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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.

THE PORT OF SEATTLE, SEARS, ROEBUCK AND
CO., LOCKHEED MARTIN, INC., THE SEATTLE
SCHOOL DISTRICT, GENERAL DISPOSAL
CORP., AND THE CITY OF MERCER ISLAND,

Defendants,

THE TULALIP SECTION 17 CORPORATION,

Intervenors.

CIVIL ACTION NO.

C 99-665-R

CONSENT DECREE
RESOLVING NATURAL
RESOURCE DAMAGES
CLAIMS

RELATED CASES:
NO.: C97-152-D
C97-1648-WD
C98-300-R

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

Consent Decree
Resolving Natural
Resource Damages Claims

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

1 appear in the complaint, as trustees for natural resources at the
2 Tulalip Landfill Superfund Site (collectively referred to as
3 "Plaintiffs"), defendants the Port of Seattle, Sears, Roebuck and
4 Co., Lockheed Martin, Inc., the Seattle School District, General
5 Disposal Corporation and the City of Mercer Island ("the
6 Generator Defendants"). The United States is also signing this
7 Consent Decree on behalf of the United States Navy and the Bureau
8 of Indian Affairs of the United States Department of the Interior
9 ("BIA"), to resolve their potential Natural Resource Damages
10 liability, and to obtain contribution protection under 42 U.S.C.
11 § 9613(f)(2). The Tulalip Section 17 Corporation has intervened
12 in this action pursuant to Federal Rule of Procedure 24, and the
13 Tulalip Tribes of Washington and the Tulalip Section 17
14 Corporation are signing this Consent Decree to resolve their
15 potential Natural Resource Damages liability and to obtain
16 contribution protection under 42 U.S.C. § 9613(f)(2).
17

18 I. INTRODUCTION

19 1. The Plaintiffs allege that the Tulalip Landfill is
20 located on Ebey Island between Steamboat Slough and Ebey Slough
21 in the Snohomish River delta system between Everett and
22 Marysville, Washington. Ebey Island is located in Snohomish
23 County, Township 30N, Range 5E, Section 32. The Tulalip Landfill
24 Superfund Site ("the Site"), located within the Tulalip Indian
25 Reservation, occupies approximately 147 acres of the western
26 portion of Ebey Island, just to the west of Interstate 5 and the
27 Burlington Northern Railroad. The landfill area ("the Tulalip
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1 Landfill") is bordered by a berm and is surrounded primarily by
2 wetlands in the form of freshwater and brackish water marshes.
3 To the west of the landfill area are approximately 160 acres of
4 salt marsh. The site of the landfill is held by the United
5 States in trust. The Tulalip Section 17 Corporation is the trust
6 beneficiary of the westerly parcel, which was accepted in trust
7 by the United States in 1960. The Tulalip Tribes of Washington,
8 the tribal government, is the trust beneficiary of the easterly
9 parcel, which was accepted in trust by the United States in 1971.

10
11 2. The Plaintiffs allege that in 1964, the Tulalip Section
12 17 Corporation leased the Site to Seattle Disposal Company for a
13 period of 10 years. The lease was renewed in 1972. From 1964 to
14 1979, Seattle Disposal Company, its general partners J. Razore,
15 J. Banchemo, and other partners, and Marine Disposal Company,
16 operated the Site, then known as the "Big Flats Landfill," as a
17 disposal site for commercial and industrial waste. The
18 Plaintiffs allege that waste material collected in King County,
19 Snohomish County, and communities in and around the Puget Sound
20 region, including waste materials containing hazardous substances
21 generated or transported by the Generator Defendants was
22 delivered to the Site by a variety of methods. Seattle Disposal
23 Company and other parties, including entities now operated by
24 Washington Waste Hauling and Recycling, Inc. and Waste Management
25 Inc., transported waste material using barges and other vessels
26 directly from Seattle to the Site by way of Puget Sound. Other
27 parties, including Rubatino Refuse Removal, Inc., directly
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1 delivered waste material to the Site. In 1979, the landfill was
2 closed and capped pursuant to the Rivers and Harbors Act of 1899,
3 33 U.S.C. §§ 403 and 407, and the Federal Water Pollution Control
4 Act, 33 U.S.C. §§ 1311, 1319, 1342, and 1344, pursuant to a
5 consent decree entered in the United States District Court for
6 the Western District of Washington on October 19, 1977, No. C77-
7 721M. Additional capping materials, including construction
8 debris and earthen materials, were placed on the source area by
9 other parties after the 1979 consent decree closure, pursuant to
10 the NPDES permit.

