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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,))
Plaintiffs,)
)
 vs.)
)
PETROLEUM RECLAIMING SERVICE, INC.,)
)
Defendant.)
)

CIVIL NO. C09-5157RJB
CONSENT DECREE

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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 defendant Petroleum Reclaiming Service, Inc. (“Defendant”) 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 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 Defendant 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 State 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, and 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

1 groundwater of the Commencement Bay Environment, including but not limited to arsenic, antimony,
2 cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
3 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated
4 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in
5 the marine sediments of Commencement Bay's Hylebos Waterway.
6

7 C. The Trustees began assessing natural resource damages in the Commencement Bay
8 Environment in October 1991 by finding that hazardous substances had been released into the
9 Commencement Bay Environment; that public trust natural resources had likely been injured by the
10 releases; that data sufficient to pursue a natural resource damage assessment were available or could
11 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
12 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
13 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
14 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,
15 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of
16 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
17 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
18 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
19 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not
20 participate in subsequent stages of the damage assessment, and the Trustees continued the process
21 independently. The Trustees have now completed a series of studies during Phase 2 of the damage
22 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish and
23 salmonids. Results of those studies were published in a series of reports, consisting of
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1 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
2 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
3 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
4 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
5 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.
6 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
7 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon; and
8 Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998,
9 Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos Waterway.
10 Based on this research, the Plaintiffs and Defendant (collectively, the “Parties” and, individually, a
11 “Party”) agree that no further natural resource damage assessment is required to effectuate the
12 purposes of this Consent Decree, with respect to Defendant.

13
14
15 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to section 107 of
16 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
17 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,
18 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
19 Commencement Bay Environment, including the costs of assessing the damages.

20
21 E. Plaintiffs allege in the Complaint that Defendant owns or in the past owned and/or
22 operated real property or facilities, identified by the Trustees as the PETROLEUM RECLAIMING
23 SERVICES site, from which storm water, surface water runoff, wastewater, other process
24 discharges, and/or groundwater have flowed to the Commencement Bay Environment. Plaintiffs also
25 allege that investigations by EPA and others have detected concentrations of hazardous substances
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1 in soils, groundwater and/or sediments on or in those properties or facilities. Some of these
2 hazardous substances are found in the sediments of the Commencement Bay Environment.

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

12
13 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator of a vessel or a
14 facility; (b) a person who at the time of disposal or release of any hazardous substance owned or
15 operated any facility at which such hazardous substances were disposed of; (c) a person who by
16 contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter
17 for transport for disposal or treatment, of hazardous substances owned or possessed by such person,
18 by any other party or entity, or otherwise generated any hazardous substance disposed of or treated,
19 at any facility or incineration vessel owned or operated by another party or entity and containing such
20 hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for
21 transport to disposal or treatment facilities, incineration vessels or sites selected by such person from
22 which there is a release or a threatened release of a hazardous substance that causes the incurrence
23 of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

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25
26 H. Defendant denies all the allegations of the Complaint.

1 I. Although the Trustees have initiated but not yet completed a natural resource damage
2 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
3 information sufficient to support a settlement that is fair, reasonable and in the public interest.
4

5 J. To facilitate resolving natural resource damage claims, the Trustees developed a
6 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
7 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage-assessment
8 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
9 developed an estimate of the amount of injury to natural resources that had occurred as a result of
10 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
11 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
12 time, discounted to the current year. The Trustees used the term discounted ecological service
13 acre-years (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
14 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
15 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
16 restoration sufficient to compensate for the loss of 1526.77 DSAYs.
17

18 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
19 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
20 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
21 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
22 liable for all injuries to natural resources that have resulted from the contamination. As a
23 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
24 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
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1 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
2 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
3 existing information from the files of EPA, the Washington State Department of Ecology, and local
4 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
5 to the contamination.
6

7 L. To insure that all PRPs had an equal opportunity to be informed of and to offer their
8 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
9 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
10 revised the report based upon the comments received, and made it available to PRPs in final form.
11

12 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
13 among the various industrial sites along the Hylebos Waterway. As a result of their allocation process,
14 the Trustees allocated a total of 11.371 DSAYs to the Defendant. The Trustees also allocated a total
15 of \$98,404.76 in damage assessment costs relating to the Hylebos Waterway to the Defendant.
16

17 N. The Trustees quantified natural resource damages in their Hylebos Waterway report
18 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing
19 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees
20 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand
21 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration
22 projects. The cash damages equivalent of the 11.371 DSAYs allocated to Defendant totals
23 \$591,292.00. When combined with the damage assessment costs allocated to the Defendant, the
24 dollar value of the Trustees' claim asserted against Defendant totals \$689,696.76. To reflect the
25 passage of time between the Trustees' initial settlement proposal and the negotiation of this Consent
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1 Decree, the Trustees have agreed to settle their natural resource damage claims against Defendant
2 associated with the Commencement Bay Environment for cash payments totaling \$750,000.00 in
3 natural resource damages and damage assessment costs. Defendant has agreed to pay the Trustees
4 the identified sum in return for the Trustees' covenants not to sue Defendant for Natural Resource
5 Damages as provided below in Paragraph 15.

