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DEC 22 1997

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FILED
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OCT 16 1997
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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

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

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

Plaintiffs,

CIVIL ACTION NO.

v.

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

Defendants.

C97-1648

RELATED CASE:
NO. C97-152-D

DE MINIMIS CONSENT DECREE FOR NATURAL RESOURCE DAMAGES
(ALL DEFENDANTS EXCEPT GOODWILL, MANSON, AND R.W. RHINE)

General, BCO

This Consent Decree is made and entered into by the United States of America, the Washington Department of Ecology on behalf of the State of Washington, and the Tulalip Tribes of Washington, as their respective interests appear in the complaint, including as trustees for natural resources (collectively referred to as "Plaintiffs") and defendants the Boeing Company, Kaiser Cement Corp. f/k/a Kaiser Cement & Gypsum, Kaiser Gypsum Co., Inc., Safeway Inc., Richard Halfman d/b/a Halfman Trucking, R.M.

De Minimis Consent
Decree for Natural
Resource Damages

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

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1 Halfman, Inc. d/b/a Halfman Trucking, and Washington Iron
2 Works, a/k/a Formac International, Inc. and Washington Iron
3 Works, Inc. and Ederer, Inc. (collectively referred to as
4 "Participating Parties").

5 **I. INTRODUCTION**

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

19 2. The Plaintiffs allege that in 1964, The Tulalip Tribes,
20 a Section 17 Corporation federal corporation chartered pursuant
21 to Section 17 of the Indian Reorganization Act, as amended, 25
22 U.S.C. § 477, leased the Site to Seattle Disposal Company for a
23 period of 10 years. From 1964 to 1979, Seattle Disposal Company,
24 its general partners J. Razore, J. Banchemo, and other partners,
25 and Marine Disposal Company, operated the Site, then known as the
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1 "Big Flats Landfill," as a disposal site for commercial and
2 industrial waste. The Plaintiffs allege that waste material
3 collected in King County, Snohomish County, and communities in
4 and around the Puget Sound region, including waste materials
5 containing hazardous substances generated or transported by the
6 Participating Parties, was delivered to the Site by a variety of
7 methods. Seattle Disposal Company and other parties, including
8 entities now operated by Washington Waste Hauling and Recycling,
9 Inc. and Waste Management Inc., transported waste material using
10 barges and other vessels directly from Seattle to the Site by way
11 of Puget Sound. Other parties, including Rubatino Refuse
12 Removal, Inc., directly delivered waste material to the Site. In
13 1979, the landfill was closed and capped pursuant to the Rivers
14 and Harbors Act of 1899, 33 U.S.C. §§ 403 and 407, and the
15 Federal Water Pollution Control Act, 33 U.S.C. §§ 1311, 1319,
16 1342, and 1344, pursuant to a consent decree entered in the
17 United States District Court for the Western District of
18 Washington on October 19, 1977, No. C77-721M. Additional capping
19 materials, including construction debris and earthen materials,
20 were placed on the source area by other parties after the 1979
21 consent decree closure, pursuant to the NPDES permit.

22 3. The Plaintiffs allege that hazardous substances within
23 the definition of Section 101(14) of the Comprehensive
24 Environmental Response, Compensation and Liability Act
25 ("CERCLA"), 42 U.S.C. § 9601(14), have been released into the

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

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

21 5. Plaintiffs have filed, contemporaneously with the
22 lodging of this Consent Decree, a civil complaint alleging that
23 Participating Parties are liable under Section 107 of CERCLA, 42
24 U.S.C. § 9607, and Ch. 70.105D RCW, to the Plaintiffs for damages
25 for the injury to, destruction of or loss of natural resources
26

1 caused by the release of hazardous substances at or from the
2 Site.

3 6. Information currently known to the Plaintiffs, and the
4 United States Environmental Protection Agency ("EPA"), indicates
5 that the amount of hazardous substances contributed to the Site
6 by each Participating Party is minimal when compared to the total
7 amount of the hazardous substances at the Site, and that the
8 toxic or other hazardous effects of the substances contributed by
9 each Participating Party to the Site do not contribute
10 disproportionately to the cumulative toxic or other hazardous
11 effects of the hazardous substances at the Site. This includes
12 any materials contributed by a Participating Party that were
13 placed on the source area after the 1979 consent decree closure
14 of the Site. Attachment A to this Consent Decree lists the
15 volume of wastes contributed to the Site by each Participating
16 Party, based on available information.

