be interpreted as or constitute a commitment
17 | to or requirement that the United States, including the
18 | Participating Federal Agencies, obligate or pay funds in
19 | contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

20 | 18. Each Participating Party shall provide written
21 | notification of the aforesaid delivery to the persons designated
22 | in Paragraph 31 immediately after it is made. Each Participating
23 | Party's obligation to make such delivery for subsequent deposit
24 | to the Registry is a contractual obligation to Plaintiffs
25 | effective as of the day of lodging of the Decree and is
26 | enforceable as a contract regardless of when the Decree is
27 | entered by the Court. Each Participating Federal Agency's

28 | Consent Decree

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1 obligation to make such delivery of funds for subsequent deposit
2 to the Registry is a contractual obligation to the State of
3 Washington and the Tulalip Tribes of Washington effective as of
4 the day of lodging of the Decree and is enforceable as a contract
5 regardless of when the Decree is entered by the Court.

6 19. The Office of the United States Attorney shall deposit
7 the payments referred to in Paragraph 17 into the Registry of the
8 Court in accordance with the accompanying Order Directing the
9 Deposit of Funds into the Registry of the Court. (Attachment C).

10 20. All funds paid by Participating Parties and the
11 Participating Federal Agencies shall remain in the Court Registry
12 and shall not be returned to Participating Parties unless: (i)
13 Final Approval of this Consent Decree does not occur; or (ii) the
14 United States, the State of Washington or the Tulalip Tribes of
15 Washington, either jointly or independently, withdraw their
16 consent to the Decree in accordance with Paragraph 32. If this
17 Consent Decree does not become final for either of the foregoing
18 reasons, all sums paid into the Court Registry shall, immediately
19 upon the date of maturity of any securities purchased with such
20 funds by the Clerk of the Court, be returned pro rata to
21 Participating Parties after deductions for any administrative
22 costs for maintaining the account.

23 21. The amount deposited into the Registry of the Court
24 shall remain in the Registry of the Court as Natural Resource
25 Damages pursuant to the Order Directing the Deposit of Funds into

1 the Registry of the Court (Attachment C), which is hereby
2 incorporated into this Decree. Natural Resource Damages in the
3 Registry of the Court shall be used only for assessing,
4 restoring, rehabilitating, replacing or acquiring the equivalent
5 of injured natural resources as provided in 42 U.S.C. §
6 9607(f)(1) and Chapter 70.105D RCW. These funds shall be managed
7 pursuant to the Order Directing Deposit of Funds into the
8 Registry of the Court (Attachment C).

9 22. Any Participating Party who fails to timely make any
10 payment required under this Consent Decree shall be liable,
11 commencing the day after payment is due, for interest on the
12 unpaid balance at the federal judgment interest rate computed in
13 accordance with 28 U.S.C. § 1961 as of the date payment is due,
14 and, if incurred, the costs of enforcement and collection
15 pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C.
16 § 3001 et seq.

17 **VI. COVENANTS NOT TO SUE**

18 23. In consideration of the Participating Parties' timely
19 compliance with the terms of this Consent Decree, the United
20 States, the State of Washington (including the Washington
21 Department of Ecology) and the Tulalip Tribes of Washington
22 covenant not to sue or take any other civil or administrative
23 action, after entry of this Consent Decree, against any and all
24 Participating Parties which are in compliance with the terms of
25 this Consent Decree, for Covered Matters. In consideration of

1 the Participating Federal Agencies' compliance with this Consent
2 Decree, the State of Washington (including the Washington
3 Department of Ecology) and the Tulalip Tribes of Washington
4 covenant not to sue or take any other civil or administrative
5 action, after entry of this Consent Decree, against the
6 Participating Federal Agencies which are in compliance with this
7 Consent Decree, for Covered Matters. In consideration of the
8 Participating State Agencies' compliance with this Consent
9 Decree, the United States and the Tulalip Tribes of Washington
10 covenant not to sue or take any other civil or administrative
11 action, after entry of this Consent Decree, against the
12 Participating State Agencies which are in compliance with this
13 Consent Decree, for Covered Matters. These covenants not to sue
14 are subject to the reservations in Section VIII of this Decree.

