

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
LODGED
ENTERED
RECEIVED
JAN 20 1998

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FILED
LODGED
OCT 31 1997
ENTERED
RECEIVED
MR
CLERK OF SEATTLE
DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
CC TO JUDGE MI

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

Plaintiffs,

v.

THE BOEING COMPANY, GOODWILL INDUSTRIES
INC., KAISER CEMENT CORP. f/k/a KAISER
CEMENT & GYPSUM, KAISER GYPSUM CO.,
INC., MANSON CONSTRUCTION CO., R.W.
RHINE, INC., RICHARD HALFFMAN d/b/a
HALFFMAN TRUCKING, R.M. HALFFMAN,
INC. d/b/a HALFFMAN TRUCKING, SAFEWAY
INC. and WASHINGTON IRON WORKS,
et al.,

Defendants.

CIVIL ACTION NO.
C97-1648-WD

RELATED CASE:
NO. C97-152-D

CONSENT DECREE FOR NATURAL RESOURCE DAMAGES
WITH R.W. RHINE, INC.

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 as trustees for natural resources (collectively referred to as "Plaintiffs") and defendant R.W. Rhine, Inc. ("Rhine").

I. INTRODUCTION

1. The Plaintiffs allege that the Tulalip Landfill is located on Ebey Island between Steamboat Slough and Ebey Slough

Consent
Decree for Natural
Resource Damages

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

See card, WLD 5 to 02

19

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

12 2. The Plaintiffs allege that in 1964, The Tulalip Tribes,
13 a Section 17 Corporation federal corporation chartered pursuant
14 to Section 17 of the Indian Reorganization Act, as amended, 25
15 U.S.C. § 477, leased the Site to Seattle Disposal Company for a
16 period of 10 years. From 1964 to 1979, Seattle Disposal Company,
17 its general partners J. Razore, J. Banchemo, and other partners,
18 and Marine Disposal Company, operated the Site, then known as the
19 "Big Flats Landfill," as a disposal site for commercial and
20 industrial waste. The Plaintiffs allege that waste material
21 collected in King County, Snohomish County, and communities in
22 and around the Puget Sound region, including waste materials
23 containing hazardous substances generated or transported by Rhine
24 and other parties, was delivered to the Site by a variety of
25 methods. Seattle Disposal Company and other parties, including

26
27 Consent
28 Decree for Natural
Resource Damages

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

1 entities now operated by Washington Waste Hauling and Recycling,
2 Inc. and Waste Management Inc., transported waste material using
3 barges and other vessels directly from Seattle to the Site by way
4 of Puget Sound. Other parties, including Rubatino Refuse
5 Removal, Inc., directly delivered waste material to the Site. In
6 1979, the landfill was closed and capped pursuant to the Rivers
7 and Harbors Act of 1899, 33 U.S.C. §§ 403 and 407, and the
8 Federal Water Pollution Control Act, 33 U.S.C. §§ 1311, 1319,
9 1342, and 1344, pursuant to a consent decree entered in the
10 United States District Court for the Western District of
11 Washington on October 19, 1977, No. C77-721M. Additional capping
12 materials, including construction debris and earthen materials,
13 were placed on the source area by Rhine and other parties after
14 the 1979 consent decree closure, pursuant to an NPDES permit
15 issued to the Tulalip Tribes of Washington.

16 3. The Plaintiffs allege that hazardous substances within
17 the definition of Section 101(14) of the Comprehensive
18 Environmental Response, Compensation and Liability Act
19 ("CERCLA"), 42 U.S.C. § 9601(14), have been released into the
20 environment from the Site as a result of disposal activities of
21 Rhine and other parties. Hazardous substances have been found in
22 soils in and around the Site, in sediments around the Site, in
23 leachate emanating from the Site, and in ground water at the
24 Site. Hazardous substances of concern found in soils and
25 sediments include benzo(a)anthracene, benzo(a)pyrene,
26

27 Consent
28 Decree for Natural
Resource Damages

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

1 benzo(b)flouranthene, benzo(k)flouranthene, bis(2-
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 Rhine and other parties are liable under Section 107 of CERCLA,
18 42 U.S.C. § 9607, and 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. Rhine does not admit the allegations of the
22 Plaintiffs' complaint, nor does Rhine acknowledge that any injury
23 to, destruction of or loss of natural resources has been caused
24 by the release of hazardous substances at or from the Site.

