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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiffs,

v.

QUEMETCO, INC., PHARMACIA CORPORATION,
BFI WASTE SYSTEMS OF NORTH AMERICA, INC.)
and UNIVERSITY OF WASHINGTON,

Defendants.

CIVIL ACTION NO.

CV 02 0225

RELATED CASES:

- C97-152D
- C97-1648WD
- C98-300R
- C99-665R

CONSENT DECREE WITH DEFENDANT
BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
FOR NATURAL RESOURCE DAMAGES

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

epb c. jr. 15.16



CV 02 00225 #00000007

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

7

1 Tribes of Washington, as their respective interests appear in the
2 complaint, including as trustees for natural resources
3 (collectively referred to as "Plaintiffs") and defendant BFI
4 Waste Systems of North America, Inc. (hereinafter "Settling
5 Defendant").

6 **I. INTRODUCTION**

7 1. The Plaintiffs allege that the Tulalip Landfill is
8 located on Ebey Island between Steamboat Slough and Ebey Slough
9 in the Snohomish River delta system between Everett and
10 Marysville, Washington. Ebey Island is located in Snohomish
11 County, Township 30N, Range 5E, Section 32. The Tulalip Landfill
12 Superfund Site ("the Site"), located within the Tulalip Indian
13 Reservation, occupies approximately 147 acres of the western
14 portion of Ebey Island, just to the west of Interstate 5 and the
15 Burlington Northern Railroad. The term "the Tulalip Landfill"
16 refers to the 147 acres located within and including the landfill
17 berm, and extending to the toe of the berm, that is surrounded
18 primarily by wetlands in the form of freshwater and brackish
19 water marshes. To the west of the landfill area are
20 approximately 160 acres of salt marsh.

21 2. The Plaintiffs allege that in 1964, The Tulalip Tribes,
22 a Section 17 Corporation federal corporation chartered pursuant
23 to Section 17 of the Indian Reorganization Act, as amended, 25
24 U.S.C. § 477, leased the Site to Seattle Disposal Company for a
25 period of 10 years. The lease was renewed in 1972. From 1964 to

1 1979, Seattle Disposal Company, its general partners J. Razore,
2 J. Banchemo, and other partners, and Marine Disposal Company,
3 operated the Site, then known as the "Big Flats Landfill," as a
4 disposal site for commercial and industrial waste. The
5 Plaintiffs allege that waste material collected in King County,
6 Snohomish County, and communities in and around the Puget Sound
7 region, including waste materials containing hazardous substances
8 generated or transported by the Settling Defendant, was delivered
9 to the Site by a variety of methods. In 1979, the landfill was
10 closed and capped pursuant to the Rivers and Harbors Act of 1899,
11 33 U.S.C. §§ 403 and 407, and the Federal Water Pollution Control
12 Act, 33 U.S.C. §§ 1311, 1319, 1342, and 1344, pursuant to a
13 consent decree entered in the United States District Court for
14 the Western District of Washington on October 19, 1977, No. C77-
15 721M. Additional capping materials, including construction
16 debris and earthen materials, were placed on the source area by
17 other parties after the 1979 consent decree closure, pursuant to
18 the NPDES permit.

19 3. The Plaintiffs allege that hazardous substances within
20 the definition of Section 101(14) of the Comprehensive
21 Environmental Response, Compensation and Liability Act
22 ("CERCLA"), 42 U.S.C. § 9601(14), MTCA, RCW 70.105D.020(7), have
23 been released into the environment from the Site. Hazardous
24 substances have been found in soils in and around the Site, in
25 sediments around the Site, in leachate emanating from the Site,

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for Natural Resource Damages

1 and in ground water at the Site. Hazardous substances of concern
2 found in soils and sediments include benzo(a)anthracene,
3 benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene,
4 bis(2-ethylhexyl)phthalate, chrysene, 1,4-dichlorobenzene,
5 fluoranthene, fluorine, naphthalene, N-nitroso-di-n-propylamine,
6 polychlorinated biphenyls (PCBs), and pyrene. Metals were also
7 found at the Site, including arsenic, lead, and chromium.
8 Samples of leachate flowing from the Site have shown levels of
9 arsenic, barium, cadmium, iron, zinc, manganese, toluene,
10 ethylbenzene, PCBs, and acenaphthene.