15 24. In consideration of the Plaintiffs' covenants not to
16 sue in this Section VI of this Consent Decree, each Participating
17 Party agrees not to assert any claim or cause of action against
18 any of the Plaintiffs or any Participating Agency arising out of
19 injuries to Natural Resources resulting from releases of
20 hazardous substances at or from the Site, or to seek any costs,
21 damages or attorneys' fees from any Plaintiff or any
22 Participating Federal Agency in connection with injuries to
23 natural resources resulting from releases of hazardous substances
24 at or from the Site.

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VII. CONTRIBUTION PROTECTION

25. Subject to the Reservation of Rights in Section VIII of this Consent Decree, Plaintiffs agree that by entering into this Consent Decree, each Participating Party and each Participating Agency will have resolved its liability for Covered Matters, as described in Paragraphs 16(d) and 23 of this Consent Decree, pursuant to Sections 122(g)(5) and 113(f)(2) of CERCLA, 42 U.S.C. § 9622(g)(5) and 9613(f)(2), Chapter 70.105D RCW and Chapter 90.48 RCW, and shall be protected against claims for contribution regarding Covered Matters as provided in Sections 122(g)(5) and 113(f)(2) of CERCLA, 42 U.S.C. §§ 9622(g)(5) and 9613(f)(2), and Chapter 70.105D RCW.

VIII. RESERVATION OF RIGHTS

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

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

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

c. Any criminal liability.

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

16 28. Nothing in this Consent Decree constitutes a covenant
17 not to sue or to take action or otherwise limit the ability of
18 the Plaintiffs to seek or obtain further relief from any of the
19 Participating Parties, and the covenant not to sue in Section VI
20 of this Consent Decree is null and void, if information not known
21 to EPA at the time of entry of the Consent Decree is discovered
22 which indicates that any Participating Party contributed
23 hazardous substances to the Site in such greater amount or of
24 such greater toxic or other hazardous effects that the
25 Participating Party no longer qualifies as a de minimis party at

1 the Site because the Participating Party contributed more than a
2 minimal amount of the hazardous substances at the Site or
3 contributed hazardous substances which contributed
4 disproportionately to the cumulative toxic or other hazardous
5 effects of the hazardous substances at the Site.

6 29. Nothing in this Consent Decree shall preclude the Port
7 of Seattle from asserting a claim or cause of action against
8 Manson Construction Company arising out of materials identified
9 in footnote (b) of Attachment A to this Consent Decree.

10 **IX. DISCLAIMER OF LIABILITY**

11 30. Neither entry of this Consent Decree nor any action in
12 accordance with this Consent Decree shall constitute an admission
13 of liability under any federal, state, tribal or local statute,
14 regulation, ordinance, general maritime law or common law by any
15 Participating Party, its present or former officers, members,
16 directors, trustees, shareholders, insurers, agents,
17 representatives, employees, subsidiaries, successors, assigns or
18 affiliates, for any fine, penalty, response costs, damages, or
19 claims or any issues of fact or law for releases of hazardous
20 substances at the Site.

21 31. The parties further agree that none of the provisions
22 of this Consent Decree or evidence of negotiations shall be
23 offered or received in evidence in this action or any other
24 action or proceedings by any other party for any purpose, except

1 for enforcement of this Consent Decree or except as specifically
2 provided herein.

3 **X. NOTICES AND SUBMISSIONS**

4 32. Whenever, under the terms of this Consent Decree,
5 written notice is required to be given or a report or other
6 document is required to be sent by one party to the other, it
7 shall be directed to individuals at the addresses specified
8 below, unless those individuals or their successors give written
9 notice of a change. All notices and submissions shall be
10 considered effective upon receipt, unless otherwise provided.

11 As to the United States:

12 Chief
13 Environmental Enforcement Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Ben Franklin Station
18 Washington, D.C. 20044

16 As to the State of Washington:

17 Fred Gardner
18 Toxics Cleanup Program
19 State of Washington
20 P.O. Box 47600
21 Olympia, Washington 98504-7600

20 As to the Tulalip Tribes of Washington:

21 Tom McKinsey
22 Tulalip Tribes of Washington
23 6326 33rd Ave., N.E.
24 Marysville, Washington 98271

25
26 U.S. Department of Justice
27 NOAA DARC/DOJ
28 7600 Sand Point Way, N.E.
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1 **XI. ENTRY OR DISAPPROVAL OF DECREE**