1 6. The Purposes of this Consent Decree are to resolve the
2 liability of Rhine for claims for Natural Resource Damages
3 resulting from releases of hazardous substances at or from the
4 Tulalip Landfill, to resolve all counter-claims and cross-claims
5 which may arise out of or relate to such claims, and to protect
6 Rhine against claims for contribution regarding Covered Matters.

7 7. 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 A. Plaintiffs

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

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

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

5 11. "The State of Washington" or "the State" means the
6 State of Washington, including inter alia all departments,
7 administrations, natural resource trustees and agencies thereof.

8 B. Rhine

9 12. "Rhine" means defendant R.W. Rhine, Inc.

10 **III. JURISDICTION**

11 13. This Court has jurisdiction over this Consent Decree
12 under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a)
13 & 9613(b), 28 U.S.C. §§ 1331 & 1345, and supplemental
14 jurisdiction over state law claims as set forth in 28 U.S.C. Sec.
15 1367.

16 **IV. DEFINITIONS**

17 14. Whenever the following capitalized terms are used in
18 this Consent Decree, they shall have the following meaning:

19 a. "Final Approval" shall mean the earliest date on
20 which all of the following have occurred: (1) the Court has
21 approved and entered the Consent Decree as a judgment, without
22 modifying the Consent Decree prior to or at the time of approval
23 in a manner inconsistent with the parties' intentions; and (2)
24 the time for appeal from that judgment has expired without the
25 filing of an appeal, or the judgement has been upheld on appeal

1 and either the time for further appeal has expired without the
2 filing of a further appeal or no further appeal is allowed.

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

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

23 d. "Covered Matters" means any civil or
24 administrative liability Rhine may have to the United States, the
25 State of Washington (including the Washington Department of
26

27 Consent
28 Decree for Natural
Resource Damages

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

1 Ecology), the Tulalip Tribes of Washington, or any other
2 individual or entity for any claim under 42 U.S.C. §§
3 9607(a)(4)(C) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. Secs. 2702,
4 2706, chapter 70.105D RCW, chapter 90.48 RCW, or any other
5 federal, state, tribal or common law, for Natural Resource
6 Damages resulting from releases of hazardous substances at or
7 from the Tulalip Landfill.

8 **V. PAYMENT AND RELATED MATTERS**

9 15. Within 30 days of receiving written notice of the entry
10 of this Consent Decree, Rhine shall deliver a certified check in
11 the amount of \$26,734 payable to Clerk, United States District
12 Court, Western District of Washington, to:

13 Attn: Financial Deputy
14 United States District Court
15 Western District of Washington
1010 Fifth Ave., Room 215
Seattle, WA 98103

16 The certified check shall reference the "Tulalip Landfill NRD
17 Settlement," and the court registry account established pursuant
18 to the related civil action United States v. Ace Galvanizing, et
19 al., No. C94-152-Z (W.D. Wash.).

20 16. Within 5 days of making the payment specified in
21 Paragraph 15, Rhine shall provide written notification to the
22 persons designated in Paragraph 28.

23 17. The Clerk of the Court shall deposit the payments
24 referred to in Paragraph 15 into the Registry of the Court in
25

26
27 Consent
28 Decree for Natural
Resource Damages

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

1 accordance with the accompanying Order Directing the Deposit of
2 Funds into the Registry of the Court. (Attachment A).