11
12 3. The Plaintiffs allege that hazardous substances within
13 the definition of Section 101(14) of the Comprehensive
14 Environmental Response, Compensation and Liability Act
15 ("CERCLA"), 42 U.S.C. § 9601(14), have been released into the
16 environment from the Site. Hazardous substances have been found
17 in soils in and around the Site, in sediments around the Site, in
18 leachate emanating from the Site, and in ground water at the
19 Site. Hazardous substances of concern found in soils and
20 sediments include benzo(a)anthracene, benzo(a)pyrene,
21 benzo(b)fluoranthene, benzo(k)fluoranthene, bis(2-
22 ethylhexyl)phthalate, chrysene, 1,4-dichlorobenzene,
23 fluoranthene, fluorine, naphthalene, N-nitroso-di-n-propylamine,
24 polychlorinated biphenyls (PCBs), and pyrene. Metals were also
25 found at the Site, including arsenic, lead, and chromium.
26 Samples of leachate flowing from the Site have shown levels of
27 arsenic, barium, cadmium, iron, zinc, manganese, toluene,
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1 ethylbenzene, PCBs, and acenaphthene.

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

8 5. Plaintiffs have filed, contemporaneously with the
9 lodging of this Consent Decree, a civil complaint alleging that
10 the Generator Defendants are liable under Section 107 of CERCLA,
11 42 U.S.C. § 9607, and Ch. 70.105D RCW, to the Plaintiffs for
12 damages for the injury to, destruction of or loss of natural
13 resources caused by the release of hazardous substances at or
14 from the Site.

15 6. The volume of wastes contributed to the Site by each
16 Generator Defendant and the United States Navy based on
17 information currently known to the Plaintiffs, and the United
18 States Environmental Protection Agency ("EPA"), is set forth in
19 Attachment B.

20 7. The Generator Defendants deny the allegations in the
21 complaint in this action, including any and all allegations of
22 liability, and dispute the waste volumes attributed to them in
23 EPA's volumetric report.

24 8. The purposes of this Consent Decree are to resolve the
25 liability of the Generator Defendants, the United States Navy and
26 BIA, and The Tulalip Tribes of Washington and the Tulalip Section
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1 17 Corporation (collectively referred to as "the Tribes") for
2 claims for Natural Resource Damages resulting from releases of
3 hazardous substances at or from the Tulalip Landfill, and to
4 resolve all counter-claims and cross-claims which may arise out
5 of or relate to such claims, and to protect the Generator
6 Defendants, the United States Navy and BIA, and the Tribes
7 against claims for contribution regarding Covered Matters.

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

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

16 II. PARTIES

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

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

26 12. The "Tulalip Section 17 Corporation" is a federal
27 corporation chartered pursuant to Section 17 of the Indian
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1 Reorganization Act, as amended, 25 U.S.C. § 477.

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

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

9 15. "Generator Defendants" means defendants the Port of
10 Seattle, Sears, Roebuck and Co., Lockheed Martin, Inc., the
11 Seattle School District, General Disposal Corporation and the
12 City of Mercer Island.

