

1 ELIZABETH L. LOEB
2 ZACHARY N. MOOR
3 United States Department of Justice
4 Environment and Natural Resources Division
5 Environmental Enforcement Section
6 P.O. Box 7611, Ben Franklin Station
7 Washington, D.C. 20044-7611
8 (202) 616-8916
9 (202) 514-4185

7 WILLIAM J. ELING
8 The Law Office of William J. Eling
9 9401 N.E. Covington Road, No. 102
10 Vancouver, Washington 98662
11 (360) 260-1189

11 CHRISTOPHER R. HERMANN
12 MAREN R. NORTON
13 Stoel Rives LLP
14 900 SW Fifth Avenue, Suite 2600
15 Portland, OR 97204-1268
16 (503) 294-9236

16 UNITED STATES COURT FOR THE EASTERN
17 DISTRICT OF WASHINGTON

18 UNITED STATES OF AMERICA)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Plaintiff,

v.

KLICKITAT COUNTY PORT DISTRICT NO. 1)
Defendant.

NO: 1:15-cv-03051

CONSENT DECREE

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. BACKGROUND 3

II. JURISDICTION 3

III. PARTIES BOUND 4

IV. DEFINITIONS 4

V. PAYMENT OF RESPONSE COSTS 6

VI. FAILURE TO COMPLY WITH CONSENT DECREE 7

VII. COVENANTS BY PLAINTIFF 9

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES 9

IX. COVENANTS BY SETTLING DEFENDANTS 10

X. EFFECT OF SETTLEMENT/CONTRIBUTION 11

XI. PROPERTY REQUIREMENTS 13

XII. RETENTION OF RECORDS 15

XIII. NOTICES AND SUBMISSIONS 17

XIV. RETENTION OF JURISDICTION 18

XV. INTEGRATION 18

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 19

XVII. SIGNATORIES/SERVICE 19

XVIII. FINAL JUDGMENT 20

1 **I. BACKGROUND**

2 WHEREAS the United States of America (“United States”), on behalf of the
3 Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a Complaint in this
4 matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation,
5 and Liability Act, 42 U.S.C. § 9607 (“CERCLA”), against Klickitat County Port District No. 1
6 (“Settling Defendant”) seeking reimbursement of response costs incurred or to be incurred for
7 response actions taken at or in connection with the release or threatened release of hazardous
8 substances at the Recycled Aluminum Metals Company Aluminum Waste Disposal Superfund
9 Site (“Site”) located in the Dallesport Industrial Park in Klickitat County, Washington.
10

11
12 WHEREAS Settling Defendant does not admit any liability to Plaintiff arising out of the
13 transactions or occurrences alleged in the Complaint.

14 WHEREAS the United States and Settling Defendant agree, and this Court by entering
15 this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good
16 faith, that settlement of this matter without further litigation and without the admission or
17 adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated
18 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public
19 interest.
20

21 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
22 ADJUDGED, AND DECREED:
23

24 **II. JURISDICTION**

25 1. This Court has jurisdiction over the subject matter of this action pursuant to 28
26 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction
27 over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying
28

1 Complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction
2 of the Court or to venue in this District. Settling Defendant shall not challenge entry or the terms
3 of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.
4

5 **III. PARTIES BOUND**

6 2. This Consent Decree is binding upon the United States and upon Settling
7 Defendant and its successors, and assigns. Any change in ownership or corporate or other legal
8 status, including but not limited to, any transfer of assets or real or personal property, shall in no
9 way alter the status or responsibilities of Settling Defendant under this Consent Decree.
10

11 **IV. DEFINITIONS**

12 3. Unless otherwise expressly provided in this Consent Decree, terms used in this
13 Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA
14 shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms
15 listed below are used in this Consent Decree or its appendices, the following definitions shall
16 apply:
17

18 "Affected Property" means all real property at the Site and any other real property, owned or
19 controlled by Settling Defendant, where EPA determines, at any time, that access or land, water,
or other resource use restrictions are needed to implement response actions at the Site.

20 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
21 Liability Act, 42 U.S.C. §§ 9601-9675.

22 "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the
23 event of conflict between this Consent Decree and any appendix, the Consent Decree shall
control.

24 "Day" or "day" shall mean a calendar day. In computing any period of time under this Consent
25 Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the
26 period shall run until the close of business of the next working day.

27 "DOJ" shall mean the U.S. Department of Justice and its successor departments, agencies, or
28 instrumentalities.