7 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or
8 occurrences alleged in the Complaint.

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

14 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
15 AND DECREED:

17 III. JURISDICTION AND VENUE

18 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
19 §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has
20 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
21 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
22 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
23 Court's jurisdiction to enter and enforce this Decree.

25 IV. PARTIES BOUND

26 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
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1 Indians, the Muckleshoot Indian Tribe and upon Defendant and their heirs, successors and assigns.
2 Any change in ownership or corporate or other legal status, including but not limited to any transfer
3 of assets or real or personal property, will in no way alter the status or responsibilities of Defendant
4 under this Decree.
5

6 V. DEFINITIONS

7 3. Unless otherwise expressly provided, terms used in this Decree that are defined in
8 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
9 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
10 attached appendix, the following definitions will apply:
11

12 a. "Commencement Bay Environment" means the waters of Commencement Bay,
13 State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas, estuaries
14 and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point. These
15 waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St. Paul
16 Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee Waterway,
17 Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is not limited to
18 the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended by the EPA,
19 including the B&L Landfill, and areas affected by releases of hazardous substances within the
20 Commencement Bay Nearshore/Tideflats Superfund Site.
21

22 b. "Commencement Bay Restoration Account" means the Commencement Bay
23 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
24 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
25 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).
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1 c. "DSAYs" means discounted ecological service acre-years, the metric
2 established by the Trustees to determine the scale of Natural Resource Damages liability associated
3 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
4 injury to, destruction or loss of natural resources giving rise to liability.
5

6 d. "Defendant" means Petroleum Reclaiming Service, Inc..

7 e. "Natural Resource Damages" means damages, including costs of damage
8 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
9 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
10 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
11 natural resources resulting from releases of hazardous substances or discharges of oil to the
12 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
13 Waterway.
14

15 f. "Parties" mean the United States, the State of Washington, the Puyallup Tribe
16 of Indians, the Muckleshoot Indian Tribe and Petroleum Reclaiming Service, Inc..
17

18 g. "Plaintiffs" mean the United States, the State, the Puyallup Tribe of Indians,
19 and the Muckleshoot Indian Tribe.
20

21 h. "Trustees" mean the United States Department of Commerce, acting through
22 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
23 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.
24

24 VI. GENERAL PROVISIONS

25 4. The Complaint states claims upon which relief may be granted.

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

2 VII. PAYMENT OF NATURAL RESOURCE DAMAGES

3 AND DAMAGE ASSESSMENT COSTS

4
5 6. Within 30 days of entry of this Decree, Defendant will pay to the Trustees
6 \$638,391.06 for Natural Resource Damages. This payment will be made by a certified check made
7 payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Natural
8 Resource Restoration Account.

9
10 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums
11 totaling \$111,608.94 in damage assessment costs. These sums shall be paid in the following amounts
12 and particulars:

13 Trustee: National Oceanic and Atmospheric Administration

14 Amount: \$90,034.76

15 Trustee: U.S. Department of the Interior

16 Amount: \$15,052.55

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

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25
26 Payments to the other Trustees shall be made by certified checks, bearing the notation

1 “Petroleum Reclaiming Service, Inc. - Commencement Bay Assessment Costs,” in the amounts
2 indicated and made payable and addressed as follows:

3
4 Trustee: State of Washington
5 Amount: \$1,857.37
6 Payee: State of Washington/Department of Ecology
7 Address: State of Washington
8 Department of Ecology
9 Attention: Fiscal Office
10 P.O. Box 47611
11 Lacey, WA 98504-7611

12 Trustee: Puyallup Tribe of Indians
13 Amount: \$4,249.35
14 Payee: Puyallup Tribe of Indians
15 Address: Mr. William Sullivan
16 Environmental Protection Department
17 Puyallup Tribe of Indians
18 3009 Portland Avenue
19 Tacoma, WA 98404

20 Trustee: Muckleshoot Indian Tribe
21 Amount: \$414.91
22 Payee: Muckleshoot Indian Tribe
23 Address: Mr. Rob Otsea
24 Office of the Tribal Attorney
25 Muckleshoot Indian Tribe
26 39015 172nd Avenue S.E.
27 Auburn, WA 98002

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

1 VIII. FAILURE TO COMPLY WITH CONSENT DECREE

2 9. Interest on Late Payments. If Defendant fails to make any payment under
3 Paragraphs 6 and 7 by the required due date, interest shall be assessed at the rate specified for interest
4 on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
5 compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The
6 applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is
7 subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance
8 through the date of payment.
9

10 10. Stipulated Penalties.