13
14 III. JURISDICTION

15 16. This Court has jurisdiction over this Consent Decree
16 under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a)
17 & 9613(b), 28 U.S.C. §§ 1331 & 1345, and supplemental
18 jurisdiction over state law claims as set forth in 28 U.S.C. §
19 1367. The United States, the State of Washington and the
20 Generator Defendants agree not to challenge the standing of the
21 Tulalip Section 17 Corporation to intervene in this action and
22 agree not to challenge this Court's jurisdiction to grant the
23 Tulalip Section 17 Corporation's motion to intervene in this
24 action.

25 17. Without admitting liability under CERCLA or MTCA, The
26 Tulalip Tribes of Washington, and the Tulalip Section 17
27 Corporation, by entering into this Consent Decree, hereby (1)
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1 waive their sovereign immunity solely for the limited purposes of
2 allowing the entry of this Consent Decree and the enforcement of
3 its terms by this Court, (2) consent to such entry and
4 enforcement of this Consent Decree by this Court, and (3) agree
5 not to challenge the terms of this Consent Decree, this Court's
6 personal or subject matter jurisdiction to enter and enforce this
7 Consent Decree, or venue in this District. This consent to the
8 entry and enforcement of this Consent Decree shall not be deemed
9 an admission of liability under CERCLA or MTCA by The Tulalip
10 Tribes of Washington or the Tulalip Section 17 Corporation, nor
11 shall such consent be deemed a general waiver of sovereign
12 immunity by either entity. Neither the consent to the entry and
13 enforcement of this Consent Decree nor the aforesaid limited
14 waiver of sovereign immunity shall be construed as impairing,
15 modifying, diminishing, enlarging, or otherwise affecting the
16 treaty rights of The Tulalip Tribes of Washington or the Tulalip
17 Section 17 Corporation, or, except as expressly limited herein,
18 their sovereign immunity.
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20 IV. DEFINITIONS

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

23 a. "Final Approval" shall mean the earliest date on which
24 all of the following have occurred: (1) the Court has approved
25 and entered the Consent Decree as a judgment, without modifying
26 the Consent Decree prior to or at the time of approval in a
27 manner inconsistent with the parties' intentions; and (2) the
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1 time for appeal from that judgment has expired without the filing
2 of an appeal, or the judgment has been upheld on appeal and
3 either the time for further appeal has expired without the filing
4 of a further appeal or no further appeal is allowed.

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

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

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24 d. "Covered Matters" means any civil or administrative claim
25 that the United States, the State of Washington (including
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1 the Washington Department of Ecology), and/or The Tulalip Tribes
2 of Washington may have under 42 U.S.C. §§ 9607(a)(4)(c) &
3 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§ 2702 & 2706, chapter
4 70.105D RCW, chapter 90.48 RCW, or any other federal, state,
5 tribal or common law, for Natural Resource Damages resulting from
6 releases of hazardous substances at or from the Tulalip Landfill;
7 any liability the United States Navy and BIA, individually or
8 collectively, may have to the State of Washington, the Tulalip
9 Tribes of Washington for any claim under 42 U.S.C. §§
10 9607(a)(4)(c) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§ 2702 &
11 2706, chapter 70.105D RCW, chapter 90.48 RCW, or any other
12 federal, state, tribal or common law, for Natural Resource
13 Damages resulting from releases of hazardous substances at or
14 from the Tulalip Landfill; any administrative claims that FWS and
15 NOAA may have against the United States Navy and BIA under 42
16 U.S.C. §§ 9607(a)(4)(c) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§
17 2702 & 2706, chapter 70.105D RCW, chapter 90.48 RCW, or any other
18 federal, state, tribal or common law, for Natural Resource
19 Damages resulting from releases of hazardous substances at or
20 from the Tulalip Landfill; and any liability The Tulalip Tribes
21 of Washington and/or the Tulalip Section 17 Corporation,
22 individually or collectively, may have to the United States
23 and/or the State of Washington for any claim under 42 U.S.C. §§
24 9607(a)(4)(c) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§ 2702 and
25 2706, chapter 70.105D RCW,
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1 chapter 90.48 RCW, or any other federal, state, tribal or common
2 law, for Natural Resource Damages resulting from releases of
3 hazardous substances at or from the Tulalip Landfill.