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

17 5. Plaintiffs have filed, contemporaneously with the
18 lodging of this Consent Decree, a civil complaint alleging that
19 Settling Defendant is liable under Section 107 of CERCLA, 42
20 U.S.C. § 9607, and MTCA Ch. 70.105D RCW, to the Plaintiffs for
21 damages for the injury to, destruction of or loss of natural
22 resources caused by the release of hazardous substances at or
23 from the Site.

24 6. The purposes of this Consent Decree are to resolve the
25 liability of the Settling Defendant for claims for Natural

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28 Consent Decree
for Natural Resource Damages

1 Resource Damages resulting from releases of hazardous substances
2 at or from the Tulalip Landfill and to protect the Settling
3 Defendant against claims for contribution regarding Covered
4 Matters.

5 7. The Settling Defendant denies the factual allegations
6 in this Section I. of this Consent Decree, and in the complaint
7 in this action, including any and all allegations of liability
8 and disputes the waste volumes attributed to it in EPA's
9 volumetric report.

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

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

17 **II. PARTIES**

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

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

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for Natural Resource Damages

1 and other tribes and bands party to the Treaty of Point Elliot.

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

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

9 13. "Settling Defendant" means defendant and signatory to
10 this Consent Decree BFI Waste Systems of North America, Inc.

11 **III. JURISDICTION**

12 14. This Court has jurisdiction over this Consent Decree
13 under Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a)
14 & 9613(b), 28 U.S.C. §§ 1331 & 1345, and supplemental
15 jurisdiction over state law claims as set forth in 28 U.S.C. Sec.
16 1367.

17 **IV. DEFINITIONS**

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

20 a. "Natural Resources" include land, fish, wildlife,
21 biota, air, water, groundwater, drinking water supplies, and
22 other such resources belonging to, managed by, held in trust by,
23 appertaining to, or otherwise controlled by the United States
24 (including the resources of the exclusive economic zone), the
25 State of Washington or the Tulalip Tribes of Washington.

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

15 c. "Covered Matters" means any civil or
16 administrative liability Settling Defendant may have to the
17 United States, the State of Washington (including the Washington
18 Department of Ecology), the Tulalip Tribes of Washington, or any
19 other individual or entity for any claim under 42 U.S.C. §§
20 9607(a)(4)(c) & 9607(f), 33 U.S.C. § 1321, 33 U.S.C. §§ 2702,
21 2706, chapter 70.105D RCW, chapter 90.48 RCW, or any other
22 federal, state, tribal or common law, for Natural Resource
23 Damages resulting from releases of hazardous substances at or
24 from the Tulalip Landfill.

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V. PAYMENT AND RELATED MATTERS

16. Within 30 days of receiving notice of the entry of this Consent Decree, Settling Defendant shall deliver to:

Registry of the U.S. District Court
c/o Clerk, United States District Court
Western District of Washington
1010 Fifth Avenue, Room 215
Seattle, WA 98104

a certified check payable to the Clerk of the United States District Court for the Western District of Washington in the amount of THIRTY-SEVEN THOUSAND NINE HUNDRED AND EIGHTY-ONE DOLLARS (\$37,981.00). The certified check submitted by Settling Defendant shall reference the "Tulalip Landfill NRD Settlement" and the civil action number assigned to this case.

17. Within 5 business days of making the payment specified in Paragraph 16, Settling Defendant shall provide written notification of the aforesaid delivery to the persons designated in Paragraph 27.