11 a. If any amounts due under Paragraphs 7 and 8 are not paid by the required date,
12 Defendant will be in violation of this Decree and, as a stipulated penalty, in addition to the interest
13 required by Paragraph 9, will increase the financial contributions it makes under this Consent Decree
14 to fund habitat restoration actions by paying the Trustees \$1,000 per violation per week that such
15 payment is late. After the second week that such payment is late, the stipulated penalty shall apply
16 to each additional day that the payment is late.
17

18 b. Stipulated penalties are due and payable within 30 days of the date of the
19 demand for payment of the penalties by the Trustees. All payments to the Trustees under this
20 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will
21 be deposited in the Commencement Bay Restoration Account.
22

23 c. At the time of each payment, Defendant will send notice that payment has been
24 made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). This
25 notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the civil
26

1 action number.

2 d. Penalties will accrue as provided in this Paragraph regardless of whether the
3 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties
4 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due
5 and will continue to accrue through the date of payment. Nothing in this Decree prevents the
6 simultaneous accrual of separate penalties for separate violations of this Decree.
7

8 11. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse Plaintiffs
9 for all costs of such action, including but not limited to costs of attorney time.
10

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

13 13. Notwithstanding any other provision of this Section, Plaintiffs may, in their
14 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
15 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment
16 as required by Section VII or from performance of any other requirement of this Consent Decree.
17

18 14. The Trustees may use sums paid as stipulated penalties under Paragraph 10 to pay
19 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore
20 Commencement Bay natural resources.
21

22 IX. COVENANT NOT TO SUE BY PLAINTIFFS

23 15. Except as specifically provided in Section X (Reservations of Rights) below, Plaintiffs
24 covenant not to sue or to take administrative action against Defendant pursuant to Section 107(a) of
25 CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water Act
26 (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.
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1 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon
2 receipt by the Registry of the Court and by each of the Trustees of all payments required by
3 Paragraphs 6 and 7 of Section VII. This covenant not to sue is conditioned upon the satisfactory
4 performance by Defendant of its obligations under this Decree. This covenant not to sue extends only
5 to Defendant and its heirs, successors, and assigns, and does not extend to any other person.
6

7 **X. RESERVATIONS OF RIGHTS**

8 16. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant
9 with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in
10 Paragraph 15. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree
11 is without prejudice to, all rights against Defendant with respect to:
12

- 13 a. liability for failure of Defendant to meet a requirement of this Decree;
- 14 b. liability for costs of response incurred or to be incurred by Plaintiffs;
- 15 c. liability for injunctive relief or administrative order enforcement under Section 106 of
16 CERCLA, 42 U.S.C. § 9606, and
- 17 d. criminal liability to the United States or State.
18

19 **XI. REOPENERS**

20 17. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve, and
21 this Consent Decree is without prejudice to, the right to institute proceedings against Defendant in
22 this action or in a new action for:
23

- 24 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent
25 Decree; and
- 26 b. Additional claims for Natural Resource Damages if conditions, factors or information
27

1 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this
2 Consent Decree, are discovered that, together with any other relevant information, indicates that there
3 is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude
4 significantly greater than was known, at the time of entry of this Consent Decree, which is attributable
5 to the Defendant.
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7 **XII. COVENANT NOT TO SUE BY DEFENDANT**

8 18. Defendant covenants not to sue and agrees not to assert any claims or causes of action
9 against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe
10 or their contractors or employees, for any civil claims or causes of action relating to Natural Resource
11 Damages.
12

13 **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

14 19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
15 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
16 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
17 demands, and causes of action they each may have with respect to any matter, transaction, or
18 occurrence relating in any way to the Commencement Bay Environment against any person not a
19 Party hereto.
20

21 20. The Parties agree, and by entering this Consent Decree this Court finds, that
22 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
23 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
24 70.105D.040(4)(d) for Natural Resource Damages.
25

26 21. Defendant agrees that it will notify the Trustees and the United States in writing no
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1 later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.
2 Defendant also agrees that it will notify the Trustees and the United States in writing within 10 days
3 of service of a complaint or claim upon Defendant relating to a suit or claim for contribution for
4 Natural Resource Damages. In addition, Defendant will notify the Trustees and the United States
5 within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of
6 receipt of any order from a court setting a case for trial for matters related to this Decree.
7

8 22. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for
9 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource
10 Damages, Defendant shall not assert, and may not maintain, any defense or claim based upon the
11 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
12 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent
13 proceeding were or should have been brought in the instant case; provided, however, that nothing
14 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 15 and
15 18.
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18 XIV. NOTICES AND SUBMISSIONS