4 e. "The Tribes" means the Tulalip Tribes of Washington and
5 the Tulalip Section 17 Corporation.

6 V. PAYMENT AND RELATED MATTERS

7 19. Within 30 days of receiving written notice of the entry
8 of this Consent Decree, the Generator Defendants and the Tribes
9 shall deliver certified checks payable to the Registry of the
10 Court, United States District Court, to:

11 Registry of the Court
12 c/o Clerk of the Court
13 United States District Court
14 Western District of Washington
1010 Fifth Avenue, Room 215
Seattle, WA 98101

15 In the following amounts:

16	The Port of Seattle:	\$ 51,246
17	Sears, Roebuck and Co.:	\$ 60,017
18	Lockheed Martin, Inc.:	\$ 52,828
19	Seattle School District:	\$ 62,537
20	General Disposal Corporation:	\$ 41,675
	City of Mercer Island:	\$ 41,675
	The Tribes:	\$178,229

21 Each certified check submitted by each of the above-listed
22 parties shall reference the "Tulalip Landfill NRD Settlement."
23 Within 5 days of making its payment pursuant to this Paragraph
24 each party shall provide written notification to the persons
25 designated in Paragraph 31.

26 20. Within a reasonable period of time after entry of the consent
27 decree, the United States, on behalf of the United States Navy and
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1 BIA, shall make a payment to the Registry of the United States
2 District Court for the Western District of Washington, in the
3 amount of \$187,141.08. The United States' payment shall reference
4 the "Tulalip Landfill NRD Settlement." Payments by or on behalf
5 of the United States Navy and BIA are subject to the availability
6 of appropriated funds. No provision of this Consent Decree shall
7 be interpreted as or constitute a commitment to or requirement
8 that the United States, including the United States Navy and BIA,
9 obligate or pay funds in contravention of the Anti-Deficiency
10 Act, 31 U.S.C. § 1341.

11
12 21. The Registry of the Court shall maintain the funds paid
13 pursuant to this Consent Decree in accordance with the Order
14 Directing the Deposit of Funds into the Registry of the Court
15 issued by Judge Dimmick in United States v. Ace Galvanizing,
16 Inc., No. C97-152-D (Attachment A hereto), which is hereby
17 incorporated into this Consent Decree.

18 22. All funds paid by the Generator Defendants, the United
19 States on behalf of the United States Navy and BIA, and the
20 Tribes shall remain in the Court Registry until used by
21 Plaintiffs in accordance with Attachment A. These funds shall be
22 used by Plaintiffs only for assessing, restoring, rehabilitating,
23 replacing or acquiring the equivalent of the natural resources
24 injured, destroyed, or lost as a result of releases at or from
25 the Site, as provided in 42 U.S.C. § 9607(f)(1).
26

27 23. With the exception of the United States, any party to
28 this Consent Decree that fails to timely make any payment

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

7
8 **VI. COVENANTS**

9 **24. Plaintiffs' Covenants.** In consideration of the
10 Generator Defendants' compliance with this Consent Decree, the
11 United States, the State of Washington (including the Washington
12 Department of Ecology) and The Tulalip Tribes of Washington
13 covenant not to sue or take any other civil or administrative
14 action, after entry of this Consent Decree, against any and all
15 Generator Defendants that are in compliance with the terms of
16 this Consent Decree, for Covered Matters. In consideration of
17 the Tribes' compliance with the terms of this Consent Decree, the
18 United States and the State of Washington (including the
19 Washington Department of Ecology) covenant not to sue or take any
20 other civil or administrative action, after entry of this Consent
21 Decree, against the Tribes for Covered Matters. In consideration
22 of the United States Navy's and BIA's compliance with the terms
23 of this Consent Decree, the State of Washington (including the
24 Washington Department of Ecology) and The Tulalip Tribes of
25 Washington covenant not to sue or take any other civil or
26 administrative action, after entry of this Consent Decree,
27 against the United States Navy and BIA, for Covered Matters, and
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1 FWS and NOAA covenant not to take administrative action, after
2 entry of this Consent Decree, against the United States Navy and
3 BIA, for Covered Matters. With respect to the Generator
4 Defendants and the Tribes, these covenants not to sue shall
5 extend to, and inure to the benefit of, the settling parties and
6 their past, present and future directors, officers, agents, and
7 upon their successors and assigns. These covenants not to sue
8 are subject to the reservations in Section VIII of this Decree.

