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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, THE UNITED STATES DEPARTMENT OF THE INTERIOR, AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; STATE OF WASHINGTON; PUYALLUP TRIBE OF INDIANS; MUCKLESHOOT INDIAN TRIBE; Plaintiffs, v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL CORPORATION, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES, Defendants	Civil No. C91-5260T COMMENCEMENT BAY NEARSHORE/TIDEFLATS SUPERFUND SITE; ST. PAUL WATERWAY PROBLEM AREA CONSENT DECREE

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90-11-3-363

DEPARTMENT OF JUSTICE

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I. BACKGROUND

1. The United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA") and the federal Natural Resource Trustees (as defined in paragraph 31(J)), and the other Natural Resource Trustees (also defined in paragraph 31(J)) are filing Complaints in this matter, concurrently with this Consent Decree, under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9606 and 9607, as amended, and Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321. This Consent Decree addresses the St. Paul Waterway Problem Area sediment remedial action, associated monitoring, reporting, contingency planning activities, and natural resource damages matters with respect to the Settling Defendants.

2. The United States and the other Natural Resource Trustees in their Complaints seek: (i) reimbursement of monies and costs incurred by the United States for its investigations, studies, response and enforcement activities, and other necessary response actions at the St. Paul Waterway Problem Area of the Commencement Bay Nearshore/Tideflats (CB/NT) Superfund Site in Tacoma, Washington, together with accrued interest; (ii) an injunction requiring the Settling Defendants to perform Work at the St. Paul Waterway Problem Area, as set forth in the attached Monitoring, Reporting and Contingency Plan (the "Monitoring Plan") (Exhibit A), and in conformity with EPA's Record of Decision for the CB/NT site dated September 30, 1989 ("ROD",

Exhibit B), the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, as amended, 55 Fed. Reg. 8666 (March 8, 1990), and CERCLA; (iii) recovery of costs that will be incurred by EPA in connection with the Work to be performed in (ii) above; (iv) the submittal of a Superfund Completion Report regarding the sediment remedial action for the St. Paul Waterway Problem Area; (v) natural resource damages and associated costs for the St. Paul Waterway Problem Area; and (vi) such other relief as the Court finds appropriate.

3. In accordance with Sections 104(b)(2) and 121(f)(1)(F) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9621(f)(1)(F), EPA has notified the State of Washington Department of Ecology ("Ecology") of negotiations with potentially responsible parties ("PRPs") regarding the scope of the remedial action for the St. Paul Waterway Problem Area, and EPA has provided the State of Washington with an opportunity to participate in these negotiations and to be a party to any settlement. As described further in paragraph 20 et seq., Ecology previously entered into a State Consent Decree (Wa. State Dept. of Ecology v. Simpson Tacoma Kraft Co. and Wa. State Dept. of Natural Resources, Pierce County Superior Court No. 87-2-07673-9, December 24, 1989)(the "State Consent Decree") for implementation of the St. Paul Waterway Area Remedial Action and Habitat Restoration Project. EPA has also notified the Puyallup Tribe of Indians ("Puyallup Tribe") of these negotiations. The Puyallup Tribe has participated in these negotiations consistent with the Cooperative Agreement between EPA and the Puyallup Tribe

dated April 28, 1989, under which the Puyallup Tribe is a supporting agency for remedial actions at the Site. All other federal, state, and local agencies with jurisdiction which have issued permits for the remedial work have also been notified, including the U.S. Army Corps of Engineers, the State of Washington Department of Fisheries, and the City of Tacoma.

4. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA has notified the federal, state, and tribal natural resource trustees of the EPA's negotiations with the potentially responsible parties regarding the release or threatened release of hazardous substances at the St. Paul Waterway Problem Area and CB/NT site which may have resulted in injury to natural resources under their trusteeship. EPA has encouraged the participation of the federal, state and tribal natural resource trustees in such negotiations. The natural resource trustees for the St. Paul Waterway Problem Area and Commencement Bay are: (i) the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, (ii) the U.S. Department of Interior, (iii) the Washington Department of Ecology (on behalf of the Washington Department of Fisheries, the Washington Department of Natural Resources, and the Washington Department of Wildlife), (v) the Puyallup Tribe of Indians, and (vi) the Muckleshoot Indian Tribe. These parties (the "Natural Resource Trustees") have participated in the negotiations, and have reached a settlement with the Settling Defendants of their claims for damages due to injury to, destruction of, or loss of natural resources in the St. Paul Waterway Problem Area. The

Natural Resource Trustees and the Settling Defendants agree that, on the basis of the preliminary information available regarding natural resource damages at the St. Paul Waterway Problem Area, settlement of the claims as set forth in this Consent Decree is in the public interest and is made in good faith and after arms-length negotiations, and that entry of this Consent Decree is the most appropriate means to resolve the matters covered herein. The Settlement Agreement reached between the Settling Defendants and the Natural Resource Trustees also provides a mechanism by which the Settling Defendants and other potentially responsible parties in Commencement Bay can participate in a Bay-wide natural resource damage assessment. This Settlement Agreement is attached to this Consent Decree as Exhibit C, and by this reference incorporated herein and made a part of this Consent Decree.

5. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as amended, EPA placed the CB/NT site in Tacoma, Washington (the "Site" as defined in paragraph 31(S) below) on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40,658.

6. Because of the complexity of the CB/NT site, Superfund response actions at the CB/NT site are currently coordinated under seven separate operable units managed primarily by EPA and Ecology, including: (i) Operable Unit 01 - CB/NT Sediments; (ii) Operable Unit 02 - Asarco Tacoma Smelter; (iii) Operable Unit 03 - Tacoma Tar Pits; (iv) Operable Unit 04 -

Asarco Off-Property; (v) Operable Unit 05 - CB/NT Sources; (vi) Operable Unit 06 - Asarco Sediments; and (vii) Operable Unit 07 - Asarco demolition. This Consent Decree involves the St. Paul Waterway sediment contamination, one of eight Problem Areas within Operable Unit 01 of the Site identified for remedial action in the ROD (Exhibit B).

7. In 1983, in response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA entered into a CERCLA Cooperative Agreement with Ecology to conduct a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. The results of the RI were published in August 1985, and the results of the FS were published in February 1989.

8. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action on February 24, 1989, and provided an opportunity for public comment on the proposed remedial action through June 24, 1989. The ROD includes a response to each of the significant comments, criticisms, and new data submitted during the public comment period.

9. On September 30, 1989, EPA issued the ROD for two operable units of the CB/NT site. The ROD addresses both sediment remediation (Operable Unit 01) and source control (Operable Unit 05). The ROD was concurred in by Ecology and the Puyallup Tribe, with whom EPA has entered into Superfund Cooperative Agreements for remedial activities at the Site. Under a Cooperative Agreement with Ecology, effective May 1,

1989, EPA is designated as the lead agency for remediation of contaminated sediments and Ecology as the lead agency for source control of hazardous substances. The Cooperative Agreement with the Puyallup Tribe is described in paragraph 3 above.

10. As described in the RI/FS for the CB/NT site, there were nine Problem Areas of contaminated sediments and sources of hazardous substances contamination. The ROD addressed eight of these Problem Areas, including the St. Paul Waterway Problem Area. The ninth Problem Area, the Asarco Sediments, is now a separate operable unit of the CB/NT site and will be the subject of a subsequent ROD. This Consent Decree addresses the St. Paul Waterway Problem Area.

11. The St. Paul Waterway Problem Area contains contaminated sediments adjacent to the Tacoma Kraft Mill ("Mill"), now owned and operated by the Simpson Tacoma Kraft Company ("Simpson"). The Mill is situated on a peninsula of filled tidelands projecting into Commencement Bay between the mouths of the Puyallup River and the St. Paul Waterway.

12. Simpson, a Washington corporation, owns and operates the Mill facilities, which include a secondary wastewater treatment plant, uplands, and the adjoining St. Paul Waterway landward of the inner harbor line. Pulp and paper operations began at the Mill in 1927 under the ownership of the Union Bag Company, which operated the Mill until 1930. The St. Regis Paper Company acquired the Mill in 1930 and operated it until 1985, when St. Regis Paper Company merged with Champion International Corporation ("Champion").

13. Simpson acquired the Mill from Champion in August 1985. The State of Washington owns the harbor area (the area between the inner and outer harbor lines) and adjacent aquatic lands, which are managed on behalf of the state by the State of Washington Department of Natural Resources ("DNR"). Simpson leases state-owned aquatic lands from the state by and through DNR, as did previous mill owners and operators. Simpson and DNR have entered into a lease and related agreement which include use of the lands for the purposes set forth in this Consent Decree.

14. The bottom sediments in the St. Paul Waterway Problem Area and adjacent to the Mill are contaminated by chemicals and organic debris. As documented in the RI/FS, the St. Paul Waterway Problem Area was among the most biologically stressed areas in the Commencement Bay tideflats, with concentrations of several chemicals over 1,000 times higher than reference area concentrations. These findings were confirmed by sampling of the Site by Parametrix, Inc., consultants for Simpson, in their Tacoma Kraft Mill Sediment Investigation submitted to Ecology in 1986.

15. Several studies have been conducted to characterize the nature and extent of the hazardous substances, pollutants and contaminants in the St. Paul Waterway Problem Area, as well as any such substances present in the Puyallup River sediments that were utilized for Simpson's sediment capping action under the State Consent Decree (see paragraphs 3 and 20). These studies have been described, referenced, and incorporated into a document entitled Project Analysis for the St. Paul

Waterway Area Remedial Action and Habitat Restoration Project ("Project Analysis", July 1987), consisting of a Project Overview, SEPA Environmental Checklist and related environmental assessment, ten technical appendices including Focused Feasibility Study for the St. Paul Waterway Area (Appendix VI), and other applicable studies referenced therein, including relevant portions of the RI/FS as supplemented by Supplemental Information Packets (September and December 1987).

16. The 17-acre St. Paul Waterway Problem Area was identified for remedial action as a result of sediment contamination adjacent to the Mill, which included five acres of sediments near the old mill outfall with a high level of chemical contamination and some organic debris, an area to the southeast with a high level of organic debris and some chemical contamination and the bottom of the entrance to the St. Paul Waterway itself, which was contaminated by wood chips.

17. The principal chemicals identified in the RI/FS as contaminants in the St. Paul Waterway Problem Area included 4-methylphenol, phenol, 2-methoxyphenol, 1-methyl-2-(methylethyl) benzene and other compounds, which are known to be toxic to marine life. Measurements taken during the RI showed concentrations of these chemicals in the sediments that exceeded the cleanup goals and standards subsequently specified in the CB/NT ROD. The RI also showed that the organic debris present in sediments at the St. Paul Waterway problem area was in sufficient quantities to restrict biological productivity.