19 23. Whenever notice is required to be given or a document is required to be sent by one
20 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses
21 specified below, unless those individuals or their successors give notice of a change to the other
22 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice
23 requirement of the Decree for Plaintiffs and Defendant.
24

25 As to the United States and as to DOJ:
26 Chief, Environmental Enforcement Section
27
28

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 Environment and Natural Resources Division
2 U.S. Department of Justice
3 P.O. Box 7611
4 Washington, D.C. 20044-7611
5 (DJ # 90-11-2-1049)

6 As to NOAA:

7 Robert A. Taylor
8 NOAA Office of General Counsel GCNR/NW
9 7600 Sand Point Way NE
10 Seattle, WA 98115-0070

11 As to the United States Department of the Interior:

12 Jeff Krausmann
13 U.S. Fish & Wildlife Service
14 510 Desmond Dr. SE, Suite 102
15 Lacey, WA 98503-1263

16 As to the State:

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

22 As to the Puyallup Tribe of Indians:

23 Bill Sullivan
24 Environmental Department
25 Puyallup Tribe of Indians
26 3009 Portland Avenue
27 Tacoma, WA 98404

28 As to the Muckleshoot Indian Tribe:

1 Rob Otsea
2 Office of the Tribal Attorney
3 Muckleshoot Indian Tribe
4 39015 172nd Avenue S.E.
5 Auburn, WA 98002

6 As to Defendant:

7 John R. Spencer
8 Spencer Law Firm, LLC
9 1326 Tacoma Ave. S., Suite 101
Tacoma, WA 98402-1983

10 XV. EFFECTIVE DATE

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

13 XVI. RETENTION OF JURISDICTION

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

16 XVII. INTEGRATION/APPENDICES

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

22 Appendix A is the Order Directing the Deposit of Natural Resource Damages into the
23 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8,
24 1993).

1 XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2 27. This Decree will be lodged with the Court for a period of not less than 30 days for
3 public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their
4 consent if the comments regarding the Decree disclose facts or considerations that indicate this
5 Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Decree
6 without further notice.
7

8 28. If for any reason this Court declines to approve this Decree in the form presented,
9 this agreement may be voided at the sole discretion of any Party, and the terms of the agreement
10 may not be used as evidence in any litigation between the Parties.
11

12 XIX. SIGNATORIES/SERVICE

13 29. The Assistant Attorney General for the Environment and Natural Resources
14 Division of the United States Department of Justice and each undersigned representative of the
15 State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that he
16 or she is authorized to enter into the terms and conditions of this Decree and to execute and bind
17 legally the Party that he or she represents to this document.
18

19 30. Defendant agrees not to oppose entry of this Decree by this Court or to challenge
20 any provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer
21 supports entry of the Decree.
22

23 31. Defendant will identify on the attached signature page the name and address of an
24 agent who is authorized to accept service of process by mail on behalf of it with respect to all
25 matters relating to this Decree. Defendant agrees to accept service in that manner and to waive
26 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any
27
28

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

2 XX. FINAL JUDGMENT

3 32. Upon approval and entry of this Decree by the Court, this Decree will constitute
4 the final judgment between and among the United States, the State, the Puyallup Tribe of Indians,
5 the Muckleshoot Indian Tribe, and Defendant. The Court finds that there is no just reason for
6 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
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9 SO ORDERED THIS 5th DAY OF June, 2009.

10 

11 ROBERT J. BRYAN
12 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Petroleum Reclaiming Service, Inc.

3 FOR THE UNITED STATES OF AMERICA
4

5
6 Date: 3/4/09 _____

s/ _____

7 Ronald J. Tenpas
8 Assistant Attorney General
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 Washington, D.C. 20530

12 FOR THE STATE OF WASHINGTON
13

14 Date: 1/20/09 _____

_____/S/_____

15 Jay J. Manning
16 Director
17 Department of Ecology

18 Date : 10/27/08 _____

_____/S/_____

19 Assistant Attorney General
20 State of Washington

21
22 FOR THE PUYALLUP TRIBE OF INDIANS
23

24 Date: 11/3/08 _____

_____/S/_____

25
26 Herman Dillon
27 Tribal Council Chair
28

1 FOR THE MUCKLESHOOT INDIAN TRIBE

2
3 Date: 01/09/09 /S/

4
5 Charlotte Williams
6 Tribal Council Chair
7
8
9
10

11 FOR PETROLEUM RECLAIMING SERVICE, INC.

12
13 Date: 1/12/09 /S/

14
15 Gary Smith
16 President
17

18 Agent authorized to receive service of process by mail on behalf of Petroleum Reclaiming Service,
19 Inc. with respect to all matters relating to this Decree:

20 John R. Spencer
21 Spencer Law Firm, LLC
22 1326 Tacoma Ave. S., Suite 101
Tacoma, WA 98402-1983
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26
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