Honorable_____

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT TACOMA

UNITED STATES OF AMERICA, STATE OF WASHINGTON, PUYALLUP TRIBE OF INDIANS, and MUCKLESHOOT INDIAN TRIBE,	)	CIVIL NO.
Plaintiffs,	)	CONSENT DECREE
v.	)	
AOL EXPRESS, INC., ARKEMA INC., EDWARD and MOLLY BARRY, BUFFELEN WOODWORKING CO., CHS INC., CHARLES P. and PATRICIA CURRAN, DUNLAP TOWING COMPANY, ESTATE OF NORMAN NORDLUND, ESTATE OF LESLIE P. SUSSMAN, F.O.F., INC., HYLEBOS BOAT HAVEN, HYLEBOS MARINA INC., JUDY JOHNSON, JONES CHEMICALS, INC., JOSEPH SIMON & SONS/RAIL & LOCOMOTIVE EQUIPMENT CO., LOUISIANA-PACIFIC CORPORATION, PHYLLIS NORDLUND, NORDLUND BOAT COMPANY, INC., NORDLUND PROPERTIES, INC., NOVEON	)	

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KALAMA CHEMICAL, INC., DON and ALBA OLINE, RONALD OLINE, DONALD S. and BARBARA L. OLSON, KAY E. OLSON, OLSON & CURRAN BARNACLE STOPPING SALT WATER FREE VERTICAL DRY DOCK CO. dba OLE & CHARLIE'S MARINAS, PORTAC, INC., RAYONIER PROPERTIES, LLC, PAULA ROSE, SUSSMAN ROSE SUSSMAN, ALAN SUSSMAN, SOPHIE SUSSMAN, USG INTERIORS, INC., WASSER & WINTERS CO., INC., WEST WATERWAY ASSOCIATES, P.S., ZIDELL MARINE CORPORATION,

Defendants.

I. INTRODUCTION

The United States of America ("United States"), on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the United States Department of the Interior; the State of Washington (the "State") through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, "Plaintiffs"), have filed a complaint in this case against defendants AOL Express, Inc., Arkema Inc., Edward & Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles P. and Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-Pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund Properties, Inc., Noveon Kalama Chemical, Inc., Don and Alba Oline, Ronald Oline, Donald S. and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc., West Waterway Associates, P.S., and Zidell Marine Corporation ("Defendants") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D

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RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the "Decree") addresses the claims asserted in the Complaint against Defendants for Natural Resource Damages (as defined below) in the Commencement Bay Environment (as defined below).

II. RECITALS

A. The United States Department of Commerce, acting through NOAA; the United States Department of the Interior; the Washington Department of Ecology on behalf of the State of Washington; the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (collectively, "the Trustees" and, individually, a "Trustee"), under the authority of Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart G, serve as trustees for natural resources for the assessment and recovery of damages for injury to, destruction of, or loss of natural resources under their trusteeship.

B. Investigations conducted by the United States Environmental Protection Agency ("EPA"), the Trustees, and others have detected hazardous substances in the sediments, soils and groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate, hexachlorobenzine, hexachlorobutadiene, polycyclic aromatic hydrocarbons (PAHs), and polychlorinated biphenyls (PCBs). Overall, the Trustees have documented the presence of over 30 hazardous substances in the marine sediments of Commencement Bay's Hylebos Waterway.

C. The Trustees began assessing natural resource damages in the Commencement Bay Environment in October 1991 by finding that hazardous substances had been released into the Commencement Bay Environment; that public trust natural resources had likely been injured by the releases; that data sufficient to pursue a natural resource damage assessment were available or could likely be obtained at a reasonable cost; and that, without further action, implemented and planned response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place In and About the Commencement Bay/Nearshore Tideflats (CB/NT) Superfund Site (October 29,

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1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a report on the results of Phase 1 of the damage assessment process in June 1995. Those major PRPs did not participate in subsequent stages of the damage assessment, and the Trustees continued the process independently. The Trustees have now completed a series of studies during Phase 2 of the damage assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and salmonids. Results of those studies were published in a series of reports, consisting of Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L. Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway. Based on this research, the Plaintiffs and Defendants (collectively, the "Parties" and, individually, a "Party") agree that no further natural resource damage assessment is required to effectuate the purposes of this Consent Decree, with respect to Defendants.

D. Plaintiffs have filed a complaint (the "Complaint") pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendants of damages for injury to, destruction of, and loss of natural resources resulting from releases of hazardous substances into the Commencement Bay Environment, including the costs of assessing the damages.

E. Plaintiffs allege in the Complaint that Defendants each own or in the past owned

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and/or operated real property or facilities, identified by the Trustees as:

Defendant	Site Name
AOL Express, Inc.	AOL EXPRESS
Arkema Inc.	ELF ATOCHEM DUNLAP TOWING
Buffelen Woodworking Co.	BUFFELEN
CHS, Inc.	CENEX AG
Edward and Molly Barry, Charles P. and Patricia Curran, Donald S. and Barbara Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & Charlie's Marinas and West Waterway Associates, P.S.	OLE & CHARLIE'S MARINA
Dunlap Towing Company	DUNLAP TOWING
Estate of Norman Nordlund, Hylebos Boat Haven, Phyllis Nordlund, Nordlund Boat Company, Inc. and Nordlund Properties, Inc.	HYLEBOS MARINA MANKE LUMBER
F.O.F., Inc.	OCCIDENTAL U.S. NAVAL RESERVE
Hylebos Marina, Inc.	HYLEBOS MARINA OLINE PROPERTIES (1800 MARINE VIEW DR.)
Judy Johnson	DON OLINE AUTOFLUFF SITE HYLEBOS MARINA OLINE PROPERTIES (1800 MARINE VIEW DR.)
Jones Chemicals, Inc.	JONES CHEMICALS
Joseph Simon & Sons/ Rail & Locomotive Equipment Co.	JOSEPH SIMON & SONS
Louisiana-Pacific Corporation	LOUISIANA-PACIFIC
Noveon Kalama Chemical, Inc.	SOUND REFINING
Don and Alba Oline	DON OLINE AUTOFLUFF SITE HYLEBOS MARINA STONE INVESTMENTS
Ronald Oline	DON OLINE AUTOFLUFF SITE

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	HYLEBOS MARINA OLINE PROPERTIES (1800 MARINE VIEW DR.)
Portac, Inc.	PORT OF TACOMA (3002 TAYLOR WAY)
Rayonier Properties, LLC	TAYLOR WAY PROPERTIES
Estate of Leslie P. Sussman, Paula Rose, Sussman Rose Sussman, Alan Sussman and Sophie Sussman,	GENERAL METALS OF TACOMA
USG Interiors, Inc.	US GYPSUM
Wasser & Winters Co., Inc.	WASSER WINTERS
Zidell Marine Corporation	AK-WA SHIPBUILDING

Plaintiffs further allege that from each of such sites storm water, surface water runoff, wastewater, other process discharges, and/or groundwater have flowed to the Commencement Bay Environment. Plaintiffs also allege that investigations by EPA and others have detected concentrations of hazardous substances in soils, groundwater or sediments on or in those properties or facilities. Some of these hazardous substances are found in the sediments of the Commencement Bay Environment.