18. The hazardous substances, pollutants, and contaminants at the St. Paul Waterway Problem Area were primarily released from the Mill.

19. Simpson has taken measures to reduce the levels of hazardous substances or contaminants released from the Mill, including a source control program and the installation of a new Clean Water Act NPDES outfall for its secondary wastewater treatment plant and additional stormwater and chip control systems. Pursuant to delegated authority under the Clean Water Act, Ecology required the NPDES outfall relocation. Ecology is revising the Mill's NPDES permit in 1990.

20. On December 24, 1987, Simpson, Champion, and DNR entered into a State Consent Decree with Ecology under applicable hazardous waste cleanup laws (see paragraph 3 above). The State Consent Decree required Simpson to isolate toxic concentrations of contaminated sediments from the marine environment by placement of a cap of clean sediments from a nearby section of the Puyallup River over the contaminated sediments. These activities were conducted between December 1987 and September 1988 and are described in more detail in the Superfund Completion Report (Exhibit D). A habitat restoration program designed to mitigate adverse biological impacts, to create intertidal habitat for marine biota, and to support a productive biological community was implemented along with the capping activities. The project was designed to be consistent with all applicable, relevant and appropriate laws and to meet state and local

environmental standards, including those under state hazardous waste cleanup laws.

21. EPA was not a party to the 1987 State Consent Decree and at the time the State Consent Decree was entered did not formally approve of, concur in, or oversee the sediment cleanup action, which was completed prior to issuance of EPA's CB/NT ROD.

22. EPA's decision on the final remedial action plan to be implemented under CERCLA and the NCP for the St. Paul Waterway Problem Area is described in the CB/NT ROD.

23. In the ROD, EPA determined that there are five major elements of the selected remedy for the Site sediments and sources that will be applied, as appropriate, to each Problem Area:

(A) Site Use Restrictions - To protect human health by limiting access to edible resources prior to and during implementation of source and sediment remedial activities.

(B) Source Controls - To be implemented to prevent recontamination of sediments.

(C) Natural Recovery - Included as an optional (and preferred) remediation strategy for marginally contaminated sediments that are predicted to achieve acceptable sediment quality through burial and mixing with naturally accumulating clean sediments within a ten year period.

(D) Sediment Remedial Action - To address contaminated sediments that are not expected to naturally recover within ten years following implementation of all known, available, and reasonable source control measures.

(E) Source and Sediment Monitoring - To refine cleanup volume estimates, characterize the effectiveness of source controls, and implement long-term monitoring of the sediment remedial actions(s) to ensure long-term protectiveness of the remedy.

24. For the St. Paul Waterway Problem Area, the ROD specifies that source control, confinement of contaminated sediments, and source and sediment monitoring are the selected remedy. Capping in place was specifically identified as the most appropriate option for confinement of contaminated sediments in the St. Paul Waterway Problem Area, given the type, extent and severity of the sediment contamination. While the actions previously implemented by Simpson in the St. Paul Waterway Problem Area under the 1987 State Consent Decree implemented and largely accomplished EPA's selected remedy for the cleanup of contaminated sediments in the St. Paul Waterway Problem Area as determined in the ROD, revisions in the Monitoring Plan are necessary to ensure consistency of the St. Paul Waterway action with EPA's ROD and with the settlement of natural resource damage claims. Source control and related activities are being implemented under the Mill's NPDES permit administered by Ecology.

25. Pursuant to Section 121(d)(1), the Settling Parties agree that the sediment remedial action previously conducted by the Settling Defendants at the St. Paul Waterway under the 1987 State Consent Decree, subject to monitoring and maintenance by the Settling Defendants in accordance with the provisions of this Consent Decree and attached Monitoring Plan (Exhibit A), will attain a degree of cleanup that assures protection of human health and the environment.

26. In signing this Decree, defendants Simpson, Champion, and DNR deny any and all legal and equitable liability under any federal, state, local, or tribal statute, regulation, or common law for any endangerment, nuisance, response, removal, or remedial costs incurred or to be incurred by the United States, the State of Washington, or other person as a result of the release or threat of release of hazardous substances to, at, from or near the Site. Pursuant to 42 U.S.C. § 9622(d)(1)(B), entry of this Consent Decree is not an acknowledgement by Settling Defendants that any release or threatened release of a hazardous substance constituting an imminent and substantial endangerment to human health or the environment has occurred or exists at the Site. Defendants do not admit and retain the right to controvert any of the factual or legal statements or determinations made herein in any judicial or administrative proceeding except an action to enforce this Consent Decree. They do agree, however, to the Court's jurisdiction over this matter. This Consent Decree shall not be admissible in any judicial or

administrative proceeding as proof of liability or an admission of any fact dealt with herein, but it shall be admissible in an action to enforce this Consent Decree.

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

27. The Settling Parties agree to the entry of this Consent Decree and agree to be bound by its terms. The Settling Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will fully accomplish the St. Paul Waterway Problem Area sediment remedial action in accordance with EPA's ROD for the CB/NT site, will resolve natural resource damage claims with respect to the St. Paul Waterway Problem Area, address certain matters relating to the CB/NT site, and will avoid prolonged and complicated litigation between the Settling Parties, and that the entry of this Consent Decree is in the public interest.

II. JURISDICTION

28. This Court has jurisdiction over the subject matter herein, pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants, which solely for purposes of this Consent Decree and the underlying Complaint, waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Complaint states claims against the Settling Defendants upon which relief may be granted.

III. PARTIES BOUND

29. This Consent Decree applies to and is binding upon the United States, the U.S. Environmental Protection Agency, the Natural Resource Trustees, and the undersigned Settling Defendants, and all of their respective directors, officers, employees, agents, successors, trustees, and assigns.

30. The Settling Defendants shall be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with this Consent Decree and Monitoring Plan and shall include the requirement to perform the Work in accordance with this Consent Decree and Monitoring Plan in their contracts and subcontracts. Each contractor and subcontractor hired by Settling Defendants to perform Work under this Consent Decree shall be deemed to be related by contract to the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Thus, as to acts or omissions of contractors, the Settling Defendants shall not assert a defense based upon Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). The Settling Defendants shall provide a copy of this Consent Decree to each contractor and each subcontractor hired to perform Work that is required by this Consent Decree in an amount greater than $100,000.

IV. DEFINITIONS

31. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

assigned to them in the statute or its implementing regulations. Whenever terms are used in this Consent Decree and the Exhibits attached hereto, the following definitions specified in this paragraph shall apply.

(A) "Consent Decree" means this Decree and all Appendices and Exhibits attached hereto.

(B) "Consulted Agencies" means the governmental entities which have committed to participating in the Monitoring Plan and its contingency planning process. These entities are: the Washington Department of Ecology ("Ecology"), Washington State Department of Fisheries ("WDF"), Washington State Department of Natural Resources ("DNR") (in its capacity as a natural resource trustee), Washington State Department of Wildlife, National Oceanic and Atmospheric Administration ("NOAA") of the U.S. Department of Commerce, United States Department of the Interior including the U.S. Fish and Wildlife Service and Bureau of Indian Affairs, Puyallup Tribe of Indians ("Puyallup Tribe"), and the Muckleshoot Tribe of Indians.

(C) "Contractor" or "Subcontractor" means the company or companies retained by or on behalf of the Settling Defendants to undertake and accomplish the Work and associated activities required by this Consent Decree and attached ROD and Monitoring Plan.

(D) "Effective Date" means the date the Consent Decree is entered by the Court.

(E) "EPA" means the United States Environmental Protection Agency.

(F) "Future Response Costs" shall mean all direct and indirect investigation, enforcement, and response costs (including applicable interest), except oversight response costs, incurred by the United States with respect to the St. Paul Waterway Problem Area after the date of entry of this Consent Decree.

(G) "Institutional Controls" refer to the land use restrictions and other regulations, ordinances, covenants, and controls developed pursuant to the Consent Decree to maintain the integrity and prevent the unauthorized disturbance of the sediment cap, monitoring stations, or other structures that will be constructed, or other remedial measures that will be implemented, at the St. Paul Waterway Problem Area.

(H) "Monitoring Plan" means the "Monitoring, Reporting and Contingency Plan" attached as Exhibit A to this Consent Decree which describes the monitoring requirements, sampling, analyses, quality assurance/quality control procedures, reporting requirements and contingency plans and other actions necessary for the proper operation and maintenance of the sediment remedial action in the St. Paul Waterway Problem Area.

(I) "National Contingency Plan ('NCP')" shall be used as that term is used in 42 U.S.C. § 9605 and 40 C.F.R. Part 300, as amended, 55 Fed. Reg. 8666 (March 8, 1990).

(J) "Natural Resource Trustees" shall mean those entities identified as such pursuant to Section 107(f) of CERCLA and Subpart G of the National Contingency Plan, 40 C.F.R. §§ 300.600 through 300.615, and include the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, and the U.S. Department of the Interior (hereinafter the "federal Natural Resource Trustees"), and the Washington Department of Ecology (on behalf of the Washington Department of Fisheries, the Washington Department of Natural Resources, and the Washington Department of Wildlife), the Puyallup Tribe of Indians, and the Muckleshoot Indian Tribe (hereinafter the "other Natural Resource Trustees").

(K) "Oversight Response Costs" shall mean all costs, including indirect costs, incurred by the United States in overseeing the remedial action and Monitoring Plan, including but not limited to, the costs of reviewing and developing plans, reports and other items pursuant to this Consent Decree and verifying the remedial action and Work. Oversight Response Costs shall also mean costs incurred by the United States under its cooperative agreement with

Ecology, in an amount not to exceed $10,000, and under its cooperative agreement with the Puyallup Tribe for the following tribal activities: (1) conduct of an annual cap inspection, (2) review of draft and final reports required under the Monitoring Plan, and (3) participation in the Contingency Planning Process.

(L) "Past Response Costs" shall mean all costs, including accrued interest and indirect costs incurred by the United States and through EPA's cooperative agreements with Ecology and the Puyallup Tribe, with respect to the St. Paul Waterway Problem Area through the date of entry of this Consent Decree. EPA's Past Response Costs through the date of the ROD (September 30, 1989) are specified in the Cost Allocation Summary (Exhibit E).

(M) "Project Coordinator" means the person designated by the Settling Defendants with responsibility for supervising or overseeing the Work to be performed under this Consent Decree and Monitoring Plan.

(N) "Record of Decision ('ROD')" shall mean the EPA Record of Decision set forth as Exhibit B to this Consent Decree relating to the Commencement Bay Nearshore/Tideflats Superfund Site, including the St. Paul Waterway Problem Area, signed on September 30, 1989, by the Regional Administrator, EPA Region 10, and all attachments thereto.

(O) "Sediment Remedial Action" means the sediment remedial action for the St. Paul Waterway Problem Area described in section 10.2.4 of the ROD and in the Superfund Completion Report (Exhibit D).