9
10 **25. Covenants Not to Sue by the Generator Defendants, the**
11 **United States Navy and BIA, and the Tulalip Section 17**
12 **Corporation.** Each Generator Defendant covenants not to sue and
13 agrees not to assert any claim or cause of action against any or
14 all of the other Generator Defendants, any of the Plaintiffs or
15 the Tulalip Section 17 Corporation or the United States Navy or
16 BIA arising out of injuries to Natural Resources resulting from
17 releases of hazardous substances at or from the Site, or to seek
18 any costs, damages or attorneys' fees from any Plaintiff or the
19 Tulalip Section 17 Corporation or the United States Navy or BIA
20 in connection with injuries to Natural Resources resulting from
21 releases of hazardous substances at or from the Site. The United
22 States Navy and BIA covenant not sue, and agree not to assert any
23 claim or cause of action against, any of the Generator Defendants
24 or the Tribes or the State of Washington arising out of injuries
25 to Natural Resources resulting from releases of hazardous
26 substances at or from the Site, or to seek any costs, damages or
27 attorneys' fees from any of the Generator Defendants or the
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1 Tribes or the State of Washington in connection with injuries to
2 Natural Resources resulting from releases of hazardous substances
3 at or from the Site. The Tulalip Section 17 Corporation
4 covenants not to sue, and agrees not to assert any claims or
5 cause of action against, the United States, the State of
6 Washington or the Generator Defendants arising out of injuries to
7 Natural Resources resulting from releases of hazardous substances
8 at or from the Site, or to seek any costs, damages or attorneys'
9 fees from the United States, the State of Washington or the
10 Generator Defendants, in connection with injuries to Natural
11 Resources resulting from releases of hazardous substances at or
12 from the Site.

14 VII. CONTRIBUTION PROTECTION

15 26. Subject to the Reservation of Rights in Section VIII of
16 this Consent Decree, Plaintiffs agree that by entering into this
17 Consent Decree, the Generator Defendants, the United States Navy
18 and BIA, and the Tribes will have resolved their liability and/or
19 potential liability for Covered Matters, as described in
20 Paragraphs 18(d) and 24 of this Consent Decree, pursuant to
21 Sections 122(g)(5) and 113(f)(2) of CERCLA, 42 U.S.C. §§
22 9622(g)(5) & 9613(f)(2), Chapter 70.105D RCW and Chapter 90.48
23 RCW, and shall be protected against claims by any person or
24 entity for contribution regarding Covered Matters as provided in
25 Section 122(g)(5) and 113(f)(2) of CERCLA, 42 U.S.C. §§
26 9622(g)(5) and 9613(f)(2), Chapter 70.105D RCW, and Chapter 90.48
27 RCW. With respect to the Generator Defendants and the Tribes,
28 contribution protection

1 shall extend to, and inure to the benefit of, their past, present
2 and future directors, officers, agents, and upon their successors
3 and assigns.

4 VIII. RESERVATION OF RIGHTS

5 27. Nothing in this Consent Decree is intended to be nor
6 shall it be construed as a release or covenant not to sue for any
7 claim or cause of action, administrative or judicial, civil or
8 criminal, past or future, at law or in equity, which any or all
9 of the Plaintiffs may have against any of the Generator

10 Defendants, the United States Navy and BIA or the Tribes for:

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

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

17 c. Any criminal liability.