18. The amount deposited into the Registry of the Court shall be managed pursuant to the Order Directing the Deposit of Funds into the Registry of the Court issued by Judge Dimmick in United States v. Ace Galvanizing, Inc., No. C97-152D (Attachment A hereto), which is hereby incorporated into this Decree. These funds shall be used by Plaintiffs only for assessing, restoring, rehabilitating, replacing or acquiring the equivalent of the natural resources injured, destroyed, or lost as a result of releases at or from the Site, as provided in 42 U.S.C. §

1 9607(f)(1).

2 19. If Settling Defendant fails to timely make any payment
3 required under this Consent Decree, it shall be liable,
4 commencing the day after payment is due, for interest on the
5 unpaid balance at the federal judgment interest rate computed in
6 accordance with 28 U.S.C. § 1961 as of the date payment is due,
7 and, if incurred, the costs of enforcement and collection
8 pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C.
9 § 3001 et seq.

10 **VI. COVENANTS NOT TO SUE**

11 20. In consideration of the Settling Defendant's timely
12 compliance with the terms of this Consent Decree, the United
13 States, the State of Washington (including the Washington
14 Department of Ecology) and the Tulalip Tribes of Washington
15 covenant not to sue or take any other civil or administrative
16 action, after entry of this Consent Decree, against Settling
17 Defendant for Covered Matters. This covenant not to sue shall
18 extend to, and inure to the benefit of, the Settling Defendant
19 and its past, present and future directors, officers, employees,
20 acting in those capacities, and its successors and assigns. This
21 covenant not to sue is subject to the reservations in Section
22 VIII of this Decree.

23 21. In consideration of the Plaintiffs' covenants not to
24 sue in this Section VI of this Consent Decree, Settling Defendant
25 agrees not to assert any claim or cause of action against any of

1 the Plaintiffs arising out of injuries to Natural Resources
2 resulting from releases of hazardous substances at or from the
3 Site, or to seek any costs, damages or attorneys' fees from any
4 Plaintiff in connection with injuries to natural resources
5 resulting from releases of hazardous substances at or from the
6 Site.

7 **VII. CONTRIBUTION PROTECTION**

8 22. Subject to the Reservation of Rights in Section VIII of
9 this Consent Decree, Plaintiffs agree that by entering into this
10 Consent Decree, Settling Defendant will have resolved its
11 liability for Covered Matters, as described in Paragraphs 15(c)
12 and 20 of this Consent Decree, pursuant to Sections 122(g)(5) and
13 113(f)(2) of CERCLA, 42 U.S.C. § 9622(g)(5) and 9613(f)(2), MTCA,
14 RCW Chapter 70.105D.040(1), (2) and RCW 90.48.142, and shall be
15 protected against claims for contribution regarding Covered
16 Matters as provided in Sections 122(g)(5) and 113(f)(2) of
17 CERCLA, 42 U.S.C. §§ 9622(g)(5) and 9613(f)(2), RCW
18 70.105D.040(d). Contribution protection shall extend to, and
19 inure to the benefit of, the Settling Defendant and its past,
20 present and future directors, officers, employees, to the extent
21 they were acting in those capacities, and successors and assigns.

22 **VIII. RESERVATION OF RIGHTS**

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

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

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

9 c. Any criminal liability.

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

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Consent Decree
for Natural Resource Damages

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

IX. DISCLAIMER OF LIABILITY

1
2 25. Neither entry of this Consent Decree nor any action in
3 accordance with this Consent Decree shall constitute an admission
4 of liability under any federal, state, tribal or local statute,
5 regulation, ordinance, general maritime law or common law by
6 Settling Defendant, its present or former officers, members,
7 directors, trustees, shareholders, insurers, agents,
8 representatives, employees, subsidiaries, successors, assigns or
9 affiliates, for any fine, penalty, response costs, damages, or
10 claims or any issues of fact or law for releases of hazardous
11 substances at the Site.