(P) "Settling Defendants" means the Defendants Simpson Tacoma Kraft Company, Champion International Corporation, and the State of Washington, by and through the State of Washington Department of Natural Resources.

(Q) "Settling Parties" means the Settling Defendants, the United States on behalf of EPA and the federal Natural Resource Trustees, and the other Natural Resource Trustees.

(R) "St. Paul Waterway Problem Area" refers to the 17-acre area, inclusive of the contaminated sediments contained therein, located adjacent to the Simpson Tacoma Kraft Mill in the St. Paul Waterway as described in the ROD and the Superfund Completion Report.

(S) "Site" means the entire Commencement Bay Nearshore/Tideflats Superfund Site and project area, located in Tacoma, Washington, as defined in the ROD, including the St. Paul Waterway Problem Area.

(T) "Work" means all activities the Settling Defendants are required to perform under this Consent Decree to implement the ROD for the St. Paul Waterway Problem Area of the Site, including the sediment

remedial action tasks described in this Consent Decree and the attached Monitoring Plan and schedules.

V. GENERAL PROVISIONS

32. The objectives of the Settling Parties in entering into this Consent Decree are (i) to protect the public health and welfare and the environment from releases or threatened releases of hazardous substances, pollutants, or contaminants from the St. Paul Waterway Problem Area of the Site by the implementation of the sediment remedial action and monitoring, reporting and contingency activities by the Settling Defendants, (ii) to restore habitat and natural resources with respect to past activities in the St. Paul Waterway Problem Area, (iii) to reimburse governmental entities for all Past, Future, and Oversight Response costs, and (iv) to encourage public and private cooperation to accomplish effective cleanup actions and to restore the environmental health of Commencement Bay.

33. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and Monitoring Plan (Exhibit A), CERCLA and the NCP, and any amendments to CERCLA and the NCP which occur during the implementation of the Work, other applicable laws (see paragraphs 43, 117, and 118) and in a manner consistent with the ROD. EPA has determined that the activities contemplated by this Consent Decree are consistent with the NCP.

34. The obligations of Settling Defendants to finance and perform the Work and to reimburse the United States for its Past Response Costs, Oversight Response Costs and Future Response

Costs under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

35. Except as provided in Section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work under this Consent Decree conducted entirely within the Site. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation. Settling Defendants shall obtain all permits or approvals necessary for Work under this Consent Decree outside of the Site, or for any purposes other than implementation of this Consent Decree, under federal, state, or local laws and shall submit timely applications and requests for any such permits and approvals. All existing permits for the Work performed to date are hereby superseded by this Consent Decree, and Settling Defendants are not required to take any further actions under those permits.

36. The Settling Parties agree that if Settling Defendants or their Contractors arrange for the off-site storage, treatment, disposal, or transportation of any hazardous substance from the St. Paul Waterway Problem Area, then Settling Defendants will, as required, obtain EPA prior written approval of the use of any such off-Site facility in accordance with 42 U.S.C.

§ 9621(e), and will comply with the applicable provisions of 40 C.F.R. Parts 261, 262, 263, 264, 265, and any relevant EPA policies or guidances.

37. The standards and provisions of Section XIV describing Force Majeure shall govern delays in obtaining any necessary approvals or permits required for the Work and also the denial of any such approvals or permits. However, the Settling Defendants are required to make timely application for necessary permit approvals and must provide any additional information needed by the regulatory or consulting agency in a timely manner.

38. Settling Defendants shall include in all contracts or subcontracts entered into for Work required under this Consent Decree, provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

39. All exhibits, appendices, and attachments to this Consent Decree and any and all reports, plans, specifications, schedules, and other documents required by the terms of this Consent Decree and approved by EPA in accordance with the provisions of this Consent Decree are incorporated into this Consent Decree and enforceable under it.

VI. TRANSFERS OF INTEREST OR PROPERTY

40. The obligations of each Settling Defendant who owns any interest in the Mill or property included in the St. Paul Waterway Problem Area, with respect to undertaking and

maintaining the Work set forth in this Consent Decree and the attached Monitoring Plan, or developed thereunder, shall run with the land and shall be binding upon any and all persons who acquire any interest in the Mill or any property included in the St. Paul Waterway Problem Area. Within thirty (30) calendar days of the effective date of this Consent Decree, the Settling Defendants shall record a copy of this Decree with the Recorder's Office, Pierce County, Washington. A copy of the recorded notice shall be sent to EPA.

41. The Mill or any property within St. Paul Waterway Problem Area may be freely alienated provided that at least sixty (60) calendar days prior to the date of such alienation, the Settling Defendants notify EPA in writing of such proposed alienation, the name of the grantee, and a description of the Settling Defendants' obligations, if any, to be performed by such grantee. In the event of such alienation, all of Settling Defendants' obligations pursuant to this Decree shall continue to be met by the Settling Defendants or, subject to EPA approval, by Settling Defendants and the grantee.

42. Prior to termination of this Consent Decree under paragraph 125, any deed, title, or other instrument of conveyance regarding the Mill or St. Paul Waterway Problem Area shall contain a notice that such property is the subject of this Consent Decree, setting forth the style of the case, case number, and Court having jurisdiction herein.

VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

43. The Work to be performed is specified in the attached Monitoring Plan (Exhibit A). The provisions of this Monitoring Plan shall take effect on the effective date of this Consent Decree. The Monitoring Plan is incorporated by reference into this Consent Decree and its terms, conditions, and requirements are enforceable under the provisions of this Decree. All Work shall be conducted in accordance with CERCLA, the NCP, and the requirements of this Consent Decree. Any modifications to the Work performed shall be approved by EPA under paragraph 46, 68, or 120.

44. The following Work shall be performed, as specified in the Monitoring Plan:

(A) Conduct monitoring and report results in accordance with the schedules, methods, sampling and analysis protocols in the Monitoring Plan.

(B) Review and revise annual monitoring programs under EPA direction and approval.

(C) Implement contingency planning, contingency response, and expedited review procedures, if necessary.

45. Simpson shall perform or arrange for the performance of the monitoring unless the Settling Defendants inform EPA otherwise. Work under this Consent Decree shall be under the direction and supervision, as applicable, of a qualified professional engineer, biologist, environmental professional, certified hydrogeologist, or equivalent, with

experience and expertise in contaminated site monitoring. Where appropriate, Simpson's project coordinator may direct and supervise the Work. EPA shall have the right to approve such supervisor, which consent shall not be unreasonably withheld. Simpson shall also inform EPA of the principal contractors and subcontractors to be used in advance of their involvement at the site where possible. In the event of EPA disapproval, Simpson shall promptly, but not later than 30 days, resubmit to EPA the names of its new selections.

46. Performance standards. (i) Purpose of performance standards. The performance standards are designed to evaluate the protectiveness of the remedy at the St. Paul Waterway Problem Area. These standards, as described in subparagraph (ii) below, shall be met at the St. Paul Waterway Problem Area. These performance standards are based on sediment quality objectives in the ROD, specific human health risk assessments, environmental effects tests, and associated interpretive guidelines. The Settling Defendants shall conduct sampling and monitoring activities in accordance with the attached Monitoring Plan in order to determine whether these performance standards are being attained. In accordance with the Contingency Planning Procedures of the Monitoring Plan, EPA may direct the Settling Defendants to conduct additional sampling and analysis if necessary to determine whether the performance standards are being attained.

(ii) Definition of performance standards. There are three types of performance standards: physical, biological and

chemical. The chemical performance standards are interim standards that apply as described in subparagraph (C) and until reference stations for biological tests are established and approved by EPA in accordance with the Monitoring Plan. At that time, the biological performance standards will become effective under this Decree. All data will be used throughout the duration of monitoring activities under this Consent Decree for evaluating the early warning triggers specified in the Monitoring Plan.

(A) Physical performance standard. A minimum of three feet of sediment meeting the performance standards in this paragraph shall be maintained at all times throughout Areas A and B of the Problem Area (see Figure 1d of Monitoring Plan, Exhibit A).

(B) Biological performance standard. (1) This standard is measured by three biological tests: benthic infauna abundance, amphipod mortality bioassay, and larval abnormality bioassay. These tests were used to establish the sediment quality objectives specified in the ROD. A determination by EPA of an adverse effect for the benthic infauna test, the amphiphod mortality bioassay, and either the bivalve larvae abnormality test or echinoderm larvae bioassay test shall be considered a

failure to attain the biological performance standard.

(2) The Monitoring Plan contains requirements for annual monitoring of benthic and epibenthic abundance and monitoring of seeps, vents, and sediments in the Problem Area; there are no routine requirements for conducting bioassay tests. Should EPA determine that the data resulting from the Monitoring Plan indicate the need for further evaluation or sampling to determine whether the performance standards are being attained, EPA may require the Settling Defendants to conduct additional biological tests or take other actions in accordance with the Contingency Planning Process of the Monitoring Plan.

(3) EPA shall determine adverse effects for each of the three biological performance standard tests as described below:

(a) Benthic infauna abundance (in-situ). The test sediment sample has a lower (statistically significant using a one-tailed t-test with a comparison error rate of $P \leq 0.05$) mean abundance than the reference sediment sample of any of the following major taxa: crustacea, mollusca, and polychaeta; and the test sediment sample mean abundance is less than 50 percent of the reference sample mean total abundance.

(b) Amphipod mortality bioassay. The test sediment sample has a higher (statistically significant using a one-tailed t-test with a comparison error rate of $P \leq 0.05$) mean mortality than the reference sample, and the test sediment sample mean mortality exceeds 25 percent (absolute).

(c) Larval abnormality bioassay (oyster or echinoderm). The test sediment sample has a higher (statistically significant using a one-tailed t-test with a comparison error rate of $P \leq 0.05$) mean abnormality than the reference sediment sample, and the test sediment sample mean abnormality exceeds 20 percent (absolute).

(4) The selection of reference areas for the purpose of taking reference sediment samples for the biological tests will be determined in accordance with the Monitoring Plan. Samples for benthic infauna analyses shall be taken in accordance with the sampling and analytical methods, including replicate samples, specified in the Monitoring Plan. Sediment samples for bioassay analyses shall be collected from the top two centimeters of the cap and analyzed in accordance with applicable Puget Sound Estuary Program protocols. The control and reference area criteria established for the bioassays by the Puget Sound Estuary Program protocols shall be used.

(C) Chemical performance standards. These standards are interim performance standards as described above and are specified as the lowest AET in Table 7 of the Monitoring Plan. These standards are based upon the interpretation of the biological tests described in subparagraph (B) above using the Apparent Effects Threshold (AET) method and on human health risk assessment procedures. These chemical performance standards are attained when the concentration of a chemical in a sediment sample taken from the top two centimeters of the cap is less than the lowest AET value for that chemical in Table 7. However, if the lowest AET value in Table 7 is exceeded, EPA may determine, under the Contingency Planning Process, that the chemical performance standard is being attained if a combination of chemical and biological data demonstrate no adverse biological effects.