3 18. All funds paid by Rhine shall remain in the Court
4 Registry until used by Plaintiffs in accordance with Paragraph 19
5 and shall not be returned to Rhine unless Final Approval of this
6 Consent Decree does not occur. If Final Approval of this Consent
7 Decree does not occur, all sums paid into the Court Registry by
8 Rhine shall, immediately upon the date of maturity of any
9 securities purchased with such funds by the Clerk of the Court,
10 be returned to Rhine.

11 19. The amount deposited into the Registry of the Court
12 shall be managed pursuant to the Order Directing Deposit of Funds
13 into the Registry of the Court (Attachment A), which is hereby
14 incorporated into this Decree. These funds shall be used by
15 Plaintiffs only for assessing, restoring, rehabilitating,
16 replacing or acquiring the equivalent of the natural resources
17 injured, destroyed, or lost as a result of releases at or from
18 the Site, as provided in 42 U.S.C. § 9607(f)(1).

19 20. If Rhine fails to timely make any payment required
20 under this Consent Decree, it shall be liable, commencing the day
21 after payment is due, for interest on the unpaid balance at the
22 federal judgment interest rate computed in accordance with 28
23 U.S.C. § 1961 as of the date payment is due, and, if incurred,
24 the costs of enforcement and collection pursuant to the Federal
25 Debt Collection Procedure Act, 28 U.S.C. § 3001 et seq.

26
27 Consent
28 Decree for Natural
Resource Damages

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

1 VI. COVENANTS NOT TO SUE

2 21. In consideration of Rhine's timely compliance with the
3 terms of this Consent Decree, the United States, the State of
4 Washington (including the Washington Department of Ecology) and
5 the Tulalip Tribes of Washington covenant not to sue or take any
6 other civil or administrative action, after entry of this Consent
7 Decree, against Rhine for Covered Matters. This covenant not to
8 sue shall extend to, and inure to the benefit of, Rhine and its
9 past, present and future directors, officers, agents, and its
10 successors and assigns. This covenant not to sue is subject to
11 the reservations in Section VIII of this Decree.

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

20 VII. CONTRIBUTION PROTECTION

21 23. Subject to the Reservation of Rights in Section VIII of
22 this Consent Decree, Plaintiffs agree that by entering into this
23 Consent Decree, Rhine will have resolved its liability for
24 Covered Matters, as described in Paragraphs 14(d) and 21 of this
25 Consent Decree, pursuant to Section 113(f)(2) of CERCLA, 42

26
27 Consent
28 Decree for Natural
Resource Damages

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

1 U.S.C. § 9613(f)(2), Chapter 70.105D RCW and Chapter 90.48 RCW,
2 and shall be protected against claims for contribution regarding
3 Covered Matters as provided in Section 113(f)(2) of CERCLA, 42
4 U.S.C. § 9613(f)(2), Chapter 70.105D RCW, and Chapter 90.48 RCW.
5 Contribution protection shall extend to, and inure to the benefit
6 of, Rhine and its past, present and future directors, officers,
7 agents, and its successors and assigns.

8 **VIII. RESERVATION OF RIGHTS**

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

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

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

20 c. Any criminal liability.

21 25. As required by MTCA, RCW 70.105D.040(4)(c), nothing in
22 this Consent Decree is intended to be nor shall it be construed
23 as a release or covenant not to sue by the State of Washington
24 for any claim or cause of action, administrative or judicial,
25 civil or criminal, past or future, at law or in equity, which the
26

27 Consent
28 Decree for Natural
Resource Damages

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

1 State of Washington may have against Rhine for factors not known
2 to EPA at the time of entry of the decree that are discovered and
3 present a previously unknown threat to human health or the
4 environment. Factors known and threats known at the time of the
5 entry of the Consent Decree include all facts, documents,
6 evidence and data in the possession of EPA at the time of entry
7 of the Consent Decree, including but not limited to all of the
8 facts set forth in documents in EPA's administrative record for
9 the Site, EPA's Risk Assessment for the Site and EPA's Proposed
10 Plan for Interim Remedial Action for the Site.