2 33. This Consent Decree shall be lodged with the Court for
3 a period of not less than thirty (30) days and shall be made
4 available for public notice and comment in accordance with
5 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. §
6 50.7, and RCW 70.105D.040(4)(a). The United States, the Tulalip
7 Tribes of Washington and the State of Washington fully intend to
8 defend the settlement embodied in this Consent Decree against any
9 challenge. The United States and the Tulalip Tribes of
10 Washington reserve the right to withdraw or withhold their
11 consent if the comments regarding the Consent Decree disclose
12 facts or considerations that indicate that the Consent Decree is
13 inappropriate, improper, or inadequate. The State of Washington
14 reserves the right to withdraw or withhold its consent if the
15 comments regarding the Consent Decree disclose facts or
16 considerations that demonstrate that the proposed settlement
17 would not lead to a more expeditious cleanup of hazardous
18 substances as provided in RCW 70.105D.040(4)(a). Each
19 Participating Party consents to the entry of this Consent Decree
20 without further notice.

21 34. After Final Approval of this Consent Decree, this
22 Consent Decree shall be considered an enforceable judgement for
23 purposes of post-judgement collection in accordance with Rule 69
24 of the Federal Rules of Civil Procedure and other applicable
25 federal statutory authority.

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1 35. Each Participating Party hereby waives the 60-day
2 notice requirement applicable to the State of Washington and the
3 Tulalip Tribes of Washington by virtue of Section 113(g)(1) of
4 CERCLA, 42 U.S.C. § 9613(g)(1), and agrees that any failure by
5 Plaintiffs to give the notice required by that section shall not
6 constitute a deficiency in the Complaint or in this Consent
7 Decree.

8 36. This Court retains jurisdiction over both the subject
9 matter of this Consent Decree and Parties hereto for the duration
10 of the performance of the terms and conditions of this Consent
11 Decree solely for the purpose of enforcing those terms and
12 conditions.

13 37. In the event this Consent Decree is not given Final
14 Approval, this Consent Decree and all agreements contained herein
15 shall become null and void and of no further force and effect,
16 and shall not be used or referred to for any purpose whatsoever.
17 In such event, this Consent Decree and all negotiations and
18 proceedings relating thereto shall be deemed to be without
19 prejudice to the rights of the parties, who shall be restored to
20 their respective positions immediately prior to the lodging of
21 this Consent Decree in Court, and shall retain all legal rights,
22 remedies and defenses that otherwise would have existed.

23 **XII. MISCELLANEOUS**

24 38. In any subsequent administrative or judicial proceeding
25 initiated by the United States for injunctive relief, recovery of

1 response costs, or other appropriate relief relating to the Site,
2 Participating Parties shall not assert, and may not maintain, any
3 defense or claim based upon the principles of waiver, res
4 judicata, collateral esstoppel, issue preclusion, claim-
5 splitting, or other defenses based upon any contention that the
6 claims raised by the United State in the subsequent proceeding
7 were or should have been brought in the instant case; provided,
8 however, that nothing in this paragraph affects the
9 enforceability of the covenants not to sue set forth in Section
10 VI.

11 39. No Participating Party shall reference or rely upon its
12 payment under this Consent Decree in any application for dredged
13 or fill material under Section 304 of the Federal Water Pollution
14 Control Act, 33 U.S.C. § 1344, or in any proceeding arising out
15 of the Participating Party's application, or failure to apply,
16 for such a permit.

17 40. This Consent Decree shall not affect any party's
18 rights against any person or entity not a party to this Consent
19 Decree, except for the contribution protection provisions of
20 Section VII and the provisions of Paragraph 44. No person or
21 entity other than the parties hereto shall have the authority to
22 seek to enforce the terms of this Consent Decree.

23 41. This Consent Decree constitutes the entire agreement
24 among the parties with regard to the subject matter hereof and
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Consent Decree

- 20 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

1 can be modified or amended only with the express written consent
2 of all the parties to this Consent Decree.

3 42. The undersigned representatives of Plaintiffs,
4 Participating Parties, and the Participating Agencies each
5 certify that he or she is fully authorized to enter into the
6 terms and conditions of this Consent Decree and to execute and
7 legally bind the party whom he or she represents to this Consent
8 Decree. The Tulalip Tribes of Washington's joinder to this
9 Decree is solely in its capacity as a trustee for natural
10 resources and constitutes a limited waiver of the Tulalip Tribes
11 of Washington's sovereign immunity for the sole and limited
12 purpose of enforcing the terms of this Consent Decree; provided
13 that, this Consent Decree shall not act as a general waiver of
14 sovereign immunity nor shall it in any way impair treaty-reserved
15 hunting and fishing rights.