(iii) Modifications to AET database or sampling and test evaluation protocols. EPA may propose modifications to the AET database or sampling and test evaluation protocols, including QA/QC protocols, for the biological and chemical performance standards after the date of this Consent Decree. EPA will first consult with Settling Defendants and consulting agencies on proposed modifications. If EPA and the Settling Defendants agree on a modified AET database or sampling and test evaluation protocols, the modified database or protocols will be used in determining attainment of performance standards. If agreement is

not reached, the matter will be resolved in accordance with the dispute resolution procedures described in Section XV of this Consent Decree. Any modifications of the AET database or sampling and test evaluation protocols will be documented and filed with the court in accordance with paragraph 120 of this Consent Decree.

47. Failure to attain performance standards. If one or more of the performance standards is not attained, or if the remedy is otherwise not protective of human health and the environment, EPA shall determine -- where appropriate under the Contingency Planning Procedures of the Monitoring Plan or under Section IX, XIX, or XXIV below -- the additional response activities to be conducted. If the problem has not been corrected after proceeding under the Contingency Planning Process, EPA shall determine whether the Settling Defendants have failed to comply with the requirements of this Consent Decree. Such failure shall be considered a matter not covered under Section XVIII below and subject to the provisions of paragraph 101 below.

48. The Settling Defendants acknowledge and agree that nothing in this Consent Decree, including the Monitoring Plan, constitutes a warranty or representation of any kind by EPA or the United States that compliance with this Consent Decree will achieve the performance standards set forth in paragraph 46 above, and that such compliance shall not foreclose the United States from seeking performance of all terms and conditions of this Consent Decree.

VIII. ADDITIONAL WORK

49. If the Settling Defendants determine that additional Work may be necessary to attain the performance standards of this Consent Decree, the Settling Defendants shall obtain EPA's approval to proceed prior to performing such Work.

50. As specified in the Contingency Planning Process in the Monitoring Plan, EPA shall consult and coordinate Work with the Consulted Agencies prior to performing additional Work, or requiring the Settling Defendants to perform additional Work, that is authorized by the Contingency Response Process. Further, EPA shall use best efforts consistent with this Consent Decree and the State Consent Decree dated December 24, 1987, as amended, to coordinate with Ecology in the event that any future enforcement actions are initiated by EPA under this Consent Decree or by Ecology.

IX. PERIODIC REVIEW TO ENSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

51. EPA will conduct reviews of the sediment remedial action in accordance with CERCLA § 121(c), 42 U.S.C. § 9621(c), and any applicable regulations or guidance, based on data received under the Monitoring Plan together with any other appropriate information. If EPA determines as a result of this review that further response action under CERCLA § 104 or § 106 may be necessary, EPA shall provide the Settling Defendants a reasonable opportunity to confer in accordance with the

contingency planning process prior to implementing a response action. After such consultation, EPA shall, in writing, either affirm, modify, or rescind the determination of the need for further response action. If directed by EPA, the Settling Defendants shall perform the response action unless they request review of EPA's final decision pursuant to the dispute resolution provisions in Section XV of this Decree, to the extent permitted by CERCLA § 113, 42 U.S.C. § 9613.

X. QUALITY ASSURANCE

52. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAM-005/80), EPA's "Data Quality Objective Guidance" (EPA/540/G87/003 and 004), Puget Sound Estuary Protocols (1986-1990), and subsequent amendments to such guidelines. All such procedures and provisions for modifications are included in the Monitoring Plan and paragraph 46 of this Consent Decree. Should any need for modifications arise, the modifications will be provided to the Settling Defendants by EPA and incorporated into the Monitoring Plan pursuant to paragraphs 46 and 120. Any disagreements with such modifications shall be resolved under the dispute resolution provisions in this Consent Decree. Sampling data generated consistent with the Monitoring Plan shall be admissible as evidence against Settling Defendants, and Settling Defendants

waive any objection to admissibility of such evidence in any proceeding under this Consent Decree.

53. Selection of any laboratory to be utilized by Settling Defendants in implementing this Consent Decree is subject to approval by EPA. Settling Defendants shall ensure that EPA and its authorized representatives have reasonable access to each laboratory in order to inspect that laboratory, pertinent laboratory records, and equipment utilized in implementing this Consent Decree. Settling Defendants shall also require each laboratory selected to submit a quality assurance plan to EPA. In addition, Settling Defendants shall require each laboratory to perform analyses of samples provided by EPA according to EPA specified methods, to demonstrate the quality of each laboratory's analytical data.

XI. SITE ACCESS AND SAMPLING

54. (i) As of the effective date of this Consent Decree, EPA and its authorized representatives, including Ecology and the Puyallup Tribe, and their contractors, shall have access to the St. Paul Waterway Problem Area and any property to which access is required for the oversight or implementation of this Consent Decree, to the extent access to the property is controlled by or available to Settling Defendants. EPA, Ecology, the Puyallup Tribe and their authorized representatives shall have the authority to enter and freely move about such property at all reasonable times for the purposes of overseeing the

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

(A) Conducting any activity authorized by or related to CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq., the NCP or this Consent Decree;

(B) Monitoring the Work, progress of such Work, or any other activities undertaken on the property;

(C) Verifying any data or information submitted to EPA;

(D) Inspecting and copying records, operation logs, contracts, or other documents maintained or generated by Settling Defendants or their agents or contractors for the Work undertaken pursuant to this Consent Decree;

(E) Conducting such tests, investigations, or sample collections as deemed necessary to monitor compliance with this Consent Decree;

(F) Using a camera, sound recording, or other documentary type equipment to record Work done pursuant to this Consent Decree;

(G) Assessing the need for, planning, or implementing additional response actions at or near the St. Paul Waterway Problem Area; and

(H) Assessing Settling Defendants' compliance with the terms of this Consent Decree.

(ii) Settling Defendants shall have the right to accompany EPA, Ecology, the Puyallup Tribe, or their authorized representative on the property. Parties with access to the property shall comply with applicable health and safety requirements and shall not interfere, to the extent practicable, with ongoing operations.

55. To the extent that the St. Paul Waterway or any other area where Work is to be performed under this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for EPA and its representatives, including Ecology and the Puyallup Tribe and their contractors, as necessary to implement this Consent Decree. For purposes of this paragraph "best efforts" includes, but is not limited to, seeking judicial assistance. If any access required to complete the Work is not obtained within thirty (30) days of the effective date of this Consent Decree, or within 30 days of the date EPA notifies Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify EPA. EPA may thereafter assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XVII, for Future Response Costs incurred in implementing this paragraph.

56. Notwithstanding any provision of this Consent Decree, EPA, Ecology and the Puyallup Tribe retain all of their access authorities and rights under CERCLA, RCRA and any other

applicable federal or state statute, regulation or other authority.

XII. REPORTING, DOCUMENT RETENTION AND AVAILABILITY

57. Settling Defendants shall report to EPA or its authorized representatives the results of all sampling and/or tests, quality assurance data, and other data generated by Settling Defendants as specified by the Monitoring Plan. All reports submitted to EPA under the Monitoring Plan shall be signed by the Project Coordinator or designee and shall be filed with the Court after approval by EPA.

58. All required work plans, reports, and other documents ("documents") shall be subject to review and approval by EPA.

59. Except as provided in the Monitoring Plan:

(A) EPA shall notify the Settling Defendants in writing of approval or disapproval of the document, or any part thereof, within thirty (30) calendar days of receipt of any document required by this Consent Decree. In the event EPA needs a longer review period, EPA shall notify Settling Defendants of its revised response date within thirty (30) calendar days of receipt of the document.

(B) In the event of disapproval, EPA shall specify in writing any deficiencies and modifications to the document. Nothing in this provision shall negate EPA's right to approve or disapprove a submittal by

the Settling Defendants should the time periods stated in this paragraph be exceeded by EPA, nor shall such delay by EPA subject Settling Defendants to any enforcement action.

(C) Within thirty (30) calendar days of receipt of any document disapproval or comments for revision, the Settling Defendants shall either: (1) submit a revised document to EPA which incorporates EPA's modifications or summarizes and addresses EPA's concerns or (2) provide a notice of dispute under Section XV of this Consent Decree.

60. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

61. Upon the occurrence of any event during performance of the Work under this Consent Decree which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 300.63, and pursuant to Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, requires reporting, the Settling Defendants shall within twenty-four (24) hours orally notify the EPA Project Coordinator/OSC, and the EPA Superfund Response and Investigation Section, Region 10, in addition to the reporting required by Section 103 of CERCLA and Section 304 of EPCRA. Within twenty (20) calendar days of the onset of such an event, the Settling

Defendants shall furnish to EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) calendar days of the conclusion of such an event, the Settling Defendants shall submit a report setting forth all final actions taken to respond thereto. Reports submitted in compliance with other laws that include information required by this Consent Decree may be submitted under this Consent Decree and may be appended to a regular monitoring report rather than being submitted to the court separately.

62. The Settling Defendants shall make available to EPA, and shall retain, during the pendency of this Consent Decree and for a period of ten (10) years after its termination, all records, data, and documents in their possession, custody or control which relate to the performance of this Consent Decree, and State Consent Decree, including documents reflecting the results of any sampling and all documents pertaining to their own or any other person's response actions or costs under CERCLA. The Settling Defendants shall require all such records in the possession of their contractors or agents to be provided to them and shall retain originals or true copies of all such records. After the ten (10) year period of document retention, the Settling Defendants shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and the Settling Defendants shall relinquish custody of the documents to EPA on request.

63. Except as provided by paragraph 65 below, the Settling Defendants may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7)(A) of CERCLA, 42 U.S.C. § 9604(e)(7)(A), and pursuant to EPA's Confidential Business Information regulations contained at 40 C.F.R. §§ 2.203 - 2.206.

64. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such written claim accompanies the information when it is submitted to the EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such information without further notice to the Settling Defendants unless such information is subject to the requirements of paragraph 65.

65. Information acquired or generated by the Settling Defendants in performance of the Monitoring Plan and Work under this Consent Decree that is subject to the provisions of Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be claimed as confidential by the Settling Defendants. EPA may make Settling Defendants' preliminary or draft data or documents available to its contractors involved in reviewing such information in accordance with contractual requirements on confidentiality. Except as specifically provided in the Monitoring Plan, EPA shall not make Settling Defendants'

documents that are marked as preliminary or draft data or documents available to Consulted Agencies or any other person without prior consultation with the Project Coordinator. Except as provided in the Monitoring Plan, the Consulted Agencies also shall not make Settling Defendants' preliminary or draft data or documents available to any other person without prior consultation with EPA's RPM and the Project Coordinator. If Settling Defendants request, EPA or the Consulted Agency shall include an explanation regarding the reliability or status of any preliminary or draft data or documents being made available.