17 7. The Purposes of this Consent Decree are to resolve the
18 liability of the Participating Parties for claims for Natural
19 Resource Damages resulting from releases of hazardous substances
20 at or from the Tulalip Landfill, and to resolve all counter-
21 claims and cross-claims which may arise out of or relate to such
22 claims, to protect the Participating Parties against claims for
23 contribution regarding Covered Matters.

24 8. The parties recognize, and this Court finds, that the
25 parties have negotiated this Consent Decree in good faith, and
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1 that implementation of this Consent Decree will avoid lengthy and
2 protracted litigation, is fair, equitable, and in the public
3 interest, and will expedite restoration of natural resources.

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

6 II. PARTIES

7 A. Plaintiffs

8 9. "United States" means the United States of America, in
9 all its capacities, including inter alia all departments,
10 administrations, natural resource trustees, and agencies of the
11 Federal Government.

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

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

21 12. "The State of Washington" or "the State" means the
22 State of Washington, including inter alia all departments,
23 administrations, natural resource trustees and agencies thereof.

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1 B. Participating Parties

2 13. "Participating Parties" means defendants the Boeing
3 Company, Kaiser Cement Corp. (f/k/a Kaiser Cement & Gypsum),
4 Kaiser Gypsum Co., Inc., Safeway Inc., Richard Halfman, R.M.
5 Halfman, Inc. d/b/a Halfman Trucking, and Washington Iron Works
6 a/k/a Formac International, Inc. and Washington Iron Works, Inc.
7 and Ederer, Inc.

8 III. JURISDICTION

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

14 IV. DEFINITIONS

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

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

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

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

21 d. "Covered Matters" means any civil or
22 administrative liability Participating Parties, individually or
23 collectively, may have to the United States, the State of
24 Washington (including the Washington Department of Ecology), the
25 Tulalip Tribes of Washington, or any other individual or entity
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1 for any claim under 42 U.S.C. §§ 9607(a)(4)(c) & 9607(f), 33
2 U.S.C. § 1321, 33 U.S.C. Secs. 2702, 2706, chapter 70.105D RCW,
3 chapter 90.48 RCW, or any other federal, state, tribal or common
4 law, for Natural Resource Damages resulting from releases of
5 hazardous substances at or from the Tulalip Landfill.

6 V. PAYMENT AND RELATED MATTERS

7 16. Within 30 days of receiving written notice of the entry
8 of this Consent Decree, the Participating Parties shall deliver
9 certified checks payable to Clerk, United States District Court,
10 Western District of Washington, to:

11 Barbara Brouner
12 Financial Litigation Unit
13 Office of the United States Attorney
14 3600 SeaFirst Fifth Avenue Plaza
15 800 Fifth Avenue
16 Seattle, WA 98104

17 in the following amounts:

18 The Boeing Company	\$27,242
19 Kaiser Cement Corp./Kaiser Gypsum Co.	\$42,404
20 Safeway Inc.	\$31,014
21 Richard Halfman/R.M. Halfman, Inc.	\$27,289
22 Washington Iron Works, et al.	\$38,619

23 Each certified check submitted by each Participating Party shall
24 reference the "Tulalip Landfill de minimis NRD Settlement."

25 17. Within 5 days of making the payment specified in
26 Paragraph 16, each Participating Party shall provide written
27 notification to the persons designated in Paragraph 30.

28 18. The Office of the United States Attorney shall deposit
the payments referred to in Paragraph 16 into the Registry of the

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

3 19. All funds paid by Participating Parties shall remain in
4 the Court Registry until used by Plaintiffs in accordance with
5 Paragraph 20 and shall not be returned to Participating Parties
6 unless Final Approval of this Consent Decree does not occur. If
7 Final Approval of this Consent Decree does not occur, all sums
8 paid into the Court Registry shall, immediately upon the date of
9 maturity of any securities purchased with such funds by the Clerk
10 of the Court, be returned pro rata to Participating Parties after
11 deductions for any administrative costs for maintaining the
12 account.