16 43. This Consent Decree may be executed in several
17 counterparts and by facsimile and, as executed, shall constitute
18 one agreement, binding on all parties hereto, even though all
19 parties do not sign the original or the same counterpart.

20 44. Except as otherwise provided herein each party to this
21 Consent Decree shall bear his, her or its own costs, attorneys
22 fees and disbursements.

23 45. This Consent Decree shall apply to, be binding upon and
24 inure to the benefit of the Participating Parties and their past,
25 present and future directors, shareholders, officers, employees,

1 agents, and persons acting in those capacities, and upon their
2 predecessors in interest, successors and assigns.

3
4 SO ORDERED THIS ____ DAY OF _____, 1995.

5
6 United States District Judge

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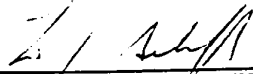
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We hereby consent to the entry of the foregoing Consent

Decree:


FOR THE UNITED STATES OF AMERICA:

Date May 21, 1997



LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date 1-30-97



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

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
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Seattle, WA 98115
(206) 526-6617

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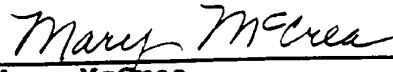
FOR THE STATE OF WASHINGTON:

4/15/96
Date



Dan Silver
Assistant Director
Toxics Cleanup Program
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

April 29, 1996
Date



Mary McGrea
Assistant Attorney General
Ecology Division
629 Woodland Square Loop, S.E.
P.O. Box 40117
Olympia, Washington 98504-0117

Consent Decree

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FOR THE TULALIP TRIBES OF WASHINGTON:

3-8 96
Date

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

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Ace Galvanizing, Inc. hereby
agrees to be bound by the terms of this Consent Decree

12/7/95
Date

Mike Buckel

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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NOV - 6 1995

SUPERFUND BRANCH

By the signature on this page, Alaskan Copper & Brass hereby agrees to be bound by the terms of this Consent Decree

Date

11/3/95

William M. [Signature]

Consent Decree

- 25 -

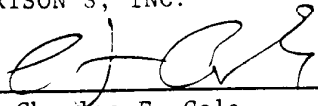
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(206) 526-6617

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By the signature on this page, Albertsons Food Center hereby agrees to be bound by the terms of this Consent Decree

ALBERTSON'S, INC.

1/16/94
Date

By: 
Charles F. Cole
Vice President, Legal and
Assistant General Counsel

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
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By the signature on this page, All City Fence Co. hereby agrees to be bound by the terms of this Consent Decree

All City Fence Co., Inc.

Clint Worthington - President

10-18-95
Date

RECEIVED
OCT 19 1995
SUPERFUND BRANCH

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

Consent Decree

By the signature on this page, Amelco Industries hereby agrees to be bound by the terms of this Consent Decree. Execution of this Consent Decree shall not constitute or be construed as an admission of liability by Amelco Industries, including any liability based on an assertion that it is the corporate successor to General-Haskell-Amelco, as listed on Attachment A.

AMELCO INDUSTRIES

Date: 10-13-95


[Signature]

By: Mark S. Angelich
Its: President

Consent Decree

U.S. Department of Justice
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Seattle, WA 98115
(206) 526-6617

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By the signature on this page, American Building Maintenance hereby agrees to be bound by the terms of this Consent Decree

↓ SIGNATURE ↓

12-13-95
Date

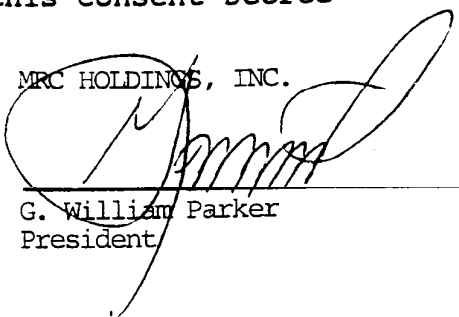
Royal Lee

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7500 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, American Can Company* hereby agrees to be bound by the terms of this Consent Decree

MRC HOLDINGS, INC.


G. William Parker
President

October 20, 1995
Date

* MRC Holdings, Inc. is successor to certain interest of American Can Company by Assignment dated December 30, 1993.