XIII. DESIGNATION OF REMEDIAL PROJECT MANAGER/ON-SCENE COORDINATOR AND PROJECT COORDINATOR

66. Within twenty (20) calendar days of the effective date of this Consent Decree, the Settling Defendants shall notify EPA, in writing, of the name, address, and telephone number of their designated Project Coordinator and Alternate Project Coordinator responsible for supervising or overseeing the Work to be performed under this Consent Decree and Monitoring Plan. The Project Coordinator shall have primary responsibility for implementation of the Work at the St. Paul Waterway Problem Area under this Consent Decree and Monitoring Plan as provided in Section VII above. Champion and DNR shall provide the name, telephone number, and address of a project contact for EPA. The Settling Defendants may change their Project Coordinator(s) or Contacts by notifying EPA, in writing, at least ten (10) calendar days prior to the change.

67. EPA shall designate a Remedial Project Manager (RPM) who shall oversee the Work performed by Settling Defendants pursuant to this Consent Decree and Monitoring Plan. In addition to the RPM designated by EPA pursuant to paragraph 116 of this Consent Decree, EPA may designate other representatives, including its contractors and consultants, and persons from, or working for, Ecology or the Puyallup Tribe, to observe and monitor the progress of activities undertaken pursuant to this Consent Decree. EPA's RPM shall have the authority lawfully vested in a RPM and On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300, as amended, and as provided under Section XXIV of this Consent Decree.

68. To the maximum extent possible, except as specifically provided in this Consent Decree, communications between Settling Defendants and EPA concerning the implementation of the Work under this Consent Decree shall be made between the Settling Defendants' Project Coordinator and EPA's RPM. The Settling Defendant's Project Coordinator and EPA's RPM are authorized to make minor modifications to the requirements of this Consent Decree (see paragraph 120 below).

XIV. FORCE MAJEURE

69. "Force Majeure," for purposes of this Consent Decree is defined as any event arising from causes entirely beyond the control of the Settling Defendants which Settling Defendants could not avoid by the exercise of due diligence and which delays or prevents the timely performance of any obligation

under this Consent Decree notwithstanding Settling Defendants' best efforts to avoid the delay, including but not limited to using best efforts to address any potential Force Majeure (i) as it is occurring and (ii) following the potential Force Majeure event, such that the delay is minimized to the greatest extent possible. Force Majeure shall not include increased costs or expenses in connection with the performance of the Work under the Consent Decree or Monitoring Plan, changed financial circumstances of Settling Defendants or nonattainment of the performance standards set forth in Section VII of this Consent Decree.

70. When circumstances or any event occurs or has occurred which may delay the completion of any phase of the Work or delay access to the St. Paul Waterway Problem Area or to any property on which any part of the Work is to be performed, whether or not caused by a Force Majeure event, the Settling Defendants shall promptly (but no later than 48 hours) orally notify EPA's RPM, or other EPA representative in his/her absence. Within five (5) working days of the event which Settling Defendants contend is responsible for the delay, Settling Defendants shall notify EPA in writing of reason(s) for the delay, the anticipated duration of such delay, the measures taken and to be taken by Settling Defendants to prevent or minimize the delay, the timetable for implementation of such measures, and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to give

oral notice to EPA's Project Coordinator and to give written explanation to EPA in a timely manner shall constitute a waiver of any claim of Force Majeure.

71. If EPA agrees that the delay or anticipated delay is or was attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are directly affected by the Force Majeure event shall be extended by agreement of the Settling Parties for a period of time to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay.

72. If EPA does not agree that the delay or anticipated delay has been or will be a Force Majeure event, or that the duration of the delay is or was warranted under the circumstances, the Settling Parties shall resolve the dispute according to Section XV hereafter. In any such proceeding, Settling Defendant has the burden of demonstrating by a preponderance of evidence that the delay or anticipated delay has been or will be caused by a Force Majeure as a defense to compliance with this Consent Decree.

XV. DISPUTE RESOLUTION

73. If the parties cannot resolve a disagreement under this Consent Decree, EPA shall use the procedures set forth in this Section and shall promptly make a determination or certify issues to the court for resolution.

74. The Settling Parties shall attempt to resolve expeditiously and informally any disagreements concerning

implementation of this Consent Decree or any Work required thereunder. Informal negotiations between the parties to the dispute may last for a period of up to fourteen (14) calendar days from the date that written notice of the existence of the dispute is served on all Settling Parties, unless it is extended by written agreement between the Settling Parties.

75. In the event that any dispute arising under this Consent Decree is not resolved informally within the fourteen (14) day time period indicated in paragraph 74 above, the party who gave the notice shall then within ten (10) days serve on the Settling Parties a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). Opposing parties shall serve their Statements of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the complaining party's Statement of Position. In the event that these ten-day time periods for exchange of Statements of Position may cause a delay in the Work, they shall be shortened in accordance with written notice by EPA.

76. An administrative record of any dispute under this Section shall be maintained by EPA. At its option, EPA may determine, which determination shall not be reviewable by a court, that any dispute which relates to the selection, extent, or adequacy of any aspect of any response actions is to be resolved on an administrative record. For purposes of this

paragraph, the adequacy of any aspect of any response action includes: (i) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (ii) the adequacy of response actions performed pursuant to this Consent Decree. The record shall include the written notification of such dispute and the Statements of Positions and any other materials submitted by the parties in support of their positions. The record shall be available for review by all Settling Parties to this Consent Decree.

77. Upon review of the administrative record, EPA shall issue a final decision and order resolving the dispute within fourteen (14) calendar days.

78. Any decision and order of EPA pursuant to the preceding paragraph shall be binding unless a Notice of Judicial Appeal is filed with this Court within ten (10) calendar days of receipt of EPA' decision and order. In any event, judicial review will be conducted on the administrative record, using an arbitrary and capricious standard of review. The Settling Defendants shall bear the burden of proof for demonstrating that the decision is arbitrary and capricious. The filing of a judicial appeal shall not stay the accrual of stipulated penalties pursuant to Section XVI. After the date of termination of this Consent Decree specified in Section XXXII hereof, judicial review will be available only by instituting new action(s) to the extent permitted by law, except for those continuing obligations set forth in paragraph 125.

79. The invocation of the procedures stated in this Section shall not extend or postpone the Settling Defendants' obligations under this Consent Decree with respect to the disputed issue unless and until EPA finds, or the Court orders, otherwise.

80. In no event will the standards for performance of the Work set forth in paragraph 46 of this Consent Decree be subject to challenge by the Settling Defendants. Disputes on whether the performance standards have been met or on modifications to such performance standards proposed by EPA are subject to dispute resolution under this Section.

XVI. STIPULATED PENALTIES

81. The Settling Defendants shall be jointly and severally liable for stipulated penalties in the amounts set forth in paragraph 87 for each violation of the requirements of this Consent Decree unless EPA or a court determines that such failure is excused under Section XIV ("Force Majeure"). Violations by the Settling Defendants shall include, but are not limited to, failure to complete an activity under this Consent Decree, or any matter under this Consent Decree in a manner acceptable to EPA and within the specified reporting schedules, established in and approved under this Consent Decree. Any modifications of the time for performance shall be mutually agreed to in writing pursuant to paragraph 68 or 120.

82. All penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue

to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

83. Following a determination by EPA that Settling Defendants have failed to comply with any requirement of this Consent Decree, EPA shall give Settling Defendants written notification of the violation and describe the noncompliance. EPA shall use best efforts to issue such notification within thirty (30) days of its determination of a violation. This notice shall also indicate the amount of penalties currently due, and the rate of accrual for continuing violations.

84. All penalties owed under this Section shall be payable within thirty (30) calendar days of receipt of the notification of noncompliance, unless the Settling Defendants invoke the dispute resolution procedures under Section XV. Penalties shall accrue from the date of violation regardless of whether EPA simultaneously notified the Settling Defendants of a violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to paragraph 89 of this Section. Such penalties shall be paid by certified check to the "Hazardous Substances Response Superfund," and shall contain Settling Defendants' complete and correct address, the Site name, and the civil action number. All checks to the "Hazardous Substances Response Trust Fund" shall be mailed to U.S. EPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251.

85. Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way the Settling Defendants' obligation to fully perform the requirements of this Consent Decree.

86. The Settling Defendants may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XV. Penalties shall accrue but need not be paid during the dispute resolution period. If the District Court becomes involved in the resolution of the dispute, the period of dispute shall end upon the rendering of a decision by the District Court regardless of whether any party appeals such decision. If the Settling Defendants do not prevail upon resolution, the United States has the right to collect all penalties which accrue prior to and during the period of dispute. In the event of an appeal by Settling Defendants, such penalties shall be placed into an escrow account until a decision has been rendered by the final court of appeal. If the Settling Defendants prevail upon resolution, no penalties shall be payable and the sums held in the escrow account shall be refunded to the Settling Defendants.

87. The following stipulated penalties shall be payable per violation per day for any noncompliance identified in paragraph 81 above.

Amount/Day	Period of Noncompliance
$1,500	1st through 30th day
$5,000	30th through 60th day
$10,000	60th day and beyond

88. No payments made under this Section shall be tax deductible.

89. Pursuant to 31 U.S.C. § 3717, interest shall accrue on any amounts overdue at a rate established by the Department of Treasury for any period after the date of billing. A handling charge will be assessed at the end of each thirty day late period, and a six percent per annum penalty charge will be assessed if the penalty is not paid within ninety (90) calendar days of the due date.

90. If the Settling Defendants fail to pay stipulated penalties, the United States may institute proceedings to collect the penalties. Notwithstanding the stipulated penalties provisions of this Section, the United States may elect to assess civil penalties and/or bring an action in U.S. District Court pursuant to Section 109 of CERCLA, as amended, or other applicable law, to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude the United States from electing to pursue any other remedies or sanctions to enforce this Consent Decree, including seeking additional penalties for civil or criminal contempt proceedings, and nothing shall preclude the United States from seeking statutory penalties against the Settling Defendants for violations of any statutory or regulatory requirements.