F. Plaintiffs further allege that hazardous substances have been or are being released to the Commencement Bay Environment from properties or facilities owned and/or operated by each Defendant through direct discharge, surface water runoff, groundwater and seeps, and that those hazardous substances have caused injury to, destruction of and loss of natural resources in the Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish, invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further allege that each of them and the public have suffered the loss of natural resource services (including ecological services as well as direct and passive human use losses) as a consequence of those injuries.

G. Plaintiffs allege that each Defendant is either (a) the owner and/or operator of a vessel or a facility; (b) a person who at the time of disposal or release of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of; (c) a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter

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for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, or otherwise generated any hazardous substance disposed of or treated, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release or a threatened release of a hazardous substance that causes the incurrence of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

H. Defendants each deny all the allegations of the Complaint, and the allegations contained in Paragraphs E, F, G, K, M and O of this Section.

I. Although the Trustees have initiated but not yet completed a natural resource damage assessment for the Commencement Bay Environment, the Trustees have developed and analyzed information sufficient to support a settlement that is fair, reasonable and in the public interest.

J. To facilitate resolving natural resource damage claims, the Trustees developed a proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos Waterway PRPs solely for settlement purposes. Relying upon the results of the damage assessment studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first developed an estimate of the amount of injury to natural resources that had occurred as a result of releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of the injuries in terms of the losses of ecological services over affected areas of the waterway and over time, discounted to the current year. The Trustees used the term *discounted ecological service acre-years* (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking to recover from all PRPs funds, property and/or in-kind services needed to generate habitat restoration sufficient to compensate for the loss of 1526.77 DSAYs.

K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have become dispersed and commingled to the extent that the effects of one PRP's releases cannot be readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos

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Waterway contamination make all PRPs who contributed to the contamination jointly and severally liable for all injuries to natural resources that have resulted from the contamination. As a consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed existing information from the files of EPA, the Washington State Department of Ecology, and local public libraries to allocate liability among the various Hylebos Waterway facilities that contributed to the contamination.

L. To ensure that all PRPs had an equal opportunity to be informed of and to offer their views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the proposed allocation to the public for notice and comment. The Trustees took comments for 60 days, revised the report based upon the comments received, and made it available to PRPs in final form.

M. After evaluating available information, the Trustees have determined, solely for purposes of this settlement and without any bearing on or applicability in any other context, that Defendants should be allocated liability for a total of 257.849 DSAY losses and $1,793,888.46 in damage assessment costs as a consequence of Defendants' respective industrial and commercial processes and activities resulting in alleged hazardous substances releases in connection with the above-named facilities.

N. In settlement of this action Defendants have agreed, in lieu of and as equivalent to monetary damages, to contract with Pierce County to secure permanently the right to use real property for the purpose of natural resource restoration, to construct thereon the habitat restoration project described in Appendix A ("Old Soldier's Home Setback Levee Project" or "Project"), attached hereto and by this reference incorporated herein and perform any additional activities described in Appendix A. Defendants have also agreed to contribute funds to support project oversight by the Trustees, and to reimburse natural resource damage assessment costs incurred by the Trustees.

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O. The Trustees have determined that the timely actions and expenditures to be undertaken by Defendants under this Consent Decree are appropriate and necessary to protect and restore the natural resources allegedly injured as a result of alleged actions or omissions of Defendants that are addressed herein, and that such timely actions and expenditures are adequate to redress Defendants' responsibility for the Natural Resource Damages that are the subject of this proceeding.

P. Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint and the matters alleged in this Consent Decree.

Q. Plaintiffs and Defendants agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

III. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, and 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

IV. PARTIES BOUND

2. This Decree is binding upon the United States, the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, each Defendant and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, will in no way alter the status or responsibilities of the Parties under this Decree.

3. Defendants shall provide a copy of this Consent Decree to Pierce County as the party

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that will be performing the work required by this Consent Decree, to each contractor hired by Defendants to perform any of the work required by this Consent Decree, and to each person representing Defendants with respect to any such work, and shall condition all future contracts entered into by Defendants hereunder upon performance of the work in conformity with the terms of this Consent Decree. Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired by Defendants' contractors to perform any portion of the work. Defendants shall be responsible for ensuring that all work performed by their contractors and subcontractors and by Pierce County, including that performed by its contractors and subcontractors, is performed in accordance with this Consent Decree.

V. DEFINITIONS

4. Unless otherwise expressly provided, terms used in this Decree that are defined in CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any attached appendix, the following definitions will apply:

a. "CERCLA" means the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Commencement Bay Environment" means the waters of Commencement Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas, estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point. These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the EPA, including the B&L Landfill, and areas affected by releases of hazardous substances within the Commencement Bay Nearshore/Tideflats Superfund Site.

c. "Commencement Bay Restoration Account" means the Commencement Bay Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural

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Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix B).

d. "Consent Decree" or "Decree" means this Consent Decree and all attached appendices. In the event of a conflict between this Consent Decree and any Appendix, the Consent Decree will control.

e. "Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day falls on a Saturday, Sunday, or federal holiday, the period of time will run until the close of business of the next working day.

f. "DSAYs" means discounted ecological service acre-years, the metric established by the Trustees to determine the scale of Natural Resource Damages liability associated with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for injury to, destruction or loss of natural resources giving rise to liability.

g. "Defendant" means each one of, and "Defendants" means all of, AOL Express, Inc., Arkema Inc., Edward and Molly Barry, Buffelen Woodworking Co., CHS Inc., Charles P. and Patricia Curran, Dunlap Towing Company, Estate of Norman Nordlund, Estate of Leslie P. Sussman, F.O.F., Inc., Hylebos Boat Haven, Hylebos Marina, Inc., Judy Johnson, Jones Chemicals, Inc., Joseph Simon & Sons/Rail & Locomotive Equipment Co., Louisiana-Pacific Corporation, Phyllis Nordlund, Nordlund Boat Company, Inc., Nordlund Properties, Inc., Noveon Kalama Chemical, Inc. (and its predecessor Kalama Chemical, Inc.), Don and Alba Oline, Ronald Oline, Donald S. and Barbara L. Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & Charlie's Marinas, Portac, Inc., Rayonier Properties, LLC, Paula Rose, Sussman Rose Sussman, Alan Sussman, Sophie Sussman, USG Interiors, Inc., Wasser & Winters Co., Inc., West Waterway Associates, P.S., and Zidell Marine Corporation.

h. "MTCA" means the Model Toxics Control Act, Chapter 70.105D RCW.

I. "Natural Resources" means that definition as provided in 42 U.S.C. § 9601(16).

j. "Natural Resource Damages" means damages, including costs of damage

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assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances or discharges of oil to the Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos Waterway.

k. "Parties" mean the United States, the State of Washington, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendants.

l. "Plaintiffs" means the United States, the State, the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe.

m. "Project" means the Old Soldier's Home Setback Levee Project described in Appendix A.

n. "Project Site" means the approximately 92-acre site composed of all or a portion of Pierce County tax parcels 051932-3-041, 051931-4-031, 051931-4-029, 051932-3-020, 051932-3-010, 051932-3-025, 051805-2-000 and 051805-2-001 near Orting, Washington, as indicated in Appendix A, that is owned by Pierce County and on which the Project is to be developed according to the terms of this Consent Decree.

o. "Trustees" mean the United States Department of Commerce, acting through NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

VI. GENERAL PROVISIONS

5. The Complaint states claims upon which relief may be granted.

6. Nothing in this Consent Decree shall be construed as an admission of liability by any Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

7. Except where otherwise expressly provided, each Defendant shall be jointly and severally responsible for performing the obligations undertaken by Defendants under this Consent Decree. Plaintiffs may take such actions as provided below to enforce the terms of this Consent

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Decree against any one or more of Defendants as Plaintiffs may choose.