18 28. As required by MTCA, RCW 70.105D.040(4)(c), nothing in
19 this Consent Decree is intended to be nor shall it be construed
20 as a release or covenant not to sue by the State of Washington
21 for any claim or cause of action, administrative or judicial,
22 civil or criminal, past or future, at law or in equity, which the
23 State of Washington may have against any of the Generator
24 Defendants, the United States Navy or BIA or the Tribes for
25 factors not known to EPA at the time of entry of this decree that
26 are discovered and present a previously unknown threat to human
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1 health or the environment. Factors known and threats known at
2 the time of the entry of the Consent Decree include all facts,
3 documents, evidence and data in the possession of EPA at the time
4 of entry of the Consent Decree, including but not limited to all
5 of the facts set forth in documents in EPA's administrative
6 record for the Site, EPA's Risk Assessment for the Site and EPA's
7 Proposed Plan for Interim Remedial Action for the Site.

8
9 IX. DISCLAIMER OF LIABILITY

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

21 30. 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
25 for enforcement of this Consent Decree or except as specifically
26 provided herein.
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X. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, N.W., Suite 8000
Washington, D.C. 20004

As to the State of Washington:

Fred Gardner
Toxics Cleanup Program
State of Washington
P.O. Box 47600
Olympia, Washington 98504-7600

As to the Tribes:

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

1 XI. PUBLIC NOTICE AND ENTRY OF CONSENT DECREE

2 32. 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 State of
7 Washington and The Tulalip Tribes of Washington intend to defend
8 the settlement embodied in this Consent Decree, unless comments
9 regarding the Consent Decree disclose facts or considerations
10 that indicate that the Consent Decree is inappropriate, improper
11 or inadequate, in which case the United States reserves the right
12 to withdraw or withhold its consent to the Consent Decree. The
13 State of Washington reserves the right to withdraw or withhold
14 its consent if the comments regarding the Consent Decree disclose
15 facts or considerations that demonstrate that the proposed
16 settlement would not lead to a more expeditious restoration of
17 natural resources. The Generator Defendants and the Tribes
18 consent to the entry of this Consent Decree without further
19 notice.
20

21 33. 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.
26

27 34. Each Generator Defendant hereby waives the 60-day
28 notice requirement applicable to the State of Washington and The

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

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

11 36. In the event this Consent Decree is not given Final
12 Approval, this Consent Decree and all agreements contained herein
13 shall become null and void and of no further force and effect,
14 and shall not be used or referred to for any purpose whatsoever.
15 In such event, this Consent Decree and all negotiations and
16 proceedings relating thereto, including the Tulalip Section 17
17 Corporation's intervention, 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 said intervention
20 and the lodging of this Consent Decree in this Court, and shall
21 retain all legal rights, remedies and defenses that otherwise
22 would have existed.
23

24 XII. MISCELLANEOUS

25 37. In any subsequent administrative or judicial proceeding
26 initiated by any or all of the Plaintiffs for injunctive relief,
27 recovery of response costs, or other appropriate relief relating
28

1 to the Site, the Generator Defendants, the United States Navy,
2 BIA and the Tribes, shall not assert, and may not maintain, any
3 defense or claim based upon the principles of waiver, res
4 judicata, collateral estoppel, issue preclusion, claim-splitting,
5 or other defenses based upon any contention that the claims
6 raised by any or all of the Plaintiffs in the subsequent
7 proceeding were or should have been brought in the instant case;
8 provided, however, that nothing in this paragraph affects the
9 enforceability of the covenants not to sue set forth in Section
10 VI, or the enforceability of the covenants not to sue set forth
11 in the consent decrees entered by the United States District
12 Court for the Western District of Washington on March 18, 1998,
13 in United States v. Seattle Disposal Co., C-97-1462-Z and related
14 actions.
15

16 38. Neither the Tribes nor any Generator Defendant shall
17 reference or rely upon its payment under this Consent Decree in
18 any application for dredged or fill material under Section 404 of
19 the Federal Water Pollution Control Act, 33 U.S.C. § 1344, or in
20 any proceeding arising out of the Tribes' or any Generator
21 Defendant's application, or failure to apply, for such a permit.
22

23 39. This Consent Decree shall not affect any party's
24 rights against any person or entity not a party to this Consent
25 Decree, except for the contribution protection provisions of
26 Section VII. No person or entity other than the parties hereto
27 shall have the authority to seek to enforce the terms of this
28 Consent Decree.