XVII. REIMBURSEMENT

91. Settling Defendants shall, jointly and severally, pay three hundred fifty four thousand, five hundred thirty six dollars ($354,536.00) plus any interest due, in reimbursement of Past Response Costs through September 30, 1989, within thirty (30) calendar days of the entry of this Consent Decree, to the "EPA Hazardous Substances Response Superfund." Interest, including prejudgment interest, shall accrue on any amount owed after thirty (30) days of the Settling Defendants' receipt of EPA's special notice and formal demand letter and shall continue to accrue on any unpaid balance following the date of entry of this Consent Decree. In addition, Settling Defendants shall, jointly and severally, pay sixty (60) percent of EPA's Past Response Costs, plus any interest due, incurred from September 30, 1989 through the date of entry of this Consent Decree and not inconsistent with the National Contingency Plan, within thirty (30) calendar days of receipt of EPA's demand letter and Financial Management Cost Summary, to the "EPA Hazardous Substances Response Superfund." Interest shall accrue on any amount owed after thirty days of the Settling Defendants' receipt of EPA's formal demand letter. Such amounts shall be sent to the U.S. EPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, payable to "EPA Hazardous Substances Response Superfund" and shall contain the Site name and civil action number. A copy of such check with an explanatory transmittal letter shall be sent to the Director of the Hazardous Waste Division, EPA, Region

10, the EPA RPM and the EPA Hearing Clerk, Office of Regional Counsel, EPA, Region 10.

92. The payments made under paragraph 91 of this Section are for reimbursement of EPA's Past Response Costs plus interest, incurred through the date of entry of this Consent Decree, claimed by the United States in this action. Nothing herein shall be construed as limiting the rights of the United States to seek any cost recovery from liable persons not party to this Consent Decree.

93. Settling Defendants shall, jointly and severally, reimburse the United States for all Oversight Response Costs and Future Response Costs plus interest from the date of entry of this Consent Decree not inconsistent with the National Contingency Plan incurred by the United States and EPA. The United States shall send Settling Defendants a demand for payment, by certified mail return receipt requested, which shall include an EPA Region 10 Financial Management Office Cost Summary of all direct and indirect costs incurred by EPA and the United States and their contractors, on an annual basis, with each demand to be made as soon as practicable after the anniversary date of the entry of this Consent Decree. Payments shall be made in the manner described in paragraph 91 within 30 days of Settling Defendants' receipt of each demand for payment.

94. Copies of check(s) paid pursuant to paragraph 93, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in paragraph 93.

95. Settling Defendants may contest payment of any Past Response Costs incurred during the period September 30, 1989 through the effective date of this Consent Decree and Oversight Response Costs or Future Response Costs incurred after entry of this Consent Decree pursuant to paragraph 93 if they determine that EPA has made an accounting error or if they allege that a cost item that is included represents costs incurred for efforts undertaken in a manner that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the accounting and must be sent to the United States pursuant to Section XV. Any such objection shall specifically identify the contested Oversight Response Costs or Future Response Costs and the basis for objection. In the event of an objection, which shall be resolved under the dispute resolution procedures of Section XV, the Settling Defendants shall within the 30 day period remit a certified or cashier's check for an amount covering any non-contested Oversight Response Costs or Future Response Costs to the United States in the manner described in paragraphs 91 and 93. The dispute resolution procedures of Section XV shall apply. If EPA prevails in the dispute, the Settling Defendants shall pay the amount due plus interest and applicable charges pursuant to paragraph 96.

96. In the event that the payments required by paragraphs 91 or 93 are not timely made, Settling Defendants shall pay interest on the unpaid balance at the rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. 102.13. Settling Defendants shall, jointly and

severally, further pay: (i) a handling charge of one percent, to be assessed at the end of each thirty-day late period, and (ii) a six (6) percent per annum penalty charge, to be assessed if Settling Defendants have not paid in full within ninety (90) days after the payment is due. Payments made under this paragraph shall be in addition to such other remedies or sanctions available to EPA and the United States by virtue of Settling Defendants' failure to make timely payments under this Section. If Oversight Response Costs are outstanding at the time the United States plans to terminate this Consent Decree, the Settling Defendants shall, within thirty (30) calendar days of the submission of an itemized cost statement and supporting documentation by the United States, and before termination of this Consent Decree, pay such oversight costs.

97. The Past Response Costs set forth in this Section are not inconsistent with the NCP.

XVIII. COVENANT NOT TO SUE

98. In consideration of actions which will be performed and payments which will be made by the Settling Defendants under the terms of this Consent Decree, and except as otherwise specifically provided in this Decree, the United States on behalf of EPA and the federal Natural Resource Trustees, and the other Natural Resource Trustees, covenant not to sue the Settling Defendants or its officers, directors, employees, agents, successors, trustees, or assigns, for "Covered Matters." These covenants not to sue shall take effect upon receipt by EPA

of the payments required by paragraph 91 of this Decree and upon receipt by the Natural Resource Trustees of the payments required under the Settlement Agreement on Natural Resource Damages attached hereto as Exhibit C. With respect to future liability, these covenants not to sue shall take effect upon the date of issuance of the Certification of Completion by EPA under paragraph 124. The covenant not to sue DNR for natural resource damages in the St. Paul Waterway Problem Area shall take effect upon: (i) completion of the administrative review and identification of properties referred to in the Settlement Agreement, and (ii) receipt of DNR's written commitment to make available properties, that are acceptable to the Natural Resource Trustees, for the habitat restoration project referred to in the Settlement Agreement. "Covered Matters" means the following:

(A) Exclusively with respect to the St. Paul Waterway Problem Area, liability for any and all civil claims available to the United States on behalf of EPA and the federal Natural Resource Trustees, and the other Natural Resource Trustees, under Sections 106 and 107 of CERCLA, Section 7003 of RCRA, and Section 311 of the Federal Water Pollution Control Act for:

(1) A release or threat of release of hazardous substances that was remedied by Work described in this Consent Decree and the Superfund Completion Report.

(2) Work performed in accordance with this Consent Decree and Monitoring Plan.

(3) Recovery of Past Response Costs, Oversight Response Costs, and Future Response Costs associated with contaminated sediments within the St. Paul Waterway Problem Area.

(4) Damages for injury to, destruction of, or loss of natural resources under federal, state, and tribal trusteeship.

(B) With respect to Simpson and Champion in the other Problem Areas described in the ROD, liability for any and all civil claims available to the United States on behalf of EPA under Sections 106 and 107 of CERCLA and Section 7003 of RCRA for:

(1) Other sediment remedial actions.

(2) Past Response Costs, Oversight Response Costs, and Future Response Costs associated with contaminated sediments.

(C) Covered Matters under this paragraph do not include the Middle Waterway Problem Area described in the ROD.

99. (i) The covenants not to sue set forth above do not pertain to any matters other than those expressly specified to be "Covered Matters." In addition, the following are specifically identified as matters that are not "Covered Matters:"

(A) Criminal liability.

(B) Claims based on a failure of the Settling Defendants to meet the requirements of this Consent Decree.

(C) Liability for violations of applicable federal, state, or tribal law or regulation by a Settling Defendant in carrying out this Consent Decree.

(D) Liability arising from hazardous substances that are removed by or at the direction of a Settling Defendant from the St. Paul Waterway Problem Area or the Site after the effective date of this Consent Decree, where such removal is not authorized by this Consent Decree.

(E) Liability, including but not limited to, claims for Response Costs, under applicable federal, state, or tribal law or regulation arising from any future release or threat of release of hazardous substances not described in the ROD and supporting documents or as a "Covered Matter."

(F) Any matters for which the United States is owed indemnification under Section XXII hereof.

(G) Oversight Response Costs and Future Response Costs, if incurred and not reimbursed to the United States under paragraph 93.

(H) Liability under applicable federal, state, or tribal law or regulation for contaminated sediments in the Middle Waterway Problem Area.

(I) Liability for unknown conditions as described in paragraph 100 of this Consent Decree.

(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act.

(ii) Settling Defendants reserve their right to assert defenses under CERCLA, including but not limited to, the defense set forth in Section 107(b)(3) of CERCLA, to any of the matters described in subparagraphs (A) through (K) above.

XIX. RESERVATION OF RIGHTS

100. The United States on behalf of EPA and the federal Natural Resource Trustees, and the other Natural Resource Trustees on their own behalf, reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not described as Covered Matters, including additional response Work at the St. Paul Waterway

Problem Area or the Site which are not covered by the covenant not to sue. EPA and the Natural Resource Trustees maintain all rights without reservation with respect to DNR in all Problem Areas other than the St. Paul Waterway Problem Area. If previously unknown conditions or information are discovered, as defined in subparagraphs (A) and (B) below, the United States reserves the right to: (i) perform additional response Work caused by a release from the St. Paul Waterway Problem Area or the Site; (ii) institute proceedings in this action or in a new action seeking to compel the Settling Defendants to perform any additional response Work at the St. Paul Waterway Problem Area or the Site; or (iii) institute proceedings in this action or in a new action seeking to compel the Settling Defendants to reimburse the United States on behalf of EPA for its response costs relating to the St. Paul Waterway Problem Area or the Site.

(A) Previously unknown conditions means:

(1) Conditions at the St. Paul Waterway Problem Area or the Site, previously unknown to the United States, are discovered after the date of this Consent Decree; or

(2) Information, including scientific or technical information, data, facts, or documents is received, in whole or in part, or new analyses of information not contained in the record for the initial remedy selection decision are completed, after the effective date of this Consent Decree.

(B) EPA and the Natural Resource Trustees reserve their rights if either EPA or the Natural Resource Trustees find, based on these previously unknown conditions or information described in subparagraph (A), together with site-specific and any other relevant information, that:

(1) The response action associated with contaminated sediments in the St. Paul Waterway Problem Area implemented under the provisions of this Consent Decree is no longer protective of human health or the environment, or

(2) A Settling Defendant is potentially liable under Sections 106 or 107 of CERCLA with respect to a release or threat of release of hazardous substances at the Site resulting from:

(a) The acts or failure to act of that Settling Defendant, or

(b) A facility or vessel owned or operated by that Settling Defendant which is located outside of the St. Paul Waterway Problem Area, or

(c) Transportation or arrangement for transport by that Settling Defendant for disposal or treatment of such hazardous substances.

(C) Settling Defendants reserve their right to assert defenses under CERCLA, including but not limited to

the defenses set forth in Section 107(b)(3) of CERCLA, to claims or actions brought under this paragraph.

101. If Settling Defendants fail to meet the requirements of this Consent Decree, EPA shall provide written notice to the Settling Defendants of such failure. Consistent with this Consent Decree, EPA, independently or in conjunction with the Natural Resource Trustees, may perform, or may require the Settling Defendants to perform, any or all portions of Work necessary to correct such failure. EPA reserves its rights under Sections XVI through XX of this Decree to assess stipulated penalties. EPA and the Puyallup Tribe reserve their rights to seek recovery of costs incurred after the entry of the Consent Decree that result from failure to meet the requirements of the Consent Decree and that: (1) relate to any portion of the Work funded or performed by EPA or the Puyallup Tribe; or (2) are incurred by the United States or the Puyallup Tribe as a result of having to seek judicial assistance to remedy conditions at or adjacent to the St. Paul Waterway Problem Area or the Site. In any proceeding for costs under this Decree, the Settling Defendants shall have the burden of proving that costs claimed by EPA and/or the Puyallup Tribe were for Work inconsistent with or beyond the scope of this Consent Decree or were inconsistent with the NCP.