8. This Consent Decree shall not be used as evidence against any Party in any action or proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

9. All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable laws and permits.

10. Defendants shall ensure that all work performed under this Consent Decree shall be conducted pursuant to the design and schedule approved by the Trustees in Appendix A attached hereto and shall be subject to review by the Trustees. If the Trustees determine that Defendants or Pierce County are not complying with the design and schedule set forth in Appendix A, the Trustees shall provide prompt written notice to Defendants specifying the basis for their determination of noncompliance. Defendants may correct the noncompliance or invoke the dispute resolution procedures set forth in Section XV below. Subject to the right of Defendants to invoke the dispute resolution provisions, the Trustees may require Defendants to take actions, to alter, suspend or cease ongoing activities, and to alter, postpone or refrain from taking proposed actions, as the Trustees reasonably deem necessary to ensure compliance with the terms of this Consent Decree and any plans or proposals adopted hereunder.

11. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any law.

12. Where any portion of the activities undertaken pursuant to this Consent Decree requires a federal, state or local permit or approval, Defendants or Pierce County shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants or Pierce County shall use best efforts to obtain any necessary permits.

13. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with this Consent Decree will result in compliance with CERCLA or any other law. Compliance with this Consent Decree does not diminish or affect Defendants' responsibility to comply with any applicable federal, state or local law or regulation. The Parties agree that Defendants are responsible for achieving and maintaining

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complete compliance with all applicable federal, state and local laws, regulations and permits.

VII. PROJECT SITE

14. Pierce County, as the owner of the Project Site, has conveyed and granted to the State of Washington the right to use the Project Site forever for salmon recovery and conservation purposes. Pierce County has recorded deed restrictions for the Project Site, which are attached as Appendix C hereto.

VIII. PROJECT DEVELOPMENT

15. Defendants shall provide the funds and services to ensure that all necessary steps are taken to construct the Project and to perform any additional activities in accordance with the details, specifications and project development schedule set out in Appendix A.

16. Defendants shall avoid taking any action on the Project Site property or adjacent property owned or controlled by Defendants that is inconsistent with this Consent Decree and that would interfere with the Project such that it would substantially decrease the likelihood of success of the Project. Defendants shall notify the Trustees in writing at least 30 days prior to entering into any contracts for or applying for any permits for the taking of any actions on the Project Site other than those identified in Appendix A. Such notice shall include a narrative description of the proposed actions plus a site diagram indicating the location of the proposed actions.

17. Within 60 days after completion of construction of the Project, Defendants shall submit a written Notice of Completion to the Trustees. The Trustees shall review the course and results of the development of the Project to determine whether the Project has been completed in accordance with Appendix A. Within 60 days after receiving the Notice of Completion, the Trustees shall submit to Defendants either (a) a written notice identifying specific deficiencies the Trustees determine must be satisfied for the Project to be completed in accordance with Appendix A (Notice of Deficiencies); or (b) a written notice of the Trustees' determination that the Project has been so completed (Notice of Approval of Completion). Following receipt of a Notice of Deficiencies, Defendants shall correct the identified deficiencies and complete the Project in accordance with Appendix A, and submit to the Trustees an amended Notice of Completion for review and response

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in accordance with this Paragraph. Any delay in completing Project construction as a result of the operation of this Paragraph shall not in and of itself constitute grounds for relief from the requirement to pay stipulated penalties under Section XVI for compliance delays.

18. Within 180 days following receipt of the Trustees' Notice of Approval of Completion for the Project, Defendants shall submit to the Trustees a Project Completion Accounting. The Project Completion Accounting shall itemize the costs incurred by Defendants in developing the Project.

IX. POST-CONSTRUCTION ALTERATIONS; FURTHER RESTORATION ACTIONS

19. In addition to any measures undertaken in connection with the Project monitoring plan identified in Appendix A, following construction of the Project the Trustees may at any time make such post-construction alterations or implement such further restoration actions on the Project site as they determine appropriate. Such post-construction alterations or further restoration actions shall only be taken with the approval of Defendants and Pierce County, which approval may be withheld only upon a showing that the proposed activity would be inconsistent with the purposes of the Project as described in Appendix A (including the Project's flood control purposes), would be inconsistent with other provisions of this Consent Decree or other applicable law, or would impose costs upon Defendants.

X. ACCESS TO INFORMATION AND PROJECT SITE

20. To facilitate their oversight responsibilities, the Trustees shall have full access to all work in progress required under this Consent Decree.

21. Commencing upon the date of lodging of this Consent Decree, Defendants agree to provide the Trustees and their contractors access at all reasonable times to the Project Site and to any property under the control of Defendants to which access is required for the oversight or implementation of this Consent Decree. Where the property to which access is sought is not otherwise open to public access, the Trustees shall give notice prior to access. Each Trustee shall have the authority to enter freely and move about such property at all reasonable times for the

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purposes of overseeing the requirements of this Consent Decree, including, but not limited to:

a. Monitoring and assessing progress on the planning, development, maintenance and monitoring of the Projects;

b. Verifying any data or information submitted to the Trustees;

c. Inspecting and copying records, operation logs, contracts or other documents maintained or generated by Defendants or their contractors hereafter retained to perform work undertaken pursuant to this Consent Decree;

d. Conducting such tests, investigations or sample collections as deemed necessary to monitor compliance with this Consent Decree or to assist in further identifying and quantifying natural resource injuries requiring restoration actions and in planning and carrying out further restoration actions;

e. Using a camera, sound recording device or other type equipment to record the work done under this Consent Decree or injury to natural resources;

f. Undertaking any maintenance action or post-construction alterations or further restoration actions in accordance with Paragraph 19.

22. Defendants shall have the right to accompany any Trustee or its representative on the property. Anyone provided access through this Consent Decree shall comply with applicable health and safety requirements and shall not interfere with ongoing operations.

XI. SELECTION OF CONTRACTORS

23. The selection of any contractor hereafter retained by Defendants to perform any of the work required under this Consent Decree shall be subject to Trustee approval. Defendants shall notify the Trustees in writing of the name, title and qualifications of any contractor Defendants propose to retain, and of any proposed changes in the selection of a contractor. The Trustees will notify Defendants in writing of the approval or disapproval of a proposed contractor. The Trustees' assent to the proposed selection or change of a contractor may be presume unless the Trustees notify Defendants in writing of their objection to the proposed selection or change within 30 days of Defendants' written selection notice. Defendants shall notify the Trustees in writing of the contractor and of any subcontractors that have been retained by Pierce County to perform any of the work

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required under this Consent Decree.