11 **IX. DISCLAIMER OF LIABILITY**

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

22 27. The parties further agree that none of the provisions
23 of this Consent Decree or evidence of negotiations shall be
24 offered or received in evidence in this action or any other
25 action or proceedings by any other party for any purpose, except
26

27 Consent
28 Decree for Natural
Resource Damages

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

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

3 **X. NOTICES AND SUBMISSIONS**

4 28. 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
27 Consent
28 Decree for Natural
Resource Damages

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XI. ENTRY OR DISAPPROVAL OF DECREE

29. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days and shall be made available for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. § 50.7, and RCW 70.105D.040(4)(a). The United States, the State of Washington and the Tulalip Tribes of Washington intend to defend the settlement embodied in this Consent Decree, unless comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is not fair, reasonable or in the public interest, in which case the United States and the Tulalip Tribes of Washington reserve the right to withdraw or withhold their consent to the Consent Decree. The State of Washington reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that demonstrate that the proposed settlement would not lead to a more expeditious restoration of natural resources. Rhine consents to the entry of this Consent Decree without further notice.

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

Consent
Decree for Natural
Resource Damages

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

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

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

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

22 **XII. MISCELLANEOUS**

23 34. In any subsequent administrative or judicial proceeding
24 initiated by the United States for injunctive relief, recovery of
25 response costs, or other appropriate relief relating to the Site,
26

27 Consent
28 Decree for Natural
Resource Damages

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

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

9 35. Rhine shall not reference or rely upon its payment
10 under this Consent Decree in any application for dredged or fill
11 material under Section 404 of the Federal Water Pollution Control
12 Act, 33 U.S.C. § 1344, or in any proceeding arising out of
13 Rhine's application, or failure to apply, for such a permit.

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

20 37. This Consent Decree constitutes the entire agreement
21 among the parties with regard to the subject matter hereof and
22 can be modified or amended only with the express written consent
23 of all the parties to this Consent Decree.

24 38. Each of the undersigned representatives of Plaintiffs
25 and of Rhine certifies that he or she is fully authorized to
26

27 Consent
28 Decree for Natural
Resource Damages

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

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

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

15 40. Except as otherwise provided herein each party to this
16 Consent Decree shall bear his, her or its own costs, attorneys
17 fees and disbursements.

18 41. Rhine shall identify, on the attached signature page,
19 the name, address and telephone number of an agent who is
20 authorized to accept service of process by mail on behalf of
21 Rhine with respect to all matters arising under or relating to
22 this Consent Decree. Rhine hereby agrees to accept service in
23 that manner and to waive the formal service requirements set
24 forth in Rule 4 of the Federal Rules of Civil Procedure and any
25

26
27 Consent
28 Decree for Natural
Resource Damages

1 applicable local rules of this Court, including, but not limited
2 to, service of a summons.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SO ORDERED THIS 20th DAY OF Jan., 1998.

William L. Payne
United States District Judge

Consent
Decree for Natural
Resource Damages

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

FOR THE UNITED STATES OF AMERICA:

10/13/97
Date

[Signature]
LOIS J. SCHEFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C.

10-31-97
Date

[Signature]
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

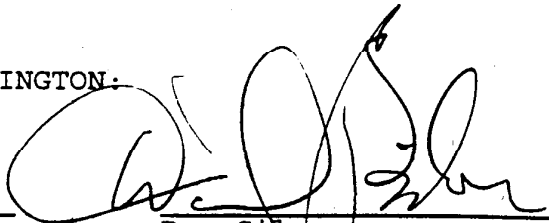
Consent
Decree for Natural
Resource Damages

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

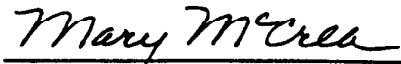
FOR THE STATE OF WASHINGTON:

10/25/97
Date



Dan Silver
Deputy Director
Operations
Washington Department of Ecology
P.O.Box 47600
Olympia, Washington 98504-7600

10/16/97
Date



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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR THE TULALIP TRIBES OF WASHINGTON:

10-16-1997
Date

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

Consent
Decree for Natural
Resource Damages

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

1
2 By the signature on this page, R.W. Rhine, Inc. agrees to be
3 bound by the terms of this Consent Decree

4
5 R.W. RHINE, INC.