1 40. This Consent Decree constitutes the entire agreement
2 among the parties with regard to the subject matter hereof and
3 can be modified or amended only with the express written consent
4 of all the parties to this Consent Decree.

5 41. Each of the undersigned representatives of Plaintiffs,
6 Generator Defendants, the United States Navy, BIA and the Tribes,
7 certifies that he or she is fully authorized to enter into the
8 terms and conditions of this Consent Decree and to execute and
9 legally bind the party whom he or she represents to this Consent
10 Decree.

11 42. 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 43. 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 44. Each Generator Defendant and the Tribes shall identify,
19 on the attached signature page, the name, address and telephone
20 number of an agent who is authorized to accept service of process
21 by mail on behalf of that Party with respect to all matters
22 arising under or relating to this Consent Decree. Generator
23 Defendants and the Tribes hereby agree to accept service in that
24 manner and to waive the formal service requirements set forth in
25 Rule 4 of the Federal Rules of Civil Procedure and any applicable
26 local rules of this Court, including, but not limited to, service
27
28

1 of a summons.

2 SO ORDERED THIS ____ DAY OF _____, 1998.
3

4
5 United States District Judge

6
7 We hereby consent to the entry of the foregoing Consent
8 Decree:

9 FOR THE UNITED STATES OF AMERICA:

10
11 7/20/77
12 Date

[Signature]
13 LOIS J. SCHIFFER
14 Assistant Attorney General
15 Environment and Natural Resource
16 Division
17 United States Department of Just
18 Washington, D.C. 20530

16
17 4-29-99
18 Date

[Signature]
19 SEAN CARMAN
20 Trial Attorney
21 Environmental Enforcement Sectio
22 United States Department of Just
23 NOAA DARC - DOJ
24 7600 Sand Point Way, N.E.
25 Seattle, Washington 98115-0070
26 (206) 526-6617

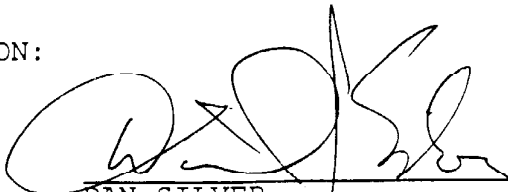
23
24 4-29-99
25 Date

[Signature] for
26 MARK A. NITCZYNSKI
27 Trial Attorney
28 Environmental Defense Section
United States Department of Just
999 18th Street
Suite 945, North Tower
Denver, Colorado 80202
(303) 312-7388

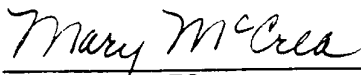
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FOR THE STATE OF WASHINGTON:

1/11/99
Date


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

1/20/99
Date


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

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FOR THE TULALIP TRIBES OF WASHINGTON:

6-26-98
Date

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

Agent for Service of Process: _____

1 FOR THE TULALIP SECTION 17 CORPORATION,
2 As Intervenor-Defendant:

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6-26-98
Date

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

Agent for Service of Process: _____

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

September 4, 1998
Date



Agent for Service of Process:

Linda J. Strout
General Counsel
Port of Seattle

2711 Alaskan Way

Seattle WA 98121

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By the signature on this page, Sears, Roebuck and Co. agrees to be bound by the terms of this Consent Decree

8-21-98
Date

Victoria S. Berghel
Victoria S. Berghel
Assistant General Counsel
for Real Estate
Sears, Roebuck and Co.