XII. REIMBURSEMENT OF RESTORATION OVERSIGHT COSTS

24. Defendants shall reimburse Trustee costs incurred in the oversight of the development and maintenance of the Project and in monitoring Project performance in the total amount of $150,000. Sums paid under this Paragraph shall be deposited in the Commencement Bay Restoration Account for use as the Trustees shall determine in accordance with the terms of this Consent Decree and other applicable law. Payment shall be deposited within 30 days following the entry of this Consent Decree with the Registry of the Court by certified check, bearing the notation "Hylebos NRDA Mediation Group - Oversight and Monitoring Costs" and the civil action number assigned to this Consent Decree, made payable and addressed as follows:

Payee: Clerk of the Court

Address: Clerk, U.S. District Court
U.S. Courthouse, Room 215
1010 Fifth Avenue
Seattle, WA 98104

Memo: For Deposit into the Commencement Bay Natural Resource Restoration Account C93-5462 [INSERT THIS CASE DOCKET NUMBER]

Defendants shall send photocopies of each check and any transmittal letter to: Chief, Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044; and to Robert A. Taylor, NOAA GCNR/NW, 7600 Sand Point Way NE, Seattle, WA 98115-0070. Any funds paid pursuant to this Paragraph that are not utilized by the Trustees to cover oversight costs or costs of maintenance, monitoring or adaptive management for the Project may be applied by the Trustees toward one or more additional restoration projects in the Commencement Bay Environment.

XIII. PAST COST REIMBURSEMENT

25. Within 30 days of entry of this Decree, Defendants will pay to the Trustees sums totaling $1,793,888.46 in damage assessment costs. These sums shall be paid in the following amounts and particulars:

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Trustee: National Oceanic and Atmospheric Administration
Amount: $1,447,127.08

Trustee: U.S. Department of the Interior
Amount: $241,939.29

Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be credited on the next business day. Defendants shall provide at least five days notice to the Financial Litigation Unit before making the transfer.

Payments to the other Trustees shall be made by certified checks, bearing the notation "Hylebos NRDA Mediation Group - Commencement Bay Assessment Costs," in the amounts indicated and made payable and addressed as follows:

Trustee: State of Washington
Amount: $29,853.49
Payee: State of Washington/Department of Ecology
Address: State of Washington
Department of Ecology
Attention: Cashiering Section
P.O. Box 5128
Lacey, WA 98503-0210

Trustee: Puyallup Tribe of Indians
Amount: $68,299.79
Payee: Puyallup Tribe of Indians
Address: Mr. William Sullivan
Environmental Protection Department
Puyallup Tribe of Indians
2002 E. 28th Street
Tacoma, WA 98404

Trustee: Muckleshoot Indian Tribe
Amount: $6,668.81
Payee: Muckleshoot Indian Tribe

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Address: Mr. Rob Otsea
Office of the Tribal Attorney
Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
Auburn, WA 98002

26. At the time of each payment Defendants will send notice that payment has been made to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions). Such notice will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action number.

XIV. FAILURE TO MAKE TIMELY PAYMENTS

27. If Defendants fail to make any payment under Paragraphs 24 and 25 by the required due date, interest shall be assessed at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance through the date of payment.

XV. DISPUTE RESOLUTION

28. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

29. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Trustees and Defendants. The period for informal negotiations shall not exceed twenty-one (21) days from the time the dispute arises, unless the parties to the dispute agree otherwise in writing. The dispute shall be considered to have arisen when the Trustees send Defendants a written notice specifying the nature of the dispute and requested relief ("Notice of Dispute") or Defendants sends the Trustees a written Notice of Dispute.

30. a. If the Parties cannot resolve a dispute by informal negotiations under the

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preceding Paragraph, then the position advanced by the Trustees shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not necessarily limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Defendants.

b. Within twenty-one (21) days after receipt of Defendants' Statement of Position, the Trustees shall serve on Defendants their written Statement of Position, including, but not necessarily limited to, any factual data, analysis or opinion supporting that position and all supporting documentation relied upon by the Trustees.

c. An administrative record of the dispute shall be maintained by the Trustees and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Section.

d. The Formal Dispute Resolution Representatives for Defendants and the Trustees shall meet to discuss the matter in dispute at the earliest available opportunity and will work in good faith to resolve the matter in dispute. If the Parties fail to resolve the dispute within twenty-one (21) days after the initial meeting of the Formal Dispute Resolution Representatives, then the position advanced by the Trustees in their Statement of Position shall be considered binding upon Defendants, subject to any agreements the Formal Dispute Resolution Representatives may have reached on one or more issues and further subject to Defendants' right to seek judicial review pursuant to the following Subparagraph. In such event the Trustees shall within five (5) days of the conclusion of the formal dispute resolution process notify Defendants in writing that the formal dispute resolution process has concluded.

e. Any matter in dispute shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Defendants with the Court and served on all Parties within twenty-one (21) days of receipt of the Trustees' letter notifying Defendants of the conclusion of the formal dispute resolution process. The motion shall include a description of the

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matter in dispute, the relief requested and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Plaintiffs may file a response to Defendants' motion within twenty-one (21) days of receipt of the motion or within any different time frame that the local rules of court may provide, and Defendants may file a reply brief within five (5) days of receipt of the response or such different time that the local rules of court may provide.

f. The Court may rule based on the written record, with or without oral argument. The burden of proving entitlement to the requested relief with respect to the matter in dispute shall be on the Party requesting it.

g. The foregoing notwithstanding, the Parties acknowledge that disputes may arise that require resolution on an expedited basis. In such cases, the Parties shall agree on an expedited schedule or, absent prompt agreement, either Defendants or the Trustees may petition the Court for the imposition of an expedited schedule.

31. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of any Party under this Consent Decree not directly in dispute or contingent on issues in dispute, unless the Trustees or the Court agrees otherwise. Defendants' obligations to pay stipulated penalties as provided in Section XVI with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, the obligation to pay stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree, subject agreement of the Parties or to the decision of the Court on Defendants' motion. If Defendants do not prevail on a disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI.

XVI. STIPULATED PENALTIES

32. The Parties stipulate that time is of the essence in the implementation of the requirements of this Consent Decree and that delays in carrying out the activities required herein may diminish the compensatory value attributable to those activities. Consequently, in the event that Defendants exceed the deadline provided for one of the activities described below (subject to any

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modifications agreed to under Section XXVIII) and such delay is not excused through operation of the dispute resolution provisions (Section XV) and/or the force majeure provisions (Section XVII), Defendants shall, as a stipulated penalty, increase the financial contributions it makes under this Consent Decree to fund habitat restoration actions, over and above any payments required elsewhere under this Consent Decree, as follows:

a. For each week Defendants fail to comply with a deadline under Paragraph 24 or 25 for making any payment; in the Project Development Schedule included in Appendix A; under Paragraph 17 for submitting a Notice of Completion; under Paragraph 18 for submitting a Project Completion Accounting; or under Paragraph 40, if applicable, for providing copies of certificates of insurance and insurance policies, Defendants shall pay a stipulated penalty in the amount of $1,000. Where the delay extends beyond the second week, the stipulated penalty shall apply to each additional day of delay for each such missed deadline. For purposes of this Subparagraph, a week shall equal a continuous period of seven days.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by the Trustees. All payments to the Trustees under this Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Restoration Account.

c. At the time of each payment, Defendants will send notice that payment has been made to the Trustees and DOJ in accordance with Section XXIV (Notices and Submissions). This notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the civil action number.

d. Penalties need only be paid upon demand. Penalties for late payments will begin to accrue on the day after payment is due. All other penalties will begin to accrue on the day after the Trustees' notice of noncompliance pursuant to Paragraph 10 and will continue to accrue through the date of payment. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate violations of this Decree.

e. Defendants may dispute the Trustees' right to the penalties identified under

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Subparagraph a. above by invoking the dispute resolution procedures of Section XV.