12 26. This Consent Decree shall not be admissible in any
13 other proceeding as evidence of liability of Settling Defendant.

X. NOTICES AND SUBMISSIONS

14
15 27. Whenever, under the terms of this Consent Decree,
16 written notice is required to be given or a report or other
17 document is required to be sent by one party to the other, it
18 shall be directed to individuals at the addresses specified
19 below, unless those individuals or their successors give written
20 notice of a change. All notices and submissions shall be
21 considered effective upon receipt, unless otherwise provided.

22 As to the United States:

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

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

1 As to the State of Washington:

2 Michelle Wilcox
3 Toxics Cleanup Program
4 State of Washington
5 P.O. Box 47600
6 Olympia, Washington 98504-7600

7 As to the Tulalip Tribes of Washington:

8 Tom McKinsey
9 Tulalip Tribes of Washington
10 6326 33rd Ave., N.E.
11 Marysville, Washington 98271

12 As to Settling Defendant:

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XI. ENTRY OR DISAPPROVAL OF DECREE

28. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days and shall be made available for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. § 50.7, and RCW 70.105D.040(4)(a). The United States, the State of Washington and the Tulalip Tribes of Washington intend to defend the settlement embodied in this Consent Decree, unless comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is not fair, reasonable or in the public interest, in which case the United States and the Tulalip Tribes of Washington reserve the right to withdraw or withhold their consent to the Consent Decree. The State of Washington reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

1 considerations that demonstrate that the proposed settlement
2 would not lead to a more expeditious restoration of natural
3 resources. Settling Defendant consents to the entry of this
4 Consent Decree without further notice.

5 29. After its entry by the Court, this Consent Decree shall
6 be considered an enforceable judgement for purposes of post-
7 judgement collection in accordance with Rule 69 of the Federal
8 Rules of Civil Procedure and other applicable federal statutory
9 authority.

10 30. Settling Defendant hereby waives the 60-day notice
11 requirement applicable to the trustees by virtue of Section
12 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), and agrees that any
13 failure by Plaintiffs to give the notice required by that section
14 shall not constitute a deficiency in the Complaint or in this
15 Consent Decree.

16 31. This Court retains jurisdiction over both the subject
17 matter of this Consent Decree and the Parties hereto for the
18 duration of the performance of the terms and conditions of this
19 Consent Decree solely for the purpose of enforcing those terms
20 and conditions.

21 **XII. MISCELLANEOUS**

22 32. In any subsequent administrative or judicial proceeding
23 initiated by the United States for injunctive relief, recovery of
24 response costs, or other appropriate relief relating to the Site,
25 Settling Defendant shall not assert, and may not maintain, any

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

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

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

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

22 36. Each of the undersigned representatives of Plaintiffs
23 and Settling Defendant certifies that he or she is fully
24 authorized to enter into the terms and conditions of this Consent
25 Decree and to execute and legally bind the party whom he or she

1 represents to this Consent Decree.

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

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

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

17 40. Settling Defendant shall identify, on the attached
18 signature page, the name, address and telephone number of an
19 agent who is authorized to accept service of process by mail on
20 its behalf with respect to all matters arising under or relating
21 to this Consent Decree. Settling Defendant hereby agrees to
22 accept service in that manner and to waive the formal service
23 requirements set forth in Rule 4 of the Federal Rules of Civil
24 Procedure and any applicable local rules of this Court,
25 including, but not limited to, service of a summons.

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28 Consent Decree
for Natural Resource Damages

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SO ORDERED THIS 20 DAY OF May, 2002.


UNITED STATES DISTRICT JUDGE

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

3 FOR THE UNITED STATES OF AMERICA:
4

5 1.20.02
6 Date:

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C.