Consent Decree

U.S. Department of Justice
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Seattle, WA 98115
(206) 526-6617

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By the signature on this page, American President Lines hereby
agrees to be bound by the terms of this Consent Decree

12-7-95
Date

Clark Beemaker

Consent Decree

- 25 -

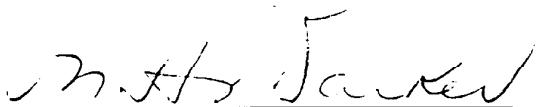
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Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Arden-Mayfair, Inc., formerly known as Arden Farms Co., hereby agrees to be bound by the terms of this Consent Decree

ARDEN-MAYFAIR, INC., formerly known as Arden Farms Co.

Date: January 25, 1996


Vice President

Consent Decree

- 25 -

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By the signature on this page, Arts Foods Center hereby agrees to be bound by the terms of this Consent Decree

11/28/95
Date

Brian P. Zepke

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NOV 29 1995
SUPERIOR COURT

Consent Decree

- 25 -

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By the signature on this page, Auto Warehousing Co. hereby agrees to be bound by the terms of this Consent Decree

December 1, 1995
Date

James F. McAttee
its attorney

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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

June 12, 1996
Date

Richard J. Carson V.P.

RECEIVED
JUN 14 1996
Environmental Cleanup Office

Consent Decree

- 23 -

U.S. Dept. of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3923

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By the signature on this page, Baugh Construction ^{Co.} hereby agrees
to be bound by the terms of this Consent Decree ^{for natural resource}
damages. JWH

Oct. 16, 1995
Date

L. A. Wilby, Secretary

Consent Decree

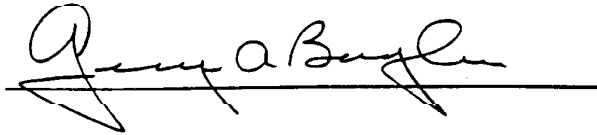
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DEC 8 - 1995
SUPERFUND REMEDIAL DIVISION

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By the signature on this page, Bayless Bindery, Inc. hereby agrees to be bound by the terms of this Consent Decree

December 05, 1995
Date



BAYLESS BINDERY, INC.
P.O. BOX 1148
RENTON, WA 98057-1148

Consent Decree

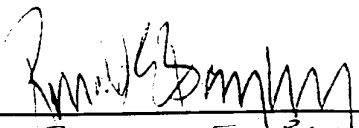
- 25 -

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By the signature on this page, Bayley Construction hereby agrees to be bound by the terms of this Consent Decree

27 NOVEMBER 1995
Date



RONALD E. BAYLEY
PRESIDENT
ROBERT E. BAYLEY CONSTRUCTION, INC.

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Bethlehem Steel Corp. hereby agrees to be bound by the terms of this Consent Decree

9/21/95

Date

A.E. Moffett, Jr.

Vice President,
Safety, Health & Environment

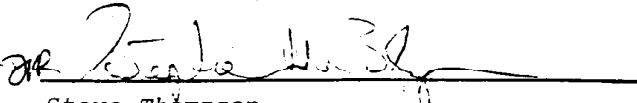
Consent Decree

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By the signature on this page, Boise Cascade Office Supply hereby agrees to be bound by the terms of this Consent Decree

OCTOBER 3, 1995
Date


Steve Thompson
Vice President, N.W. Region,
Boise Cascade Office Products

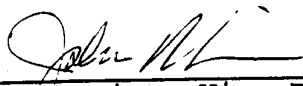
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By the signature on this page, the Bon Marche hereby agrees to be bound by the terms of this Consent Decree

Date: February 8, 1996



John R. Sims, Vice President
The Bon, Inc. d/b/a Bon Marche

Date: February 8, 1996



John R. Sims, Vice President
Federated Department Stores, Inc.
on behalf of itself and as
successor in interest to Allied
Stores Corporation

Consent Decree

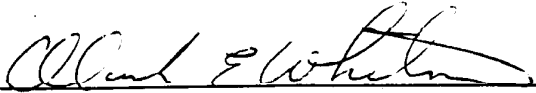
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7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

ORIGINAL

18

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

4/16/96
Date



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APR 18 1996

"Environmental Cleanup Office"

Consent Decree

- 23 -

U.S. Dept. of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3923

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NOV 01 1995

SUPERFUND REMEDIAL BRANCH

By the signature on this page, Buffalo Sanitary Wipers hereby agrees to be bound by the terms of this Consent Decree