33. If Plaintiffs bring an action in court to enforce this Decree and prevail, Defendants will reimburse Plaintiffs for all costs of such action, including but not limited to costs of attorney time.

34. Payments made under this Section are in addition to any other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to comply with the requirements of this Decree.

35. Notwithstanding any other provision of this Section, Plaintiffs may, in their unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Decree. Payment of stipulated penalties does not excuse Defendants from payment as required by Sections VIII, XII or XIII or from performance of any other requirement of this Consent Decree.

36. The Trustees may use sums paid as stipulated penalties under Paragraph 32 to pay unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore Commencement Bay natural resources.

XVII. FORCE MAJEURE

37. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and use best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" also includes, where necessary, the filing of legal actions to compel contract performance in accordance with the design and schedule approved by the Trustees herein.

38. a. If any event occurs or has occurred that may delay the performance of any

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obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall notify the Trustees within 14 days of when Defendants first knew that the event might cause a delay. Within 30 days thereafter, Defendants shall provide a written explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the rationale for attributing such delay to a force majeure event (if Defendants intend to assert such a claim). Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements will preclude Defendants from asserting any claim of force majeure for that event.

b. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Trustees for such time as is necessary. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Trustees will notify Defendants in writing of their decision.

c. If Defendants elect to invoke the dispute resolution procedures set forth in Section XV, above, regarding a claimed force majeure event it shall do so no later than 30 days after receipt of the Trustees' notice of disagreement. In any such proceeding Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will likely be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Defendants exercised best efforts to fulfill the obligation in question, and that Defendants complied with the requirements of this Paragraph. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree.

XVIII. INDEMNIFICATION; INSURANCE

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39. a. Defendants shall ensure that any contractor hereafter retained who performs work for them in carrying out the requirements of this Consent Decree shall indemnify for and hold harmless each of the Plaintiffs and/or their agents, employees and representatives from any and all damage claims or causes of action arising from acts or omissions of Defendants and/or their officers, employees, agents, contractors, subcontractors, representatives and any persons acting on their behalf or under their control, in carrying out the requirements of this Consent Decree. Further, Defendants agree to pay the Plaintiffs all costs they incur, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of damage claims made against the Plaintiffs based on acts or omissions of Defendants or their officers, employees, agents, contractors, subcontractors, representatives and any persons acting on their behalf or under their control, in carrying out the requirements of this Consent Decree. None of the Plaintiffs shall be held out as a party to any contract entered into by or on behalf of Defendants or Pierce County in carrying out the requirements of this Consent Decree. Neither Defendants, Pierce County, nor any such contractor or representative of them shall be considered an agent of any Plaintiff, and Defendants shall require any contractor hereafter retained by Defendants who performs work for Defendants in carrying out the requirements of this Consent Decree to affirmatively acknowledge that it is not acting as an agent of any Plaintiff.

b. Defendants shall ensure that any contractor hereafter retained who performs work for them in carrying out the requirements of this Consent Decree waive, and shall indemnify and hold harmless each of the Plaintiffs with respect to, any claims for damages or reimbursement from the Plaintiffs or for set-off against any payments made or to be made to the Plaintiffs, arising from or on account of any contract, agreement or arrangement between Defendants and any person in carrying out the requirements of this Consent Decree, including claims on account of construction delays.

40. In the event that Defendants elect to perform any portion of the work required to develop the Project, Defendants shall secure and maintain comprehensive general liability insurance and automobile liability insurance with limits of $10,000,000 (ten million dollars), combined single

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limit. In addition, for the duration of this Consent Decree Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing any work involved in implementing this Consent Decree. No later than 15 days before commencing any work involved in implementing this Consent Decree, Defendants shall provide to the Trustees certificates of such insurance and a copy of each insurance policy. Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Defendants demonstrates by evidence satisfactory to the Trustees that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

41. The Trustees agree to require that any contractor who performs work for them in the Project area shall agree to indemnify and hold harmless Defendants and their agents, employees and representatives, against all claims of any nature, including, but not limited to, claims by third parties for death, personal injury, or property damage, and claims for environmental liability that arise as the result of negligent acts or omissions of such contractor, its employees, representatives and agents in carrying out the provisions of this Consent Decree. Such indemnity shall be limited to actual damages only, and shall not extend to consequential damages or any other liability except as stated herein.

XIX. COVENANT NOT TO SUE BY PLAINTIFFS

42. Except as specifically provided in Section XX (Reservations of Rights) below, Plaintiffs covenant not to sue or to take administrative action against Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon entry of this Consent Decree by the Court and continue in effect conditioned upon the satisfactory

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performance by Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to each Defendant and its heirs, successors and assigns, and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS

43. Plaintiffs reserve, and this Decree is without prejudice to, all rights against any Defendant with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in Paragraph 42. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree is without prejudice to, all rights against each Defendant with respect to:

a. liability for failure of the Defendant to meet a requirement of this Decree;

b. liability for costs of response incurred or to be incurred by Plaintiffs, provided, however, that nothing in this Subparagraph b. shall be deemed to supersede or conflict with the provisions of the consent decree entered in *United States v. Bay Chemical, et al.*, W.D. Wash. case number C99-5521RJ;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability to the United States or State.

XXI. REOPENERS

44. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to institute proceedings against each Defendant in this action or in a new action for:

a. Claims based on a failure of the Defendant to satisfy the requirements of this Consent Decree; and

b. Additional claims for Natural Resource Damages if conditions, factors or information in the Commencement Bay Environment, not known to the Trustees at the time of entry of this Consent Decree, are discovered that, together with any other relevant information, indicates that there is a threat to the environment, or injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude significantly greater than was known, at the time of entry of this

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Consent Decree, which is attributable to the Defendant. For purposes of this Paragraph, information known to the Trustees shall consist of any information in the files of, or otherwise in the possession of any one of the individual Trustees, or their contractors or consultants who worked on the Trustees' natural resource damages assessment and liability allocation projects.

XXII. COVENANT NOT TO SUE BY DEFENDANTS

45. Each Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe or their contractors or employees, for any civil claims or causes of action relating to Natural Resource Damages.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

46. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action they each may have with respect to any matter, transaction, or occurrence relating in any way to the Commencement Bay Environment against any person not a Party hereto.

47. The Parties agree, and by entering this Consent Decree this Court finds, that each Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW 70.105D.040(4)(d), for Natural Resource Damages.