1 “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded
2 on the Court’s docket.

3 “EPA” shall mean the U.S. Environmental Protection Agency and its successor departments,
4 agencies, or instrumentalities.

5 “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund
6 established by the Internal Revenue Code, 26 U.S.C. § 9507.

7 “Interest” shall mean interest at the rate specified for interest on investments of the EPA
8 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
9 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
10 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
11 on October 1 of each year. Rates are available online at
12 http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

13 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances
14 Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C.
15 § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

16 “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an
17 upper or lower case letter.

18 “Parties” shall mean the United States and Settling Defendant.

19 “Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs,
20 that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through the Day
21 this Consent Decree is lodged with the Court for public comment pursuant to Section XVI.

22 “Plaintiff” shall mean the United States.

23 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also
24 known as the Resource Conservation and Recovery Act).

25 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

26 “Settling Defendant” shall mean Klickitat County Port District No. 1.

27 “Site” shall mean the Recycled Aluminum Metals Company Aluminum Waste Disposal
28 Superfund Site which consists of approximately 1.5 acres which was formally an unlined landfill
at the Dallesport Industrial Park in Klickitat County, Washington, the legal description of which
is, SW ¼ of Section 25, Township 2N, Range 13E, Willamette Meridian. The Site is generally
shown on the map included in Appendix A.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or
where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by
operation of law or otherwise.

1 “United States” shall mean the United States of America and each department, agency, and
2 instrumentality of the United States, including EPA.

3 **V. PAYMENT OF RESPONSE COSTS**

4 4. Payment by Settling Defendant for Past Response Costs. Within forty-five (45)
5 Days after the Effective Date, Settling Defendant shall pay to EPA the sum of TWO MILLION
6 DOLLARS (\$2,000,000).

7 5. Settling Defendant shall make payment by sending a check made out to the “U.S.
8 Department of Justice” to P.O. Box 1494, Spokane, WA 99210-1008. The payment instructions
9 provided by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the Eastern
10 District of Washington after the Effective Date will include a Consolidated Debt Collection
11 System (CDCS) number, which shall be used to identify all payments required to be made in
12 accordance with this Consent Decree. The FLU will provide the payment instructions to:
13

14
15 Kimberly Freeman
16 Stoel Rives LLP
17 900 SW Fifth Avenue, Suite 2600
18 Portland, Oregon 97204
19 phone: 503-294-9662
20 fax: 503-220-2480
21 kim.freeman@stoel.com

22 on behalf of Settling Defendant. Settling Defendant may change the individual to receive
23 payment instructions on its behalf by providing written notice of such change to DOJ and EPA in
24 accordance with Section XIII (Notices and Submissions).

25 6. Deposit of Payment. The total amount to be paid pursuant to Paragraph 4 shall be
26 deposited by EPA in the EPA Hazardous Substance Superfund.

27 7. Notice of Payment. At the time of payment, Settling Defendant shall send notice
28 that payment has been made: (a) to EPA in accordance with Section XIII (Notices and

1 Submissions); (b) to DOJ by email or by mail in accordance with Section XIII (Notices and
2 Submissions); and (c) to the EPA Cincinnati Finance Center by email or by regular mail at:

3 Email: cinwd_acctsreceivable@epa.gov

4 Regular mail: EPA Cincinnati Finance Center
5 26 W. Martin Luther King Drive
6 Cincinnati, Ohio 45268

7 Such notice shall reference the CDCS Number, Site/Spill ID Number 10 HF, and DJ Number 90-
8 11-3-10906.

9 **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

10 8. Interest on Late Payments. If Settling Defendant fails to make any payment under
11 Paragraph 4 (Payment by Settling Defendant for Past Response Costs) by the required due date,
12 Interest shall continue to accrue on the unpaid balance through the date of payment.

13 9. Stipulated Penalty.

14 a. If any amounts due to EPA under Paragraph 4 (Payment by Settling
15 Defendant for Past Response Costs) are not paid by the required date, Settling Defendant shall be
16 in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to
17 the Interest required by Paragraph 8, \$10,000 per day that such payment is late.

18 b. If Settling Defendant does not comply with the terms of Section XI
19 (Property Requirements) and/or Section XII (Retentions of Records), Settling Defendant shall be
20 in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, \$500 per
21 violation per day of such noncompliance.