6 7-29-97
Date

By: 

Its: President

8
9 Agent for Service of Process:

Thomas M. Kilbane
Ater Wynne Hewitt Dodson & Skerritt, LLP

601 Union Street, Suite 5450

Seattle, WA 98101-2327

(206) 623-4711

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 Consent
28 Decree for Natural
Resource Damages

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

ORIGINAL

ATTACHMENT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, AND
THE TULALIP TRIBES OF WASHINGTON

Plaintiff,

v.

THE BOEING COMPANY, GOODWILL INDUSTRIES
INC., KAISER CEMENT CORP. f/k/a KAISER
CEMENT & GYPSUM, KAISER GYPSUM CO.,
INC., MANSON CONSTRUCTION CO., R.W.
RHINE, INC., RICHARD HALFFMAN d/b/a
HALFFMAN TRUCKING, R.M. HALFFMAN,
INC. d/b/a HALFFMAN TRUCKING, SAFEWAY
INC. and WASHINGTON IRON WORKS,
et al.,

Defendants.

CIVIL ACTION
NO.

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

RELATED CASE:
NO. C97-152-D

This case arose out of the release of hazardous substances at the Tulalip Landfill Superfund Site ("the Site"), located within the Tulalip Indian Reservation, which occupies approximately 147 acres of the western portion of Ebey Island, just to the west of Interstate 5 and the Burlington Northern Railroad.

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

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

1 This Order is entered pursuant to and in furtherance of the
2 Consent Decree for Natural Resource Damages (the "Consent Decree")
3 between Plaintiffs United States of America, State of Washington
4 and the Tulalip Tribes of Washington, and defendants the Boeing
5 Company, Goodwill Industries, Inc., Kaiser Cement Corp. f/k/a
6 Kaiser Cement & Gypsum, Kaiser Gypsum Co., Inc., Manson
7 Construction Co., Richard Halfman d/b/a Halfman Trucking, R.M.
8 Halfman, Inc. d/b/a Halfman Trucking, R.W. Rhine, Inc., Safeway
9 Inc., and Washington Iron Works, et al. (collectively referred to
10 as "Participating Parties").

11 Under the De Minimis Natural Resource Damages Consent Decree
12 in United States v. Ace Galvanizing, et al., No. C97-152-Z, entered
13 by this Court on August 15, 1997, an account titled the "Tulalip
14 Landfill NRD Settlement Account" ("the Account") was established in
15 the Registry of the United States District Court for the Western
16 District of Washington for payments received in that action and all
17 related actions, including this one.

18 Under the Consent Decree, the Participating Parties have
19 agreed to pay to the Account their share of Natural Resource
20 Damages resulting from the release of hazardous substances at or
21 from the Site, which Natural Resource Damages have been estimated
22 for purposes of this de minimis settlement to be \$6.6 million.

23 Under the Consent Decree, Participating Parties will pay their
24 respective shares of this de minimis settlement amount to the
25 Account established by the Registry of the United States District
26

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

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

1 Court for the Western District of Washington. The funds will
2 thereafter remain in the Registry for use by the Natural Resource
3 Trustees (National Oceanic and Atmospheric Administration of the
4 U.S. Department of Commerce, the U.S. Department of the Interior,
5 the Washington Department of Ecology on behalf of the State of
6 Washington, and the Tulalip Tribes of Washington) for assessing,
7 restoring, rehabilitating, replacing or acquiring the equivalent of
8 natural resources injured, destroyed, or lost as a result of
9 releases of hazardous substances at or from the Site. This Order
10 addresses handling and investment of these funds by the Registry of
11 the Court.