48. Each Defendant agrees that it will notify the Trustees and the United States in writing no later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages. Each Defendant also agrees that it will notify the Trustees and the United States in writing within 10 days of service of a complaint or claim upon them relating to a suit or claim for contribution for Natural Resource Damages. In addition, each Defendant will notify the Trustees and the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial for matters related to this Decree.

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49. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource Damages, no Defendant shall assert, and nor may it maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 42 and 45.

XXIV. NOTICES AND SUBMISSIONS

50. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Decree, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of the Decree for Plaintiffs and Defendants.

As to the United States and as to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(DJ # 90-11-2-1049)

As to NOAA:

Robert A. Taylor
NOAA Office of General Counsel GCNR/NW
7600 Sand Point Way NE
Seattle, WA 98115-0070

As to the United States Department of the Interior:

Jeff Krausmann
U.S. Fish & Wildlife Service
510 Desmond Dr. SE, Suite 102

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Lacey, WA 98503-1263

As to the State:

Craig Thompson
Toxics Cleanup Program
State of Washington
P.O. Box 47600
Olympia, WA 98504-7600

As to the Puyallup Tribe of Indians:

Bill Sullivan
Environmental Department
Puyallup Tribe of Indians
1850 Alexander Avenue
Tacoma, WA 98421

As to the Muckleshoot Indian Tribe:

Mr. Rob Otsea
Office of the Tribal Attorney
Muckleshoot Indian Tribe
39015 172nd Avenue S.E.
Auburn, WA 98002

As to AOL Express, Inc.:

Valerie Lewis
Asst. V.P. and Asst. Secretary
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94619

As to Arkema Inc.:

Doug Loutzenhiser
Director, Envmt. & Sustainable Developmt.
Arkema Inc.
900 First Avenue
King of Prussia, PA 19406

Steven T. Parkinson
Groff Murphy Tractenberg & Everard
300 East Pine Street
Seattle, WA 98122

As to Buffelen Woodworking Company:

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Loren Dunn
Riddell Williams P.S.
1001 Fourth Avenue Plaza, #4500
Seattle, WA 98154

As to CHS Inc.:

Tod Gold
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

As to Edward and Molly Barry, Charles and Patricia Curran, Donald S. and Barbara Olson, Kay E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole & Charlie's Marinas and West Waterway Associates, P.S.:

Gregory A. Jacoby
McGavick Graves
Suite 500
1102 Broadway
Tacoma, WA 98402-3534

As to Dunlap Towing Company:

James L. Dunlap, President
P.O. Box 593
La Conner, Washington 98257

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue
Tacoma, WA 98402

As to Estate of Norman Nordlund, Hylebos Boat Haven, Phyllis Nordlund, Nordlund Boat Company, Inc., and Nordlund Properties, Inc.:

Gregory A. Jacoby
McGavick Graves
Suite 500
1102 Broadway
Tacoma, WA 98402-3534

As to FOF, Inc.:

Patrick M. Paulich
Thorsrud Cane & Paulich
1325 Fourth Avenue, Suite 1300

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Seattle, Washington 98101

As to Hylebos Marina Inc.:

James V. Handmacher
Morton McGoldrick, P.S.
P.O. Box 1533
820 A Street, Suite 600
Tacoma, WA 98401

As to Judy Johnson:

James V. Handmacher
Morton McGoldrick, P.S.
P.O. Box 1533
820 A Street, Suite 600
Tacoma, WA 98401

As to Jones Chemicals, Inc.:

Timothy J. Gaffney
Executive Vice President
JCI Jones Chemicals, Inc.
100 Sunny Sol Boulevard
Caledonia, New York 14423

As to Joseph Simon & Sons and Rail & Locomotive Equipment Company (a Division of Joseph Simon & Sons):

Philip Simon, President
2200 East River Street
Tacoma, Washington 98421

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue
Tacoma, WA 98402

As to Louisiana-Pacific Corporation:

Bert Krages
Attorney at Law
6665 SW Hampton St., Suite 200
Portland, OR 97223

As to Noveon Kalama Chemical, Inc.:

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John W. Watson
Baker & McKenzie LLP
One Prudential Plaza
130 East Randolph Street, Suite 3700
Chicago, IL 60601

As to Don and Alba Oline:

Clark J. Davis
Davis Roberts and Johns PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

As to Ronald Oline:

James V. Handmacher
Morton McGoldrick, P.S.
P.O. Box 1533
820 A Street, Suite 600
Tacoma, WA 98401

As to Portac, Inc.:

Tod Gold
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

As to Rayonier Properties, LLC:

R. Paul Beveridge
Heller Ehrman
Suite 6100
701 Fifth Avenue
Seattle, WA 98104

Donald L. Schwendiman
Rayonier Properties, LLC
3888 NW Randall Way, Suite 204
Silverdale, WA 98383

As to Estate of Leslie P. Sussman, Paula Rose, Sussman Rose Sussman, Alan Sussman and Sophie Sussman:

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue

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Seattle, WA 98115-0070
(206) 526-6616

Tacoma, WA 98402

As to USG Interiors, Inc.

Howard (Terry) Hall
Wolfstone, Panchot & Bloch, P.S., Inc.
801 Second Avenue, Suite 1500
Seattle, WA 98104

Christopher J. McElroy
Assistant General Counsel
USG Corp.
125 S. Franklin Street
Chicago, IL 60606

As to Wasser & Winters Co., Inc.:

James C. Hanken
Law Offices of James C. Hanken
999 Third Avene, Suite 3210
Seattle, WA 98104

As to Zidell Marine Corporation:

Kathryn M. Silva
Zidell Marine Corporation
3121 SW Moody
Portland, OR 97239

Suzanne Lacampagne
Miller Nash LLP
111 SW Fifth Avenue, Suite 3400
Portland, OR 97204

XXV. EFFECTIVE DATE

51. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVI. RETENTION OF JURISDICTION

52. This Court will retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.

XXVII. INTEGRATION/APPENDICES

53. This Decree and its appendices constitute the final, complete, and exclusive agreement and understanding with respect to the settlement embodied in this Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree. The following appendices are attached to and incorporated into this Consent Decree:

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

Appendix A Old Soldier's Home Setback Levee Setback Project Project Description

Appendix B Order Directing the Deposit of Natural Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8, 1993)

Appendix C Project Site deed restrictions

XXVIII. MODIFICATION

54. No material modifications shall be made to any requirement under this Consent Decree without written notification to and written approval of the United States Department of Justice and the Trustees, Defendants and the Court. Modifications to this Consent Decree exclusive of the appendices incorporated within that do not materially alter the terms of this Consent Decree may be made by written agreement between the United States Department of Justice, the Trustees and Defendants. Modifications to any of the appendices to this Consent Decree that do not materially alter any of the terms of this Consent Decree may be made by written agreement between the Trustees and Defendants. The following modifications shall be deemed not to materially alter the terms of this Consent Decree or the appendices incorporated herein:

a. Extensions of deadlines contained in Appendix A, provided that the total of such extensions shall equal one year or less;

b. Project design changes that increase the Project scale, or that decrease the Project scale by no more than 10% (ten percent) of the Project's area; or

c. Extensions of deadlines for reports, accounts, plans or proposals of 45 days or less.