22 c. Stipulated penalties are due and payable within thirty (30) Days after the
23 date of the demand for payment of the penalties by EPA. All payments to EPA under this
24 Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

1 Federal Reserve Bank of New York
2 ABA = 021030004
3 Account = 68010727
4 SWIFT address = FRNYUS33
5 33 Liberty Street
6 New York NY 10045

7 Field Tag 4200 of the Fedwire message should read
8 “D 68010727 Environmental Protection Agency”.

9 d. At the time of payment, Settling Defendant shall send notice that payment
10 has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

11 e. Penalties shall accrue as provided in this Paragraph regardless of whether
12 EPA has notified Settling Defendant of the violation or made a demand for payment, but need
13 only be paid upon demand. All penalties shall begin to accrue on the day after payment or
14 performance is due, or the day a violation occurs, and shall continue to accrue through the date
15 of payment, or the final day of correction of the noncompliance or completion of the activity.
16 Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for
17 separate violations of this Consent Decree.

18 10. If the United States brings an action to enforce this Consent Decree, Settling
19 Defendant shall reimburse the United States for all costs of such action, including but not limited
20 to costs of attorney time.

21 11. Payments made under this Section shall be in addition to any other remedies or
22 sanctions available to Plaintiff by virtue of Settling Defendant’s failure to comply with the
23 requirements of this Consent Decree.

24 12. Notwithstanding any other provision of this Section, the United States may, in its
25 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
26 accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
27
28

1 Settling Defendant from payment as required by Section V (Payment of Response Costs) or from
2 performance of any other requirements of this Consent Decree.

3
4 **VII. COVENANT BY PLAINTIFF**

5 13. Except as specifically provided in Section VIII (Reservation of Rights by United
6 States), the United States covenants not to sue or to take administrative action against Settling
7 Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past
8 Response Costs. This covenant shall take effect upon the Effective Date. This covenant is
9 conditioned upon the satisfactory performance by Settling Defendant of its obligations under this
10 Consent Decree. This covenant extends only to Settling Defendant and does not extend to any
11 other person.
12

13 **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

14 14. The United States reserves, and this Consent Decree is without prejudice to, all
15 rights against Settling Defendant with respect to all matters not expressly included within
16 Paragraph 13 (Covenant By Plaintiff). Notwithstanding any other provision of this Consent
17 Decree, the United States reserves all rights against Settling Defendant with respect to:
18

19 a. liability for failure of Settling Defendant to meet a requirement of this
20 Consent Decree;

21 b. liability for costs incurred or to be incurred by the United States that are
22 not within the definition of Past Response Costs;

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

25 d. criminal liability; and
26
27
28

1 e. liability for damages for injury to, destruction of, or loss of natural
2 resources, and for the costs of any natural resource damage assessments.

3 **IX. COVENANT BY SETTLING DEFENDANT**

4 15. Settling Defendant covenants not to sue and agrees not to assert any claims or
5 causes of action against the United States or its contractors or employees, with respect to Past
6 Response Costs and this Consent Decree, including but not limited to:
7

8 a. any direct or indirect claim for reimbursement from the EPA Hazardous
9 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.
10 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
11

12 b. any claim arising out of the response actions at the Site for which the Past
13 Response Costs were incurred, including any claim under the United States Constitution, the
14 Constitution of the State of Washington, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
15 Justice Act, 28 U.S.C. § 2412, or at common law; or
16

17 c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607
18 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

19 16. Waiver of Claims by Settling Defendant.

20 a. De Micromis Waiver. Settling Defendant agrees not to assert any claims
21 and to waive all claims or causes of action (including but not limited to claims or causes of
22 action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the
23 Site against any person where the person's liability to Settling Defendant with respect to the Site
24 is based solely on having arranged for disposal or treatment, or for transport for disposal or
25 treatment, of hazardous substances at the Site, or having accepted for transport for disposal or
26 treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport
27
28

1 occurred before April 1, 2001, and the total amount of material containing hazardous substances
2 contributed by such person to the Site was less than 110 gallons of liquid materials or 200
3 pounds of solid materials;

4
5 b. Exceptions to Waiver.

6 i. The waiver under this Paragraph 16 shall not apply with respect to
7 any defense, claim, or cause of action that a Settling Defendant may have against any person
8 otherwise covered by such waiver if such person asserts a claim or cause of action relating to the
9 Site against such Settling Defendant.

10 ii. The waiver under this Paragraph 16 shall not apply to Settling
11 Defendant's contractual indemnification claim against its insurers.