12 Pursuant to Rule 67 of the Federal Rules of Civil Procedure,
13 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with the
14 terms of the Consent Decree, it is hereby ORDERED that:

15 i. All funds received by the Clerk of the Court pursuant to
16 the Consent Decree shall be deposited to the Account and
17 administered by the Clerk of the Court as follows:

18 a) The funds shall be used to purchase 91-day government
19 securities, at the highest prevailing interest rate available for
20 such securities;

21 b) upon maturity of the securities referred to in
22 subparagraph a), the Clerk shall consult with counsel for the
23 United States regarding the purchase of additional short-term
24 securities. Counsel for the United States shall consult with
25 representatives of the Natural Resource Trustees and, depending
26

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

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

1 upon the Natural Resource Trustees' anticipated funding needs,
2 shall advise the Clerk regarding the desired reinvestment in
3 government securities. The Clerk may make any such allocations of
4 funds as directed by counsel for the United States without further
5 Order of the Court.

6 ii. All income earned as interest on funds so invested or
7 deposited shall be credited to the Account.

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

14 iv. The Clerk shall prepare quarterly reports on the status
15 and activity of the Account showing payments received,
16 disbursements made, income earned, maturity dates of securities
17 held, and principal balance, and shall distribute the reports to
18 the following to counsel for the United States, the State of
19 Washington and the Tulalip Tribes of Washington at the following
20 addresses:

21 Ms. Kirsten Erickson
22 National Oceanic and Atmospheric Administration
23 Damage Assessment Center
24 7600 Sand Point Way, NE
25 Seattle, Washington 98115

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

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

1 Ms. Colleen Kelley
2 Office of the Regional Solicitor
3 United States Department of the Interior
4 500 NE Multnomah Street, Suite 607
5 Portland, Oregon 97232

6 Ms. Mary McCrea
7 Assistant Attorney General
8 Office of the Attorney General
9 P.O. Box 40117
10 Olympia, Washington 98504-0117

11 Mr. Keith Moxon
12 Buck & Gordon
13 1011 Western Avenue, Suite 902
14 Seattle, Washington 98104

15 v. Funds in the Account shall remain in the Registry until
16 further order of this Court.

17 vi. Applications for orders for disbursements from the
18 Account shall be made by the United States on behalf of the Natural
19 Resource Trustees, upon certification by each of the Natural
20 Resource Trustees that their determination to make such
21 disbursement was in compliance with the terms of the Decree,
22 applicable law and such other decision making procedures as the
23 Natural Resource Trustees may adopt. Such applications may be
24 acted upon by the Court without notice to or consent by the
25 Participating Parties.

26 vii. Funds deposited in the Account pursuant to this Order are
27 subject to the assessment of fees as authorized at 56 Federal
28 Register 53656 (November 4, 1991). In cases where the U.S.
Government is a party to the action, the fees so deducted from the
Account for this purpose may be restored to the Account upon

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

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

1 application filed with the Court by counsel for the United States.
2 The Motion by the United States to enter the Consent Decree and
3 this Order herein constitutes such an application and the Court
4 hereby directs the Clerk to exempt the Tulalip Landfill NRD
5 Settlement Account from the assessment of the fees described above.

6 viii. A certified copy of this Order shall be served upon
7 the Clerk of this Court.

8
9 Dated _____

United States District Judge

10
11 Presented by:
12 Sean Carman
13 U.S Department of Justice
14 c/o NOAA Damage Assessment
15 7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

16
17
18
19
20
21
22
23
24
25
26
27 Order Directing the
Deposit of Funds
Into the Registry
28 of the Court

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