10 1-23-02
11 Date

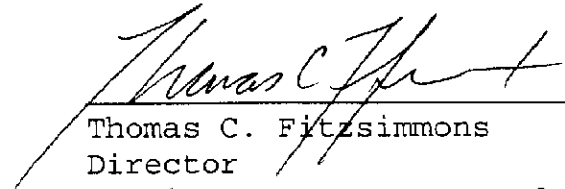
Sean Carman
SEAN CARMAN
Trial Attorney
Environmental Enforcement Section
United States Department of Justice
NOAA DARC - DOJ
7600 Sand Point Way, N.E.
Seattle, Washington 98115-0070
(206) 526-6617

28 Consent Decree
For Natural Resource Damages


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

FOR THE STATE OF WASHINGTON:

1-28-02
Date


Thomas C. Fitzsimmons
Director
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

1-30-02
Date


Steven J. Thiele
Assistant Attorney General
Ecology Division
2425 Bristol Court SW
P.O. Box 40117
Olympia, Washington 98504-0117

Consent Decree
for Natural Resource Damages

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

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FOR THE TULALIP TRIBES OF WASHINGTON:

Feb 16, 01
Date

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

BFI
Consent Decree
for Natural Resource Damages

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

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By the signature on this page, BFI Waste Systems of North America, Inc. agrees to be bound by the terms of this Consent Decree

6-28-01
Date

J. White

Agent for Service of Process: *BFI Waste Systems of North America, Inc.*
15880 N. Greenway Hayden Loop
Scottsdale AZ 85260

Attn: Secretary
and

Kathrop + Sage
Suite 2800
2345 Grand Blvd.
Kansas City, MO 64108-2612
Attn: Thomas G. Ryan

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Karen (cont)
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, AND
THE TULALIP TRIBES OF WASHINGTON

Plaintiff,

v.

ACE GALVANIZING, INC., et al.,

Defendants.

CIVIL ACTION
NO: C97-152-D

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

This case arises out of the release of hazardous substa
the Tulalip Landfill Superfund Site ("the Site"), located wi
the Tulalip Indian Reservation, which occupies approximately
acres of the western portion of Ebey Island, just to the wes
Interstate 5 and the Burlington Northern Railroad. This Ord
entered pursuant to and in furtherance of Consent Decrees fo
Natural Resource Damages (the "Consent Decree") between Pla
United States of America, State of Washington and the Tulal
Tribes of Washington, and the defendants who have signed the

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

U.S. Department of
c/o NOAA DARC - B
7600 Sand Point W
Seattle, WA 9811
(206) 526-6617

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

3 Under the Consent Decrees, the Participating Parties ha
4 agreed to pay their share of Natural Resource Damages (result
5 from the release of hazardous substances at or from the Site
6 have been estimated for purposes of this de minimis settleme
7 be \$5.6 million.

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

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

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7500 Sand Point
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1 Pursuant to Rule 67 of the Federal Rules of Civil Procedure
2 28 U.S.C. § 2041, and Local Rule GR 6, and in accordance with
3 terms of the Consent Decree, it is hereby ORDERED that:

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

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

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

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

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

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

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

7 iv. The Natural Resource Trustees may apply to the Cou
8 an Order establishing an investment procedure or vehicle
9 alternative to that identified in paragraph (ii) above that
10 provides a comparable level of security and earnings potent
11 which application may be acted upon by the Court without no
12 or consent by the Participating Parties.

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

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

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

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

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

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

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

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

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1 application and the Court hereby directs the Clerk to exempt t
 2 Tulalip Landfill NRD Settlement Account from the assessment of
 3 fees described above.

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

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 7 Dated May 15, 1997
 8

Cynthia R. Amie
 United States District Jud

9
 10 Presented by:
 11 *Sean Carman*
 Sean Carman
 U.S Department of Justice
 12 c/o NOAA DARC
 7600 Sand Point Way, NE
 13 Seattle, WA 98115
 (206) 526-6617
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27 Order Directing the
 Deposit of Funds
 Into the Registry
 28 of the Court

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