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

21 21. Any Participating Party who fails to timely make any
22 payment required under this Consent Decree shall be liable,
23 commencing the day after payment is due, for interest on the
24 unpaid balance at the federal judgment interest rate computed in
25 accordance with 28 U.S.C. § 1961 as of the date payment is due,
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1 and, if incurred, the costs of enforcement and collection
2 pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C.
3 § 3001 et seq.

4 **VI. COVENANTS NOT TO SUE**

5 22. In consideration of the Participating Parties' timely
6 compliance with the terms of this Consent Decree, the United
7 States, the State of Washington (including the Washington
8 Department of Ecology) and the Tulalip Tribes of Washington
9 covenant not to sue or take any other civil or administrative
10 action, after entry of this Consent Decree, against any and all
11 Participating Parties which are in compliance with the terms of
12 this Consent Decree, for Covered Matters. This covenant not to
13 sue shall extend to, and inure to the benefit of, the
14 Participating Parties and their past, present and future
15 directors, officers, agents, and upon their successors and
16 assigns. This covenant not to sue is subject to the reservations
17 in Section VIII of this Decree.

18 23. In consideration of the Plaintiffs' covenants not to
19 sue in this Section VI of this Consent Decree, each Participating
20 Party agrees not to assert any claim or cause of action against
21 any of the Plaintiffs arising out of injuries to Natural
22 Resources resulting from releases of hazardous substances at or
23 from the Site, or to seek any costs, damages or attorneys' fees
24 from any Plaintiff in connection with injuries to natural
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1 resources resulting from releases of hazardous substances at or
2 from the Site.

3 **VII. CONTRIBUTION PROTECTION**

4 24. Subject to the Reservation of Rights in Section VIII of
5 this Consent Decree, Plaintiffs agree that by entering into this
6 Consent Decree, each Participating Party will have resolved its
7 liability for Covered Matters, as described in Paragraphs 15(d)
8 and 22 of this Consent Decree, pursuant to Sections 122(g)(5) and
9 113(f)(2) of CERCLA, 42 U.S.C. § 9622(g)(5) and 9613(f)(2),
10 Chapter 70.105D RCW and Chapter 90.48 RCW, and shall be protected
11 against claims for contribution regarding Covered Matters as
12 provided in Sections 122(g)(5) and 113(f)(2) of CERCLA, 42 U.S.C.
13 §§ 9622(g)(5) and 9613(f)(2), Chapter 70.105D RCW, and Chapter
14 90.48 RCW. Contribution protection shall extend to, and inure to
15 the benefit of, the Participating Parties and their past, present
16 and future directors, officers, agents, and upon their successors
17 and assigns.

18 **VIII. RESERVATION OF RIGHTS**

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

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

1 b. Any liability arising from the past, present, or
2 future disposal, release, or threat of release of any hazardous
3 substance, hazardous waste, or solid waste other than releases or
4 threats of releases at or from the Site; or

5 c. Any criminal liability.

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

22 27. Nothing in this Consent Decree constitutes a covenant
23 not to sue or to take action or otherwise limit the ability of
24 the Plaintiffs to seek or obtain further relief from any of the
25 Participating Parties, and the covenant not to sue in Section VI

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1 of this Consent Decree is null and void, if information not known
2 at the time of entry of the Consent Decree is discovered which
3 indicates that any Participating Party contributed hazardous
4 substances to the Site in such greater amount or of such greater
5 toxic or other hazardous effects that the Participating Party no
6 longer qualifies as a de minimis party at the Site because the
7 Participating Party contributed more than a minimal amount of the
8 hazardous substances at the Site or contributed hazardous
9 substances which contributed disproportionately to the cumulative
10 toxic or other hazardous effects of the hazardous substances at
11 the Site.

12 **IX. DISCLAIMER OF LIABILITY**

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

23 29. The parties further agree that none of the provisions
24 of this Consent Decree or evidence of negotiations shall be
25 offered or received in evidence in this action or any other

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1 | action or proceedings by any other party for any purpose, except
2 | for enforcement of this Consent Decree or except as specifically
3 | provided herein.