102. Nothing in this Consent Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation, or other entity not a

signatory to this Consent Decree for any liability it may have arising out of or relating to the St. Paul Waterway Problem Area or the Site. The United States, either on behalf of EPA or the federal Natural Resource Trustees, or both, and the other Natural Resource Trustees on their own behalf, expressly reserve the right to sue any person other than the Settling Defendants, in connection with the St. Paul Waterway Problem Area or any other area at the Site.

XX. COVENANT BY SETTLING DEFENDANTS; ASSIGNMENT OF CLAIMS

103. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, EPA, or the Natural Resource Trustees, for any claims for costs, damages, or attorneys fees related to or arising from "Covered Matters" including but not limited to any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) pursuant to Sections 106(b)(2), 111, or 112, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or NCP section 300.700(d) or (e). Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or NCP section 300.700(d).

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

104. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action

to, any person not a party to this Consent Decree. Each of the Settling Parties expressly reserves any and all rights, including any right to contribution, defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the St. Paul Waterway Problem Area or the Site against any person not a party hereto. In the event the United States and the Puyallup Tribe do not recover all of their Past Response Costs, Oversight Response Costs, and Future Response Costs related to the St. Paul Waterway Problem Area or the Site, the United States and the Puyallup Tribe shall have a first right of recovery against any non-settling parties as provided in Section 113(f)(3)(C) of CERCLA. Nothing in this Consent Decree shall limit the right of the Settling Defendants to assert claims for contribution at any time against non-settling parties.

105. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the parties hereto agree that the Settling Defendants are entitled as of the effective date of this Consent Decree to such protection from contribution actions or claims as provided in CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2). "Matters addressed" in this Consent Decree means:

(A) The sediment remedial action in and the natural resource damages with respect to the St. Paul Waterway Problem Area.

(B) Work performed in accordance with this Consent Decree and Monitoring Plan.

(C) EPA's and the Natural Resource Trustees' Past Response Costs and Oversight Response Costs that are reimbursed by the Settling Defendants.

(D) The Future Response Costs of EPA or the Natural Resource Trustees, if expended by them and reimbursed by the Settling Defendants.

106. The Settling Defendants agree that with respect to any suit or claim for contribution brought by or against them for matters related to this Consent Decree they will notify the representatives of EPA, the United States, and the other Natural Resource Trustees, within 30 days of the initiation of service of such suit or claim upon them.

107. In any subsequent administrative or judicial proceeding initiated either by the United States or by the other Natural Resource Trustees, or both, for injunctive relief, recovery of response costs, or other appropriate relief relating to the St. Paul Waterway Problem Area or any other area within the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver or claim-splitting, or based upon any contention that the claims raised by the United States or the other Natural Resource Trustees in the subsequent proceeding were or should have been brought in the instant case; provided, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section XVIII. The terms of this Consent Decree and the fact of entry of this Decree do not constitute claim-splitting by any party.

XXII. INDEMNIFICATION; OTHER CLAIMS

108. The United States does not assume any liability by entering into this Agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Simpson and Champion agree to indemnify and save and hold harmless the United States, EPA, and the Natural Resource Trustees, and/or their agents, employees and representatives for or from any and all claims or causes of action arising from acts or omissions of Simpson and Champion and/or their officers, employees, agents, contractors, subcontractors, representatives, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including any claims arising from any designation of Simpson and Champion as EPA's authorized representatives under Section 104(e) of CERCLA. The United States and the other Natural Resource Trustees shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States or the other Natural Resource Trustees. EPA shall notify Settling Defendants of any such claims or actions after receiving notice that such a claim or action is anticipated or has been filed.

109. Simpson and Champion waive, and shall indemnify and hold harmless the United States and the other Natural Resource Trustees with respect to any claims for damages or reimbursement from the United States or the other Natural

Resource Trustees, or for set-off of any payments made or to be made to the United States or the other Natural Resource Trustees, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work relating to the St. Paul Waterway Problem Area, including claims on account of construction delays. Nothing in this Consent Decree shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, corporation, or state or local government entity not a signatory to this Consent Decree for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from, the St. Paul Waterway Problem Area or any other area within the Site.

110. EPA and the Natural Resource Trustees are not to be construed as a party to, and do not assume any liability for, any contract entered into by the Settling Defendants in carrying out the activities under this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of the Settling Defendants.

XXIII. INSURANCE/FINANCIAL RESPONSIBILITY

111. Simpson and Champion shall purchase and maintain an insurance policy in an amount reasonably acceptable to the United States, which shall protect the United States and the

public against any and all liability arising out of Settling Defendants' and their contractors and other agents' acts or omissions in performance of the Work under this Consent Decree and Monitoring Plan. Prior to the entry of this Consent Decree, Settling Defendants shall provide EPA with a certificate of insurance and a copy of the insurance policy for approval by the United States.

XXIV. ENDANGERMENT

112. In the event EPA determines or concurs in a determination by another local, state, tribal or federal agency that any activities pertaining to implementation of this Consent Decree, or any other circumstances or activities at the St. Paul Waterway Problem Area or surrounding Site, which causes or threatens an unpermitted release of a hazardous substance(s), or which may present an immediate threat or imminent and substantial endangerment to the public health or welfare or the environment, the EPA may order the Settling Defendants to stop further implementation of this Consent Decree for such period of time as needed to abate the danger and/or immediately undertake all appropriate action to prevent, abate, or minimize such release or endangerment. If the Settling Defendants object to any order by the RPM, they may petition the Court to stay or set aside such order. The filing of such a petition shall not operate to stay the effectiveness of such order, nor shall it in any way operate to preclude EPA from taking response actions, or from seeking to enforce such order. During any stoppage of Work under this

Section, the Settling Defendants' obligations with respect to the Work ordered to be stopped shall be suspended and the time periods for performance of that Work, as well as the time period for any other Work dependent upon the Work which stopped, shall be extended, for such period of time as EPA determines is reasonable under the circumstances, in no event less than the time of the stoppage.

113. In the event of any action or occurrence during the performance of the Work under this Consent Decree or Monitoring Plan which causes or threatens a release of a hazardous substance(s), which may threaten the integrity of the sediment remedial action or affect the biological populations, or which may present an immediate threat to public health, welfare, or the environment, the Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify the EPA RPM, or if unavailable, the EPA Emergency Response and Investigations Section, Superfund Branch, EPA Region 10. Settling Defendants shall take such action in accordance with all applicable provisions of the Health and Safety and Contingency Plans developed pursuant to the Monitoring Plan. In addition, Settling Defendants agree to prohibit any and all activities that will or may potentially threaten or impair the integrity of the sediment remedial action for the St. Paul Waterway Problem Area, or that will or may potentially impair the health of or recovery of the biological populations in the St. Paul Waterway Problem Area.

114. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP. Payment of such costs or response shall be made in the manner described in paragraph 93 of Section XVII, as applicable, within thirty (30) days of Settling Defendants' receipt of demand for payment and a Region 10 Financial Management Office Cost Summary of all of the direct and indirect costs incurred.

115. Any disagreements under this Section XXIV shall be resolved through the dispute resolution procedures under Section XV. Nothing in the preceding paragraphs 112, 113, and 114 shall be deemed to limit any authority of EPA, the United States, or this Court to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened unpermitted release of hazardous substance(s) at, or from the St. Paul Waterway Problem Area or any other area within the Site.

XXV. NOTICES

116. Whenever, under the terms of this Consent Decree, notice is required to be given, or a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Section XV hereof, such correspondence shall be directed to the individuals at the addresses specified below. Inadvertent failure to provide multiple copies to a party shall not be considered noncompliance with this Consent Decree.

As to the United States or EPA:

Four copies to:

Lori Cohen, Remedial Project Manager
Superfund Branch (HW-113)
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

One copy to:

Allan Bakalian, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

One copy to:

Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(DOJ Reference No. 90-11-3-363)

As to the Settling Defendants:

David McEntee
Environmental Manager
Simpson Tacoma Kraft Company
P.O. Box 2133
Portland Avenue
Tacoma, Washington 98401

Edward J. Reeve
Senior Counsel
Simpson Tacoma Kraft Company
1201 Third Avenue
Seattle, Washington

Kenneth S. Weiner
Preston Thorgrimson Shidler Gates & Ellis
5400 Columbia Center
Seattle, Washington 98104

James Carraway
Senior Manager, Special Projects
Environmental Affairs
Champion International Corporation
One Champion Plaza
Stamford, CT 06921

Ann J. Morgan
Manager, Division of Aquatic Lands
Washington Department of Natural Resources
John Cherberg Building
MS: QW-21
Olympia, Washington 98504

Christa L. Thompson
Office of the Attorney General
7th Floor
Highway License Building
Olympia, WA 98504

As to the Consulted Agencies, one copy each to:

Simpson Tacoma Kraft Mill Project Manager
Department of Ecology
Hazardous Waste Investigations and Cleanup
Program
Mail Stop PV-11
Olympia, Washington 98504-8711

Bill Sullivan
Environmental Department
Puyallup Tribe of Indians
2002 East 28th Street
Tacoma, Washington 98404

Morgan Bradley
Muckleshoot Indian Tribe
39015 - 172nd Avenue S.E.
Auburn, Washington 98002

Thom Hooper
Washington Department of Fisheries
115 General Administration Building
Olympia, Washington 98504

Tom Mumford
Washington Department of Natural Resources
Division of Aquatic Lands
900 - 47th Avenue N.E.
Olympia, Washington 98506

John Carleton
Washington Department of Wildlife
600 Capital Way N.
Olympia, Washington 98501-1091

Don Kane
United States Fish & Wildlife Services
Division of Ecological Services
2625 Parkmont Lane S.W., Building B-3
Olympia, Washington 98502

Chris Mebane
Coastal Resources Coordinator
NOAA
c/o EPA Region 10 (HW-113)
1200 Sixth Avenue
Seattle, Washington 98101

Charles S. Polityka
Regional Environmental Office
Department of Interior
1002 N.E. Holladay - Suite 354
Portland, Oregon 97232-4181

Ron Eggers
Bureau of Indian Affairs
Portland Area Office
P.O. Box 3785
Portland, Oregon 97208

Fred Gardner
Department of Ecology-Rowesix
4224 6th Avenue S.E.
Lacey, Washington 98503

Richard Du Bey
Special Environmental Counsel to the
Puyallup Tribe of Indians
3110 Bank of California Center
Seattle, WA 98164

XXVI. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

117. The United States and Settling Defendants agree that Work required under this Consent Decree is consistent with the provisions of the NCP pursuant to 42 U.S.C. § 9605.