XXIX. ENFORCEMENT

55. The requirements of this Consent Decree, including but not limited to deadlines, schedules and Project designs, are independently enforceable and the delay or failure of the Trustees to enforce any requirement will not preclude or prejudice the subsequent enforcement of the same or another requirement.

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Seattle, WA 98115-0070
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XXX. TERMINATION

56. This Decree shall terminate upon written notice, made in accordance with Section XXIV, by Defendants to all Plaintiffs that all actions required under Section VIII have been taken, all payments required under Sections VIII, XII and XIII (and under Sections XIV and XVI, if applicable) have been made and all other applicable requirements of this Decree have been fulfilled, and subsequent written notice by the United States confirming the performance by Defendants of their obligations under this Decree. Such notice by the United States shall be sent within 45 calendar days of receipt by all Plaintiffs of the required payments and notice from Defendants. If the United States fails to send such notice, this Decree shall terminate automatically on the 46th day following receipt by all Plaintiffs of the required payments and notice from Defendant. The following provisions of this Decree shall survive termination: Section IX ("Post-Construction Alterations; Further Restoration Actions"); Section X ("Access to Information and Project Site"); Section XIX ("Covenant Not to Sue by Plaintiffs"); Section XX ("Reservations of Rights"); Section XXI ("Reopeners"); Section XII ("Covenant Not to Sue by Defendants"); and Section XXIII ("Effect of Settlement; Contribution Protection").

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

57. This Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations that indicate this Decree is inappropriate, improper, or inadequate. Each Defendant consents to the entry of this Decree without further notice.

58. If for any reason this Court does not approve this Decree in the form presented, or does not approve this Decree by June 30, 2006 and Pierce County does not extend the applicable deadline for performance contained in the Project agreement with Defendants, this settlement agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

59. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and each undersigned representative of the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies that he or she is authorized to enter into the terms and conditions of this Decree and to execute and bind legally the Party that he or she represents to this document.

60. Each Defendant agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer supports entry of the Decree.

61. Each Defendant will identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on behalf of it with respect to all matters relating to this Decree. Each Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

XXXIII. FINAL JUDGMENT

62. Upon approval and entry of this Decree by the Court, this Decree will constitute the final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, and each Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___DAY OF_____2006.

_____
United States District Judge

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v. AOL Express, Inc., *et al.*

FOR THE UNITED STATES OF AMERICA

Date: _____ _____

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

FOR THE STATE OF WASHINGTON

Date: _____ _____

Date : _____ _____

Assistant Attorney General
State of Washington

FOR THE PUYALLUP TRIBE OF INDIANS

Date: _____ _____

FOR THE MUCKLESHOOT INDIAN TRIBE

Date: _____ _____

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v. AOL Express, Inc., *et al.*

FOR THE UNITED STATES OF AMERICA

Date: _____

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

FOR THE STATE OF WASHINGTON

Date: 1/23/06

Date: 1/18/06

Assistant Attorney General
State of Washington

FOR THE PUYALLUP TRIBE OF INDIANS

Date: _____

FOR THE MUCKLESHOOT INDIAN TRIBE

Date: _____

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v. AOL Express, Inc., *et al.*

FOR THE UNITED STATES OF AMERICA

Date: _____ _____

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

FOR THE STATE OF WASHINGTON

Date: _____ _____

Date : _____ _____

Assistant Attorney General
State of Washington

FOR THE PUYALLUP TRIBE OF INDIANS

Date: 2/1/06

FOR THE MUCKLESHOOT INDIAN TRIBE

Date: _____ _____

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, *et al.* v. AOL Express, Inc., *et al.*

FOR THE UNITED STATES OF AMERICA

Date: _____ _____

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

FOR THE STATE OF WASHINGTON

Date: _____ _____

Date : _____ _____

Assistant Attorney General
State of Washington

FOR THE PUYALLUP TRIBE OF INDIANS

Date: _____ _____

FOR THE MUCKLESHOOT INDIAN TRIBE

Date: 1-20-06

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR SAFEWAY INC., ON BEHALF OF AOL EXPRESS, INC., A WHOLLY-OWNED INDIRECT SUBSIDIARY

Date: January 17, 2006

Valerie D. Lewis
Assistant V.P. & Asst. Sec'y
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA. 94588

Agent authorized to receive service of process by mail on behalf of AOL EXPRESS, INC. with respect to all matters relating to this Decree:

Valerie D. Lewis
Assistant V.P. & Assistant Sec'y
Safeway Inc.
5918 Stoneridge Mall Road
Pleasanton, CA. 94588

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR ARKEMA INC.

Date: January 5, 2006

Gerard E. Robert

Agent authorized to receive service of process by mail on behalf of ARKEMA INC. with respect to all matters relating to this Decree:

Arkema Inc.
2000 Market Street
Philadelphia, PA 19103
Attn: General Counsel

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR EDWARD BARRY

Date: 1-20-2006

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of EDWARD BARRY with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR MOLLY BARRY

Date: 1.20.2006

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of MOLLY BARRY with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

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NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR BUFFELEN WOODWORKING CO.

Date: 1/24/06

Agent authorized to receive service of process by mail on behalf of BUFFELEN WOODWORKING CO. with respect to all matters relating to this Decree:

Loren Dunn
Riddell Williams P.S.
1001 Fourth Avenue Plaza, #4500
Seattle, WA 98154

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR CHS INC.

Date: 1/13/06

Agent authorized to receive service of process by mail on behalf of CHS INC. with respect to all matters relating to this Decree:

Todd Gold
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR PATRICIA CURRAN

Date: 1. 20. 2006

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of PATRICIA CURRAN with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
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7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR CHARLES P. CURRAN

Date: 1-20-2000

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of CHARLES P. CURRAN with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR DUNLAP TOWING COMPANY

Date: 1-6-06

Agent authorized to receive service of process by mail on behalf of DUNLAP TOWING COMPANY with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402
253-572-4500

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR ESTATE OF NORMAN NORDLUND

Date: 1/11/06

Personal Representative

Agent authorized to receive service of process by mail on behalf of ESTATE OF NORMAN NORDLUND with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR ESTATE OF LESLIE P. SUSSMAN

Date: 1/11/06

Personal Representative

Agent authorized to receive service of process by mail on behalf of ESTATE OF LESLIE P. SUSSMAN with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue
Tacoma, WA 98402

U.S. Department of Justice
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7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR F.O.F., INC.

Date: January 12, 2006 _____

Agent authorized to receive service of process by mail on behalf of F.O.F., INC. with respect to all matters relating to this Decree:

Patrick Paulich
Thorsrud Cane & Paulich
1325 4TH Avenue, Suite 1300
Seattle, WA 98101

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NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR HYLEBOS BOAT HAVEN

Date: 1/18/06

Agent authorized to receive service of process by mail on behalf of HYLEBOS BOAT HAVEN with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR HYLEBOS MARINA INC.