4 | **X. NOTICES AND SUBMISSIONS**

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

12 | As to the United States:

13 | Chief
14 | Environmental Enforcement Section
15 | Environment and Natural Resources Division
16 | U.S. Department of Justice
17 | P.O. Box 7611
18 | Ben Franklin Station
19 | Washington, D.C. 20044

20 | As to the State of Washington:

21 | Fred Gardner
22 | Toxics Cleanup Program
23 | State of Washington
24 | P.O. Box 47600
25 | Olympia, Washington 98504-7600

1 As to the Tulalip Tribes of Washington:

2 Tom McKinsey
3 Tulalip Tribes of Washington
4 6326 33rd Ave., N.E.
5 Marysville, Washington 98271

6 XI. ENTRY OR DISAPPROVAL OF DECREE

7 31. This Consent Decree shall be lodged with the Court for
8 a period of not less than thirty (30) days and shall be made
9 available for public notice and comment in accordance with
10 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. §
11 50.7, and RCW 70.105D.040(4)(a). The United States, the State of
12 Washington and the Tulalip Tribes of Washington intend to defend
13 the settlement embodied in this Consent Decree, unless comments
14 regarding the Consent Decree disclose facts or considerations
15 that indicate that the Consent Decree is not fair, reasonable or
16 in the public interest, in which case the United States and the
17 Tulalip Tribes of Washington reserve the right to withdraw or
18 withhold their consent to the Consent Decree. The State of
19 Washington reserves the right to withdraw or withhold its consent
20 if the comments regarding the Consent Decree disclose facts or
21 considerations that demonstrate that the proposed settlement
22 would not lead to a more expeditious restoration of natural
23 resources. Each Participating Party consents to the entry of
24 this Consent Decree without further notice.

25 32. After Final Approval of this Consent Decree, this
26 Consent Decree shall be considered an enforceable judgement for

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1 purposes of post-judgement collection in accordance with Rule 69
2 of the Federal Rules of Civil Procedure and other applicable
3 federal statutory authority.

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

11 34. This Court retains jurisdiction over both the subject
12 matter of this Consent Decree and Parties hereto for the duration
13 of the performance of the terms and conditions of this Consent
14 Decree solely for the purpose of enforcing those terms and
15 conditions.

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

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

5 40. Each of the undersigned representatives of Plaintiffs
6 and of the Participating Parties certifies that he or she is
7 fully authorized to enter into the terms and conditions of this
8 Consent Decree and to execute and legally bind the party whom he
9 or she represents to this Consent Decree. The Tulalip Tribes of
10 Washington's joinder to this Decree is solely in its capacity as
11 a trustee for natural resources and constitutes a limited waiver
12 of the Tulalip Tribes of Washington's sovereign immunity for the
13 sole and limited purpose of enforcing the terms of this Consent
14 Decree; provided that, this Consent Decree shall not act as a
15 general waiver of sovereign immunity nor shall it in any way
16 impair treaty-reserved hunting and fishing rights.

17 41. This Consent Decree may be executed in several
18 counterparts and by facsimile and, as executed, shall constitute
19 one agreement, binding on all parties hereto, even though all
20 parties do not sign the original or the same counterpart.

21 42. Except as otherwise provided herein each party to this
22 Consent Decree shall bear his, her or its own costs, attorneys
23 fees and disbursements.

24 43. Each Participating Party shall identify, on the
25 attached signature page, the name, address and telephone number

1 of an agent who is authorized to accept service of process by
2 mail on behalf of that Party with respect to all matters arising
3 under or relating to this Consent Decree. Participating Parties
4 hereby agree to accept service in that manner and to waive the
5 formal service requirements set forth in Rule 4 of the Federal
6 Rules of Civil Procedure and any applicable local rules of this
7 Court, including, but not limited to, service of a summons.

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SO ORDERED THIS ____ DAY OF _____, 1997.

~ ~

United States District Judge

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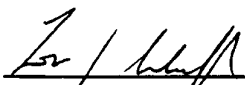
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We hereby consent to the entry of the foregoing Consent

Decree:


FOR THE UNITED STATES OF AMERICA:

July 21, 1997
Date



LOIS J. SCHIFFER
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT AND NATURAL RESOURCES
DIVISION
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, DC 20530

May 8, 1997
Date



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


De Minimis Consent
Decree for Natural
Resource Damages

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

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FOR THE STATE OF WASHINGTON:

7/17/97
Date



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

7/23/97
Date



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

De Minimis Consent
Decree for Natural
Resource Damages

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FOR THE TULALIP TRIBES OF WASHINGTON:

May 22, 97
Date

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

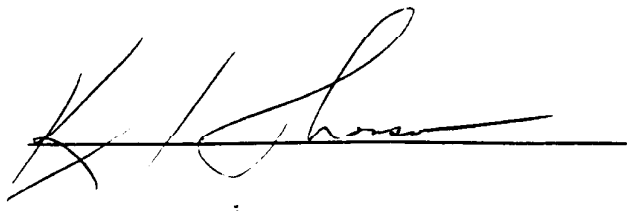
De Minimis Consent
Decree for Natural
Resource Damages
The Boeing Company

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

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

4/29/97
Date

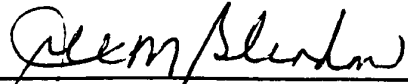


Agent for Service of Process:

Heather S. Howard
Corporate Secretary & Corporate Counsel
2-25 Bldg., First Floor
7755 E. Marginal Way South
Seattle, WA 98108

By the signature on this page, Kaiser Cement Corp. (f/k/a Kaiser Cement & Gypsum) and Kaiser Gypsum Co., Inc. agree to be bound by the terms of this Consent Decree.

May 1, 1997
Date


Assistant Secretary

Agent for Service of Process:

Michele M. Gutman, Esq
Babst, Calland, Clements and Zomnir
Two Gateway Center, 8th Floor
Pittsburgh, PA 15222
(412) 394-5425

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

April 28, 1997
Date

Susan C. Gagnon

Agent for Service of Process:

Susan C. Gagnon
Senior Attorney
Safeway Inc.
:
5918 Stoneridge Mall Road
Pleasanton, CA 94588-3229

1 By the signature on this page, Richard Halfman d/b/a Halfman
2 Trucking, and R. M. Halfman, Inc. d/b/a Halfman Trucking, agree
3 to be bound by the terms of this Consent Decree
4

5 APRIL 16, 1997

6 Date

Richard M. Halfman

Richard M. Halfman

[title]

[address]

9 Agent for Service:

JOHN A. MCGARY

801-2ND AVE #1500

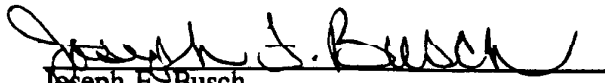
Seattle, Wash 98104-1502

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27 De Minimis Consent
Decree for Natural
28 Resource Damages

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Seattle, WA 98115
(206) 526-6617

1 By the signature on this page, Washington Iron Works a/k/a Formac International, Inc. and
2 Washington Iron Works, Inc. and Ederer, Inc. agree to be bound by the terms of this Consent
3 Decree

4
5
6 April 24, 1997
Date


Joseph F. Busch
Vice President
Ederer, Inc.
2925 First Avenue South
Box 24708
Seattle, WA 98124

11 Agent for Service:

Richard A. Du Bey
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

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Resource Damages

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ATTACHMENT A

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<u>Party</u>	<u>Waste Volume (Tons)</u>
Kaiser	19,841.82
Goodwill	18,770.53
WI Works (Ederer)	18,070.94
Safeway	14,512.62
R.M. Halfman	12,769.08
Boeing	12,747.31

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ATTACHMENT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, AND)	
THE TULALIP TRIBES OF WASHINGTON)	
)	
Plaintiff,)	CIVIL ACTION
)	NO.
v.)	
)	
THE BOEING COMPANY, GOODWILL INDUSTRIES)	
INC., KAISER CEMENT CORP. f/k/a KAISER)	
CEMENT & GYPSUM, KAISER GYPSUM CO.,)	
INC., MANSON CONSTRUCTION CO., R.W.)	ORDER DIRECTING THE
RHINE, INC., RICHARD HALFFMAN d/b/a)	DEPOSIT OF FUNDS
HALFFMAN TRUCKING, R.M. HALFFMAN,)	INTO THE REGISTRY
INC. d/b/a HALFFMAN TRUCKING, SAFEWAY)	OF THE COURT
INC. and WASHINGTON IRON WORKS,)	
<u>et al.</u> ,)	
)	RELATED CASE:
Defendants.)	NO. C97-152-D
)	

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 Order Directing the
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Into the Registry
of the Court

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 Dated

Dec. 22, 1997.

William L. Dwyer
United States District Judge

10
11 Presented by:

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

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27 Order Directing the
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