XXVII. COMPLIANCE WITH LAWS

118. All actions carried out by the Settling Defendants pursuant to this Consent Decree shall be done in accordance with all applicable or relevant and appropriate requirements under federal, state, and tribal, statutes, rules, regulations and ordinances as required by Section 121 of CERCLA, 42 U.S.C. § 9601, and the National Contingency Plan, 40 C.F.R. Part 300, as amended.

XXVIII. RESPONSE AUTHORITY

119. Except as provided in paragraph 98 ("covenant not to sue"), nothing in this Consent Decree shall be deemed to limit the response authority of EPA under 42 U.S.C. §§ 9604 and 9606, or to alter the applicable legal principles governing the judicial review of EPA's Record of Decision concerning remedial action at the St. Paul Waterway Problem Area or the Site.

XXIX. MODIFICATION

120. (i) No modification shall be made to the text of this Consent Decree without written notification to and written approval of the Settling Parties and the Court. The notification required by this paragraph shall set forth the nature of and reasons for the requested modification. No oral modification of the text of this Consent Decree shall be effective. Nothing in this paragraph shall require the Settling Parties to amend the text of this Consent Decree in order to make mutually agreed upon revisions in the Exhibits herein, including the Monitoring Plan.

(ii) Minor modifications to the Exhibits herein that do not materially alter the requirements of this Consent Decree may be made with the written consent of the Settling Defendant's Project Coordinator and EPA's RPM (see paragraph 68 above). Such minor modifications include, for example, field decisions relative to sample location, clarification of sampling techniques to adapt to field conditions, reporting formats and schedules, data evaluation techniques, and identification of parties to be notified under paragraph 116. Minor modifications shall be documented and ratified in writing and retained in the project files of all parties. Minor modifications shall be documented in the next report required under the Monitoring Plan.

(iii) If disagreements on modifications are not within the scope of the contingency planning process, they shall be resolved through the dispute resolution procedures in Section XV above.

(iv) Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

121. The United States shall publish a notice of this Consent Decree's availability for review and comment upon its lodging with the United States District Court as a proposed settlement in this matter pursuant to the provisions of 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7. The United States will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during at least a thirty (30) calendar day period following such notice. The United States will file with the Court a copy of any comments received and the response of United States to such comments. After the close of the public comment period, the United States reserves the right after review of such comments to withdraw or withhold its consent to the Consent Decree if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice, but reserve their right to withdraw or withhold consent if revisions to the Consent Decree are made after the close of the public comment period.

XXXI. COMMUNITY RELATIONS

122. This section sets forth an agreement between EPA, Simpson, and Champion on providing information to the public on the progress of the Work under this Consent Decree and on Superfund activities at the St. Paul Waterway. The intent of this section is for EPA, Simpson, and Champion to coordinate these community relations activities. Other than as provided in this Section, EPA, Simpson, and Champion are not limited in how they respond to public inquiries on these matters.

(A) EPA shall be the lead agency for community relations activities required by law, regulation, or the Community Relations Plan for the Site. EPA shall make final determinations on the text of any notices or documents required by law, regulation, or the Community Relations Plan (consistent with Section XII regarding the availability of confidential and draft material).

(B) EPA shall notify and invite Simpson and Champion to participate in EPA's community relations activities directed to the St. Paul Waterway Problem Area. Simpson and Champion shall be provided the opportunity to review draft fact sheets, press releases, and other public notices. Simpson and Champion may also participate in public meetings that are held or sponsored by EPA to explain activities at or concerning the St. Paul Waterway Problem Area. EPA shall make final determinations on the text and

distribution of any of its community relations documents.

(C) Simpson or Champion shall notify and invite EPA to participate in their community relations activities directed to the St. Paul Waterway Problem Area. Simpson or Champion shall provide EPA the opportunity to review draft fact sheets, press releases, and other public notices. EPA may participate in public meetings that are held or sponsored by Simpson or Champion that concern the St. Paul Waterway Problem Area. Any communications or notices issued by Simpson or Champion independent of EPA's community relations activities at the St. Paul Waterway Problem Area shall be presented as separate and independent of EPA's community relations activities.

(D) EPA's RPM and the Project Coordinator shall be the contacts for coordination under this Section.

XXXII. EFFECTIVE AND TERMINATION DATES

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

124. Certification of Completion. The Settling Defendants shall submit to EPA a Notice of Completion and a final report called a Superfund Completion Report no later than thirty (30) days after the date of the Regional Administrator's signature on this Consent Decree. The final report must

summarize the Work performed and the performance standards achieved and shall include or reference any supporting documentation. Based upon its review of this report, the supporting documentation, and the remedial activities conducted at the St. Paul Waterway Problem Area, EPA will issue a Certification of Completion for the St. Paul Waterway Problem Area if the sediment remedial action has been satisfactorily completed and has achieved standards of performance required under this Consent Decree. The United States will not lodge this Consent Decree until EPA has issued the Certification of Completion.

125. Termination of Consent Decree. After EPA determines that compliance with Section VII ("Performance of the Work") is no longer required in order to assure that the sediment remedial action remains protective of human health and the environment, this Consent Decree shall be terminated upon motion of any Settling Party and Order of this Court. Termination of this Consent Decree shall not affect the "Covenant Not to Sue" in Section XVIII, the "Reservation of Rights" in Section XIX, and the "Effect of Settlement; Contribution Protection" in Section XXI.

XXXIII. RETENTION OF JURISDICTION

126. This Court shall retain jurisdiction over this matter for the purpose of enabling any of the Settling Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the

interpretation, construction, implementation, or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XV hereof.

XXXIV. SIGNATORIES

127. The undersigned representative of each Settling Defendant to this Consent Decree, the Department of Justice, the Environmental Protection Agency, and each of the Natural Resource Trustees, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

128. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agency who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of summons, any applicable local rules of this Court.

SO ORDERED THIS 13 DAY OF Dec, 1991 ~~1990~~

United States District Judge

THE UNDERSIGNED SETTLING PARTIES enter into this Consent Decree in the matter of United States v. Simpson Tacoma Kraft Company, et al., relating to the St. Paul Waterway Problem Area of the Commencement Bay Nearshore/Tideflats Superfund Site.

FOR THE UNITED STATES OF AMERICA

By: _____ Dated: 6.5.91

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

By: _____ Dated: May 1 1991

Kalyn Cherie Free, Thomas W. Swegle
Nancy Flickinger
Attorney
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20536

By: _____ Dated: 6/13/91

Assistant United States Attorney
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, Washington 98104

By: _____ Dated: September 27, 1990

Regional Administrator
EPA, Region 10
Seattle, Washington 98101

By: _____ Dated: September 27, 1990

for
Allan Bakalian
Assistant Regional Counsel
EPA, Region 10
Seattle, Washington 98101

By: Raymond B. Ludwiszewski Dated: 3/7

Raymond B. Ludwiszewski
Acting Assistant Administrator
Office of Enforcement
Environmental Protection Agency
Washington, D.C.

SIMPSON TACOMA KRAFT COMPANY

By: J. T. Roach
Vice President and
Chief Financial Officer

Dated: September 27, 1990

CHAMPION INTERNATIONAL CORPORATION

By: _____ Dated: 9/27/90

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

By: James A. Stearns Dated: Sept. 27, 1990

For matters arising under or relating to the Consent Decree, service may be made on the Office of the Attorney General, Christa L. Thompson, Assistant Attorney General, Natural Resources Division, Highways-Licenses Building, M.S. PB-71 Olympia, WA 98504

THE WASHINGTON DEPARTMENT OF ECOLOGY

By: Carol L. Fleskes Dated: 1/9/91

By: Jay J. Manning Dated: 1/9/91
Jay J. Manning
Assistant Attorney General
State of Washington

THE PUYALLUP TRIBE OF INDIANS

By: Vivian John

Dated: 9/27/90

THE MUCKLESHOOT INDIAN TRIBE

By: Virginia Cross Dated: 5-28-91

EXHIBITS

Exhibit A	Monitoring and Contingency Plan
Exhibit B	Record of Decision
Exhibit C	Settlement Agreement on Natural Resource Damages
Exhibit D	Superfund Completion Report
Exhibit E	Cost Allocation Summary

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE);

ENVIRONMENTAL PROTECTION AGENCY REGION 10 AGREEMENT AND CONCURRENCE

The ENVIRONMENTAL PROTECTION AGENCY REGION 10, signatory to the St. Paul Waterway Consent Decree on September 27, 1990, hereby acknowledges and concurs with the following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree:

> "(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.
>
> (K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The Environmental Protection Agency Region 10 further agrees by executing this Agreement and Concurrence that the St. Paul Waterway Consent Decree, as revised and circulated to the parties on November 28, 1990, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by the Environmental Protection Agency.

This Agreement and Concurrence will be attached to the Environmental Protection Agency Region 10's previously executed signature page to the St. Paul Waterway Consent Decree.

ENVIRONMENTAL PROTECTION AGENCY

By: Dana A. Rasmussen — Dated: December 21, 1990
Dana A. Rasmussen
Regional Administrator

By: Allan B. Bakalian — Dated: December 21, 1990
Allan B. Bakalian
Assistant Regional Counsel

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the SIMPSON TACOMA KRAFT COMPANY, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

> "(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.
>
> (K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

SIMPSON TACOMA KRAFT COMPANY

By: for J. T. Rach

Dated: December 12, 1990

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the PUYALLUP TRIBE OF INDIANS, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

> "(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.
>
> (K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

PUYALLUP TRIBE OF INDIANS

By: Henry John Dated: 12/5/90

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the WASHINGTON DEPARTMENT OF NATURAL RESOURCES, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

> "(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.
>
> (K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

By: James A. Stearns Dated: Dec. 6, 1990

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the WASHINGTON DEPARTMENT OF ECOLOGY, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

> "(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.
>
> (K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

WASHINGTON DEPARTMENT OF ECOLOGY

By: Carol L. Fleshes Dated: January 9, 1991

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the CHAMPION INTERNATIONAL CORPORATION, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"... liability for damages for injury to, destruction of, ... natural resources, including damages with respect to ... product releases occurring after July 1, 1990, and ... damages with respect to the St. Paul Waterway ... Area.

"... liability for releases of petroleum products or ... substances (not described in the ROD ... ing documents or as a "Covered Matter") ... St. Paul Waterway Problem Area after July 1, 1990, pursuant to ... Section 311 of the Federal Water Pollution Control Act, as ... amended by the Oil Pollution Act of 1990, P.L. No. 101-380, ... 104 Stat. 484, or any other applicable provision of that ..."

The undersigned representative further agrees that ... this Agreement and Concurrence that if A's member ... revises the St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, with ... of these revisions, the prior version ... executed by such Settling Party.

This Agreement and Concurrence will be ... duly executed signature page ... St. Paul Waterway Consent Decree.

CHAMPION INTERNATIONAL CORPORATION

By: Jim Caraway Date: 1-15-91