Date: 1-31-2006

Ron Olive, President

Agent authorized to receive service of process by mail on behalf of HYLEBOS MARINA INC. with respect to all matters relating to this Decree:

James V. Handmacher
Morton McGoldrick, P.S.
820 "A" Street, Suite 600
PO Box 1533
Tacoma, WA 98401-1533

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR JUDY JOHNSON

Date: 1-10-06

Agent authorized to receive service of process by mail on behalf of JUDY JOHNSON with respect to all matters relating to this Decree:

James V. Handmacher
Morton McGoldrick, P.S.
820 "A" Street, Suite 600
PO Box 1533
Tacoma, WA 98401

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NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR JONES CHEMICALS, INC.

Date: 1/9/06

Timothy J. Gaffney
Executive Vice President

Agent authorized to receive service of process by mail on behalf of JONES CHEMICALS, INC. with respect to all matters relating to this Decree:

Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808
(888) 690-2882
sop@cscinfo.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR JOSEPH SIMON & SONS/RAIL & LOCOMOTIVE EQUIPMENT CO.

Date: 1-5-06

Philip Simon
President

Agent authorized to receive service of process by mail on behalf of JOSEPH SIMON & SONS/RAIL & LOCOMOTIVE EQUIPMENT CO. with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma WA 984022

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR LOUISIANA-PACIFIC CORPORATION

Date: 1/17/06

Neil Sherman
Director, Corporate Real Estate
and Business Development

Agent authorized to receive service of process by mail on behalf of LOUISIANA-PACIFIC CORPORATION with respect to all matters relating to this Decree:

United States Corporation Company
202 North Phoenix Street
Olympia, Washington 98506

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR PHYLLIS NORDLUND

Date: 1/11/06

Agent authorized to receive service of process by mail on behalf of PHYLLIS NORDLUND with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR NORDLUND BOAT COMPANY, INC.

Date: 1-11-06

Agent authorized to receive service of process by mail on behalf of NORDLUND BOAT COMPANY, INC. with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR NORDLUND PROPERTIES, INC.

Date: 1-11-06

Agent authorized to receive service of process by mail on behalf of NORDLUND PROPERTIES, INC. with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR NOVEON KALAMA CHEMICAL, INC.

Date: 1/23/06 _____

Agent authorized to receive service of process by mail on behalf of NOVEON KALAMA CHEMICAL, INC. with respect to all matters relating to this Decree:

John W. Watson
Baker & McKenzie
One Prudential Plaza
130 E. Randoph Drive
Chicago, Illinois 60601
(312) 861-2646
(312) 698-2969

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR ALBA OLINE

Date: 1-23-2006

Personal Representative of Alba M Oline Estate,

Agent authorized to receive service of process by mail on behalf of ALBA OLINE with respect to all matters relating to this Decree:

Ron Oline
1722 186th Ave E
Lakeetapps, WA 98391

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR DON OLINE

Date: 1-27-2006

Agent authorized to receive service of process by mail on behalf of DON OLINE with respect to all matters relating to this Decree:

Clark J. Davis
Davis Roberts & Johns, PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR RONALD OLINE

Date: 1-10-2006 _____

Agent authorized to receive service of process by mail on behalf of RONALD OLINE with respect to all matters relating to this Decree:

James V. Handmacher
Morton McGoldrick, P.S.
820 "A" Street, Suite 600
PO Box 1533
Tacoma, WA 98401

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR BARBARA OLSON

Date: 1·20·2006

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of BARBARA OLSON with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR DONALD S. OLSON

Date: 1. 20. 2006 _____

Agent authorized to receive service of process by mail on behalf of DONALD S. OLSON with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR KAY E. OLSON

Date: 1-20-2006

ATTORNEY IN FACT

Agent authorized to receive service of process by mail on behalf of KAY E. OLSON with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR OLSON & CURRAN BARNACLE STOPPING SALT WATER FREE VERTICAL DRY DOCK CO. dba OLE & CHARLIE'S MARINAS

Date: 1.20.2006

Agent authorized to receive service of process by mail on behalf of OLSON & CURRAN BARNACLE STOPPING SALT WATER FREE VERTICAL DRY DOCK CO. dba OLE & CHARLIE'S MARINAS with respect to all matters relating to this Decree:

Gregory A. Jacoby
McGavick Graves, P.S.
1102 Broadway, Suite 500
Tacoma, WA 98402
(253) 627-1181
(253) 627-2247 (fax)
gaj@mcgavick.com

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR PORTAC, INC.

Date: 1-24, 2006

Agent authorized to receive service of process by mail on behalf of PORTAC, INC. with respect to all matters relating to this Decree:

Tod A. Gold
Salter Joyce Ziker, PLLC
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR RAYONIER PROPERTIES, LLC

Date: Jan 11, 2006

Assistant General Counsel

Agent authorized to receive service of process by mail on behalf of RAYONIER PROPERTIES, LLC with respect to all matters relating to this Decree:

Donald L. Schwendiman
Assistant General Counsel
Rayonier Properties, LLC
3888 N.W. Randall Way, Suite 204
Silverdale, WA 98383

R. Paul Beveridge
Heller Ehrman
Suite 6100
701 Fifth Avenue
Seattle, WA 98104

U.S. Department of Justice
NOAA GC - DOJ DARC
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Seattle, WA 98115-0070
(206) 526-6616

FOR PAULA ROSE

Date: 1-10-06 _____

Partner

Agent authorized to receive service of process by mail on behalf of PAULA ROSE with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR SUSSMAN ROSE SUSSMAN, a Washington General Partnership composed of Leslie P. and Sophie Sussman, Paula Rose and Alan Sussman

Date: 1/11/06

Sophie Sussman
Partner

Agent authorized to receive service of process by mail on behalf of SUSSMAN ROSE SUSSMAN with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402

U.S. Department of Justice
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7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR ALAN SUSSMAN

Date: 11 January 2006

Agent authorized to receive service of process by mail on behalf of ALAN SUSSMAN with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR SOPHIE SUSSMAN

Date: 1/11/06

Agent authorized to receive service of process by mail on behalf of SOPHIE SUSSMAN with respect to all matters relating to this Decree:

Guy J. Sternal
Eisenhower & Carlson, PLLC
1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

FOR USG INTERIORS, INC.

Date: January 11, 2006

Christopher J. McElroy
Assistant General Counsel
USG Corporation (Parent)

Agent authorized to receive service of process by mail on behalf of USG INTERIORS, INC. with respect to all matters relating to this Decree:

Stanley L. Ferguson
Executive Vice President and General Counsel
USG Corporation
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Chicago, IL 60606-4678

U.S. Department of Justice
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FOR WASSER & WINTERS CO., INC.

Date: 1/9/06

Ronald G. Berg
Vice President

66 Port Way
P. O. Box 396
Longview, WA 98632

Agent authorized to receive service of process by mail on behalf of WASSER & WINTERS CO., INC. with respect to all matters relating to this Decree:

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FOR WEST WATERWAY ASSOCIATES, P.S.

Date: 1. 20. 2006

Agent authorized to receive service of process by mail on behalf of WEST WATERWAY ASSOCIATES, P.S. with respect to all matters relating to this Decree:

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ORIGINAL

FOR ZIDELL MARINE CORPORATION

Date: 01/10/06

Agent authorized to receive service of process by mail on behalf of ZIDELL MARINE CORPORATION with respect to all matters relating to this Decree:

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