12 iii. The waiver under Paragraph 16 shall not apply to any claim or
13 cause of action against any person otherwise covered by such waiver if EPA determines that: (i)
14 the materials containing hazardous substances contributed to the Site by such person contributed
15 significantly or could contribute significantly, either individually or in the aggregate, to the cost
16 of the response action or natural resource restoration at the Site; or (ii) such person has failed to
17 comply with any information request or administrative subpoena issued pursuant to Section
18 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of
19 RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the
20 performance of a response action or natural resource restoration with respect to the Site; or if (iii)
21 such person has been convicted of a criminal violation for the conduct to which the waiver would
22 apply and that conviction has not been vitiated on appeal or otherwise.

23
24
25
26 X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

1 17. Except as provided in Paragraph 16 (Waiver of Claims by Settling Defendant),
2 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of
3 action to, any person not a Party to this Consent Decree. Except as provided in Section IX
4 (Covenant by Settling Defendant), each of the Parties expressly reserves any and all rights
5 (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses,
6 claims, demands, and causes of action that it may have with respect to any matter, transaction, or
7 occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this
8 Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3)
9 of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional
10 response costs or response action and to enter into settlements that give rise to contribution
11 protection pursuant to Section 113(f)(2).
12

13
14 18. The Parties agree, and by entering this Consent Decree this Court finds, that this
15 Consent Decree constitutes a judicially-approved settlement pursuant to which Settling
16 Defendant has, as of the Effective Date, resolved liability to the United States within the
17 meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the
18 Effective Date, to protection from contribution actions or claims as provided by Section
19 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in
20 this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.
21

22
23 19. The Parties further agree, and by entering this Consent Decree this Court finds,
24 that the Complaint filed by the United States in this action is a civil action within the meaning of
25 Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes
26 a judicially-approved settlement pursuant to which Settling Defendant has, as of the Effective
27

1 Affected Property is part of, or related to, the Site; (ii) that EPA performed a response action at
2 the Site; and (3) identify the document requiring implementation of the response action,
3 including, if applicable, the name and civil action or docket number of the matter. Settling
4 Defendant shall record the notice within ten (10) Days after EPA's approval of the notice and
5 submit to EPA, within ten (10) Days thereafter, a certified copy of the recorded notice.
6

7 b. If EPA determines that additional properties owned by Settling Defendant,
8 not identified in Appendix B, constitute Affected Property as defined herein, it shall provide
9 timely notice to Settling Defendant. Upon notification under this subparagraph, Settling
10 Defendant shall update Appendix B and the notice required pursuant to Paragraph 22.a to reflect
11 EPA's determination.
12

13 c. Owner Settling Defendant shall, prior to entering into a contract to
14 Transfer its Affected Property, or sixty (60) Days prior to Transferring its Affected Property,
15 whichever is earlier:
16

17 i. notify the proposed transferee that EPA performed a response
18 action regarding the Site; and

19 ii. notify EPA of the name and address of the proposed transferee and
20 provide EPA with a copy of the above notice that it provided to the proposed transferee.
21

22 23. In the event of any Transfer of the Affected Property, unless the United States
23 otherwise consents in writing, Owner Settling Defendant shall continue to comply with its
24 obligations under the Consent Decree.

25 24. Notwithstanding any provision of the Consent Decree, the United States retains
26 all of its access authorities and rights, as well as all of its rights to require institutional controls,
27
28

1 including enforcement authorities related thereto, under CERCLA, RCRA, and any other
2 applicable statute or regulations.

3 **XII. RETENTION OF RECORDS**

4 25. Until five (5) years after the Effective Date, Settling Defendant shall preserve and
5 retain all non-identical copies of records, reports, documents, and other information (including
6 records, reports, documents, and other information in electronic form) (hereinafter referred to as
7 “Records”) now in its possession or control or that come into its possession or control, that relate
8 in any manner to its liability under CERCLA with respect to the Site, provided, however, that
9 Settling Defendant who is potentially liable as an owner or operator of the Site must retain, in
10 addition, all Records that relate to the liability of any other person under CERCLA with respect
11 to the Site. Each of the above record retention requirements shall apply regardless of any
12 corporate retention policy to the contrary.
13

14
15 26. At the conclusion of the record retention period, Settling Defendant shall notify
16 EPA and DOJ at least ninety (90) Days prior to the destruction of any such Records, and, upon
17 request by EPA or DOJ, and except as provided in Paragraph 27 (Privileged and Protected
18 Claims), Settling Defendant shall deliver any such Records to EPA.
19

20 27. Privileged and Protected Claims.