Date

11-1-95

Lawrence J. Benezra

Lawrence J. Benezra, President
BUFFALO INDUSTRIES, INC.
dba Buffalo Sanitary Wipers

Consent Decree

- 25 -

U.S. Department of Justice
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By the signature on this page, Burlington Northern Railroad
hereby agrees to be bound by the terms of this Consent Decree

1/12/96
Date

J. Elizabeth Hill

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
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Seattle, WA 98115
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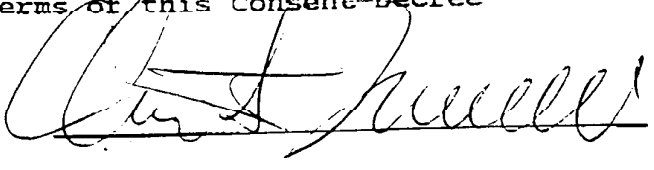
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By the signature on this page, C.A. Newell hereby agrees to be bound by the terms of this Consent-Decree

3/12/96
Date



Consent Decree

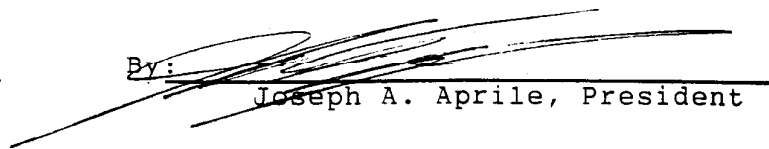
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By the signature on this page, Canteen Service hereby agrees to be bound by the terms of this Consent Decree

CANTEEN SERVICE, INC.

October 18, 1995
Date

By: 
Joseph A. Aprile, President

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

By the signature on this page, Capital Industries hereby agrees to be bound by the terms of this Consent Decree

10/6/95
Date

Ronald D. Taylor, Pres.

Consent Decree

- 25 -

U.S. Department of Justice
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By the signature on this page, Case's, Inc. hereby agrees to be bound by the terms of this Consent Decree

6/24/96
Date

Allen Hanson V.P.

Consent Decree

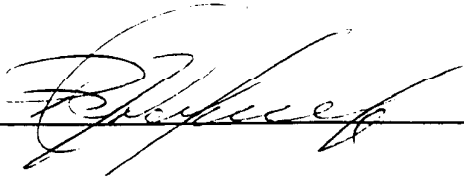
- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

By the signature on this page, Champion International Corporation for St. Regis Paper Company and Champion Building Products agrees to be bound by the terms of this Consent Decree.

Date

10/12/95



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By the signature on this page, Chemithon Corp. hereby agrees to be bound by the terms of this Consent Decree

Oct 17, 1995
Date

Roger R. Hillen
Exec. V.P. - Finance

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By the signature on this page, Children's Orthopedic Hospital*
hereby agrees to be bound by the terms of this Consent Decree

1/8/86
Date

Jeffrey Gutman
General Counsel

* New Knowlton
Children's Hospital and Medical Center

Consent Decree

- 25 -

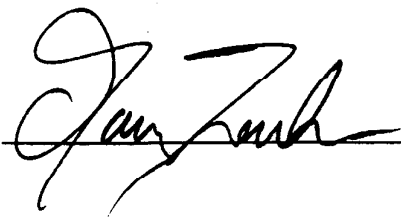
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By the signature on this page, City Light hereby agrees to be bound by the terms of this Consent Decree

1/31/96

Date



Consent Decree

- 25 -

U.S. Department of Justice
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7600 Sand Point Way, N.E.
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By the signature on this page, Commercial Warehouse Company, Inc.
hereby agrees to be bound by the terms of this Consent Decree

12/6/95
Date

D.M. Kato

Consent Decree

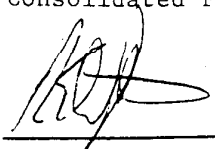
- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Consolidated Freightway hereby
agrees to be bound by the terms of this Consent Decree

Consolidated Freightways Corporation of Delaware



11 December 1995

Date

Robert E. Wrightson, Senior Vice President

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Constructors - Pacific Company hereby agrees to be bound by the terms of this Consent Decree

12-12-95

Date



Consent Decree

- 25 -

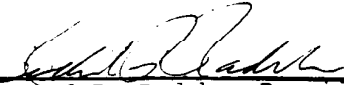
U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Contour Laminates hereby
 agrees to be bound by the terms of this Consent Decree

CONTOUR LAMINATES, INC.