Agent for Service of Process: CT Corporation
520 Pike Street
Seattle, WA 98101

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By the signature on this page, Lockheed Martin, Inc. agrees to be bound by the terms of this Consent Decree

July 9, 1998
Date

James J. Dr. Ngeli

Agent for Service of Process:

Assistant General Counsel
Lockheed Martin Corporation
7921 Southpark Plaza, Suite 210
Littleton, CO 80120

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By the signature on this page, the Seattle School District agrees to be bound by the terms of this Consent Decree

8/18/98
Date


Joseph Olchefske, Acting Superintendent

Agent for Service of Process:

Mark Green
General Counsel
Seattle School District
815 Fourth Avenue North
Seattle, WA 98109

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By the signature on this page, General Disposal Corporation agrees to be bound by the terms of this Consent Decree

8-19-98
Date



Agent for Service of Process:

Mark M. Myers
Williams, Kastner & Gibbs PLLC
601 Union Street, Ste. 4100
P.O. Box 21926
Seattle, WA 98111-3926

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

June 17, 1998
Date

Richard M. Conrad
Richard M. Conrad, City Manager

Agent for Service of Process:

David Kahn, City Attorney

Debra Symmonds, Assistant City Manager

Tina Eggers, City Clerk

BY THE JUDGE sis

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

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UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

UNITED STATES OF AMERICA, AND
 THE TULALIP TRIBES OF WASHINGTON

Plaintiff,

v.

ACE GALVANIZING, INC., et al.,

Defendants.

CIVIL ACTION
 NO. C97-152-D

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

This case arises out of the release of hazardous substances 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. This Order is
 entered pursuant to and in furtherance of Consent Decrees for
 Natural Resource Damages (the "Consent Decree") between Plaintiffs
 United States of America, State of Washington and the Tulalip
 Tribes of Washington, and the defendants who have signed the

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

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

18

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

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

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

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27 Order Directing the
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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 Pursuant to Rule 67 of the Federal Rules of Civil Procedure,
2 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with the
3 terms of the Consent Decree, it is hereby ORDERED that:

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

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

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

15 b) After notification by counsel for the United States of
16 Final Approval of the Decree, the funds shall be used to purchase
17 91-day government securities, at the highest prevailing interest
18 rate available for such securities;

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

26
27 Order Directing the
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U.S. Department of Justice
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7600 Sand Point Way, NE
Seattle, WA 98115
(206) 526-6617

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

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

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

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

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

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

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

6 Keith Moxon, Esq.
7 Buck & Gordon
8 1011 Western Avenue, Suite 902
9 Seattle, Washington 98104

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

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

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

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

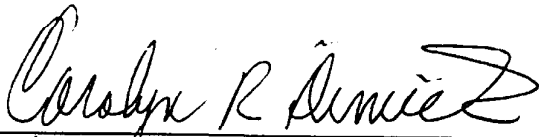
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c/o NOAA DARC - DOJ
7600 Sand Point Way, NE
Seattle, WA 98115
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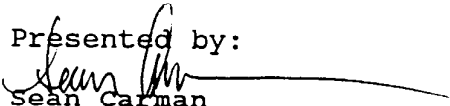
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application and the Court hereby directs the Clerk to exempt the
Tulalip Landfill NRD Settlement Account from the assessment of the
fees described above.

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

Dated Aug -15, 1977


United States District Judge

Presented by:

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

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

EXHIBIT B - GENERATOR DEFENDANTS' WASTE VOLUMES

Port of Seattle	23,812.07 Tons
Sears & Roebuck Co.	27,887.84 Tons
Lockheed Martin, Inc.	24,547.00 Tons
The Seattle School District	29,058.69 Tons
General Disposal Company/ The City of Mercer Island	39,001.75 Tons
The United States Navy	40,663.72 Tons

Volumes as listed in the Environmental Protection Agency's updated Volumetric Information Report, dated April 5, 1996.