21 a. Settling Defendant may assert that all or part of a Record is privileged or
22 protected as provided under federal law, provided they comply with Paragraph 27.b, and except
23 as provided in Paragraph 27.c.
24

25 b. If Settling Defendant asserts a claim of privilege or protection, it shall
26 provide Plaintiff with the following information regarding such Record: its title; its date; the
27 name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of
28

1 each recipient; a description of the Record's contents; and the privilege or protection asserted. If
2 a claim of privilege or protection applies only to a portion of a Record, Settling Defendant shall
3 provide the Record to Plaintiff in redacted form to mask the privileged or protected information
4 only. Settling Defendant shall retain all Records that it claims to be privileged or protected until
5 the United States has had a reasonable opportunity to dispute the privilege or protection claim
6 and any such dispute has been resolved in the Settling Defendant's favor.
7

8 c. Settling Defendant may make no claim of privilege or protection
9 regarding:

10 i. any data regarding the Site, including but not limited to, all
11 sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or
12 engineering data, or the portion of any other Record that evidences conditions at or around the
13 Site; or
14

15 ii. the portion of any Record that Settling Defendant is required to
16 create or generate pursuant to this Consent Decree.
17

18 28. Business Confidential Claims. Settling Defendant may assert that all or part of a
19 Record submitted to Plaintiff under this Section (Retention of Records) is business confidential
20 to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
21 § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendant shall segregate and clearly identify all
22 Records or parts thereof submitted under this Consent Decree for which Settling Defendant
23 asserts a business confidentiality claim. Records submitted to EPA determined to be confidential
24 by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
25 confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified
26 Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7)
27
28

1 1200 Sixth Avenue, Suite 900
2 Mail Stop: ECL-133
3 Seattle, WA 98101

4 As to Setting Defendant: Port of Klickitat
5 c/o Executive Director
6 Port of Klickitat
7 154 E Bingen Point Way Ste. A
8 Bingen, WA 98605
9 phone: 509-493-1655
10 fax: 509-493-4257
11 port@portofklickitat.com

12 William Eling
13 The Law Office of William J. Eling
14 9401 NE Covington Road, No. 102
15 Vancouver, Washington 98662
16 phone: 360-260-1189
17 fax: 360-213-0770
18 elinglaw@aol.com

19 Christopher Herman
20 Stoel Rives LLP
21 900 SW Fifth Ave, Suite 2600
22 Portland, OR 97204-1268
23 phone: 503-294-9236
24 fax: 503-220-2480
25 chris.hermann@stoel.com

26 **XIV. RETENTION OF JURISDICTION**

27 31. This Court shall retain jurisdiction over this matter for the purpose of interpreting
28 and enforcing the terms of this Consent Decree.

XV. INTEGRATION

32. This Consent Decree and Appendices A and B constitute the final, complete, and
exclusive agreement and understanding among the Parties with respect to the settlement
embodied in this Consent Decree. The Parties acknowledge that there are no representations,
agreements, or understandings relating to the settlement other than those expressly contained in

1 this Consent Decree. The following appendices are attached to and incorporated into this
2 Consent Decree:

3 Appendix A: Site Map; and

4 Appendix B: Legal Description of Affected Property.
5

6 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

7 33. This Consent Decree shall be lodged with the Court for a period of at least thirty
8 (30) Days for public notice and comment. The United States reserves the right to withdraw or
9 withhold its consent if the comments regarding the Consent Decree disclose facts or
10 considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate.
11 Settling Defendant consents to the entry of this Consent Decree without further notice.
12

13 34. If for any reason this Court should decline to approve this Consent Decree in the
14 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the
15 agreement may not be used as evidence in any litigation between the Parties.
16

17 **XVII. SIGNATORIES/SERVICE**

18 35. Each undersigned representative of a Settling Defendant and the Deputy Section
19 Chief, U.S. Department of Justice, Environmental Enforcement Section, Environment and
20 Natural Resources Division, certifies that he or she is authorized to enter into the terms and
21 conditions of this Consent Decree and to execute and bind legally such Party to this document.
22

23 36. Settling Defendant agrees not to oppose entry of this Consent Decree by this
24 Court or to challenge any provision of this Consent Decree, unless the United States has notified
25 Settling Defendant in writing that it no longer supports entry of the Consent Decree.