6/24/96
 Date

By: 
 Richard P. Radeke, President
 Contour Laminates, Inc., also known
 as Radeke Corporation, a dissolved
 Washington corporation.

Consent Decree

U.S. Department of Justice
 NOAA DARC/DOJ
 7600 Sand Point Way, N.E.
 Seattle, WA 98115
 (206) 526-6617

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

CRAFTSMAN PRESS, INC.

4/19/96
Date

By: Robert Leate
Title: Treasurer

Consent Decree

- 23 -

U.S. Dept. of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3923

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By the signature on this page, Cree Construction hereby agrees to be bound by the terms of this Consent Decree

OCTOBER 17, 1995

Date


WILLIAM J. CREE, PRESIDENT

Consent Decree

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

By the signature on this page, Crosby & Overton agrees to be bound by the terms of this Consent Decree

April 22, 1996
Date



Michael A. Shlob
Executive Vice President

Consent Decree

- 23 -

U.S. Dept. of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3923

RECEIVED

MAY 06 1996

"Environmental Cleanup Office"

By the signature on this page, Crow Roofing hereby agrees to be bound by the terms of this Consent Decree

5-1-96
Date

Carol A. Vares, V.P.

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Consent Decree

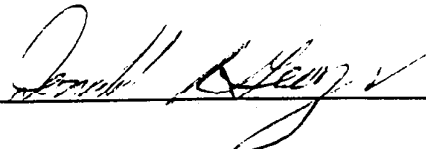
- 23 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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

Date

April 8, 1996



Consent Decree

- 23 -

U.S. Dept. of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-3923

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

December 11, 1995
Date

DARIGOLD, INC.
by Douglas C. Marshall
Corporate Secretary

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

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By the signature on this page, Deeny Construction Co., Inc.
hereby agrees to be bound by the terms of this Consent Decree

~~11/15/95~~ 12/14/95
Date

Deeny Construction Co., Inc.
by James Deeny Pres.


Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

By the signature on this page, Eagle Metals Co. hereby agrees to be bound by the terms of this Consent Decree

10-16-95
Date



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By the signature on this page, E & E Meats hereby agrees to be bound by the terms of this Consent Decree

1-4-96
Date

Marye Kawola
Sec Treas -
Board of Direct

Consent Decree

- 25 -

U.S. Department of Justice
NOAA DARC/DOJ
7600 Sand Point Way, N.E.
Seattle, WA 98115
(206) 526-6617

By the signature on this page, Ellstrom Manufacturing hereby agrees to be bound by the terms of this Consent Decree

Oct. 27, 1995
Date

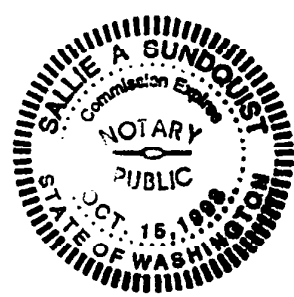
[Handwritten Signature]

WITNESS: Lynn Kneebone
Lynn Kneebone

State of Washington
County of King

Signed or attested before me on 27th day of Oct., 1995.

Sallie Sundquist
Signature



My Appointment Expires:
10-15-98

Judge Dimmick

FILED ENTERED
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AUG - 5 1997 SS
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

FILED ENTERED
LODGED RECEIVED
AUG 15 1997
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY
BY

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.

ACE GALVANIZING, INC., et al.,
Defendants.

CIVIL ACTION NO.
C97-152-D

[PROPOSED]
ORDER ENTERING DE
MINIMIS NATURAL RESOURCE
DAMAGES CONSENT DECREE

This Court, having fully considered the Motion of the trustees for natural resources at the Tulalip Landfill superfund site to Enter the De Minimis Natural Resources Consent Decree, lodged with this Court on January 30, 1997, hereby APPROVES the settlement embodied in the Consent Decree, and ORDERS that it shall be entered by the Clerk of the Court this 15 day of August, 1997.
SO ORDERED.

Carolyn R. Dimmick
UNITED STATES DISTRICT JUDGE

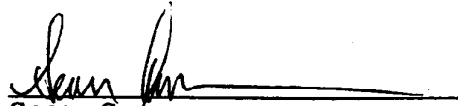
cto, ckd

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