26 37. Settling Defendant shall identify, on the attached signature page, the name and
27 address of an agent who is authorized to accept service of process by mail on behalf of that Party
28

1 with respect to all matters arising under or relating to this Consent Decree. Settling Defendant
2 hereby agrees to accept service in that manner and to waive the formal service requirements set
3 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this
4 Court, including but not limited to, service of a summons. The Parties agree that Settling
5 Defendant need not file an answer to the Complaint in this action unless or until the Court
6 expressly declines to enter this Consent Decree.
7

8 **XVIII. FINAL JUDGMENT**

9 38. Upon entry of this Consent Decree by the Court, this Consent Decree shall
10 constitute the final judgment between and among the United States and the Settling Defendant.
11 The Court finds that there is no just reason for delay and therefore enters this judgment as a final
12 judgment under Fed. R. Civ. P. 54 and 58.
13

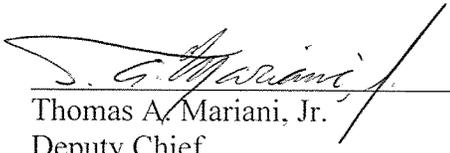
14
15 SO ORDERED THIS ___ DAY OF _____, 20__.

16
17
18 _____
19 Hon. Rosanna Malouf Peterson
20 United States District Court Judge
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR THE UNITED STATES OF AMERICA:

08-05-2015
Dated

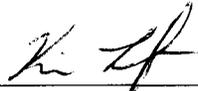

Thomas A. Mariani, Jr.
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611


Elizabeth L. Loeb
Senior Counsel
Zachary Moor
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



RICHARD ALBRIGHT
Director, Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Mail Stop: ECL-122
Seattle, Washington 98101

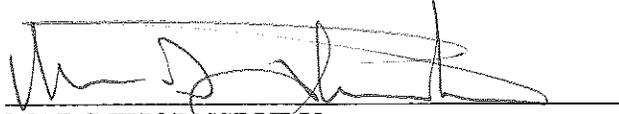


KRIS LEEFERS
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Mail Stop: ORC-113
Seattle, Washington 98101

FOR DEFENDANT KLICKITAT COUNTY PORT DISTRICT NO. 1:

July 28, 2015

Dated



MARC THORNSBURY

Executive Director

154 E. Bingen Point Way, Suite A

Bingen, WA 98605

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Marc Thornsbury

Executive Director

154 E. Bingen Point Way, Suite A

Bingen, WA 98605

(509) 493-1655

mthornsbury@portofklickitat.com

APPENDIX A



Aerial Photograph Reference: Google Earth Pro, 2008.
 Date of Aerial Photograph: June 29, 2005.

 <p>ecology and environment, inc. International Specialists in the Environment Seattle, Washington</p>	<p>RAMCO DISPOSAL SITE Dallesport, Washington</p>		<p>Figure 2 SITE PLAN</p>	
	<p>0 240 480 Approximate Scale in Feet</p>		<p>Date: 7/13/09</p>	<p>Drawn by: AES</p>

APPENDIX B

LEGAL DESCRIPTION
for
Former RAMCO Disposal Area

A tract of land lying in the Southwest 1/4 of Section 25, Township 2 North, Range 13 East, Willamette Meridian, Klickitat County, Washington, being more particularly described as follows:

Commencing at the Southwest corner of said Section 25; thence along the West line of said Section 25, North 01°29'27" East 1,609.68 feet; thence leaving said West line at a right angle, South 88°30'33" East 1,224.88 feet to the true point of beginning of this description, said true point of beginning lies on the Northeasterly line of the Port of Klickitat Dallesport Industrial Park property; thence along said Northeasterly line, South 52°03'41" East 278.33 feet; thence leaving said Northeasterly line, South 13°26'24" East 81.99 feet; thence South 20°33'20" West 66.48 feet; thence North 71°08'09" West 109.69 feet; thence North 85°00'04" West 76.30 feet; thence South 82°44'15" West 82.62 feet; thence South 65°50'18" West 33.75 feet; thence South 49°34'13" West 90.83 feet; thence South 77°33'49" West 72.53 feet; thence North 19°59'34" West 79.04 feet; thence North 67°42'29" East 98.36 feet; thence North 31°09'24" East 30.46 feet; thence North 11°52'35" East 154.84 feet; thence North 13°57'20" West 38.27 feet; thence North 69°16'39" East 122.89 feet to the true point of beginning of this description.

Contains 2.02 acres, more or less.

<14258_DESC.010_sa>