

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

ARONSON INVESTMENT COMPANY  
LLC,

Defendant.

NO.

CONSENT DECREE

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1  
2 **I. INTRODUCTION**

3 A. In entering into this Consent Decree (Decree), the mutual objective of the  
4 Washington State Department of Ecology (Ecology), and Aronson Investment Company, LLC  
5 (Aronson) is to allow for the construction, installation, operation, repair and maintenance of a  
6 subsurface barrier wall on property owned by Aronson, including installation of any related  
7 groundwater monitoring wells required by Ecology in establishing a conditional point of  
8 compliance, in order to facilitate remedial actions being performed by Philip Services  
9 Corporation (PSC) and/or its successors and assigns. PSC is the owner and operator of a  
10 facility from which there has been a release or threatened release of hazardous substances.  
11 This Decree requires Aronson to:

12 (1) Enter into and agree to the recording of the Subsurface Easement, which is  
13 attached hereto as Exhibit C, for its property located at 5300 Denver Avenue South in Seattle  
14 (Property), for the purposes of installing, operating, and maintaining the remedial measures as  
15 set forth in Exhibit C, the obligations of which are incorporated herein by reference and are  
16 enforceable obligations of this Decree; and

17 (2) Consent to a groundwater conditional point of compliance on its property,  
18 should such a conditional point of compliance be approved by Ecology in a final Cleanup  
19 Action Plan.

20 Ecology has determined that these actions are necessary to protect human health and  
21 the environment.

22 B. The Complaint in this action is being filed simultaneously with this Decree. An  
23 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
24 By entering into this Decree, Aronson does not admit, and expressly denies, any liability to the  
25 Plaintiff or to any person or entity. The Parties wish to resolve the issues raised by Ecology's  
26 Complaint. In addition, the Parties agree that settlement of these matters without litigation is

1 reasonable and in the public interest, and that entry of this Decree is the most appropriate  
2 means of resolving these matters.

3 C. In signing this Decree, the Parties agree to its entry and agree to be bound by its  
4 terms.

5 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
6 Parties from any liability they may have with respect to matters alleged in the Complaint or  
7 with respect to matters addressed in this Decree. The Parties retain the right to seek  
8 reimbursement, in whole or in part, from any liable persons for sums expended under or to  
9 negotiate or comply with this Decree.

10 E. This Decree shall not be construed as proof of liability or responsibility for any  
11 releases of hazardous substances or for remedial action costs nor an admission of any facts;  
12 provided, however, that Aronson shall not challenge the authority of the Attorney General and  
13 Ecology to enforce this Decree.

14 F. The Court is fully advised of the reasons for entry of this Decree, and good  
15 cause having been shown.

16 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as  
17 follows:

## 18 II. JURISDICTION

19 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
20 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

21 B. Authority is conferred upon the Washington State Attorney General by  
22 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after  
23 public notice and any required hearing, Ecology finds the proposed settlement would lead to a  
24 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
25 such a settlement be entered as a Consent Decree issued by a court of competent jurisdiction.  
26

1 C. Ecology has determined that a release or threatened release of hazardous  
2 substances has occurred at the Site, which has led to the contamination of groundwater on the  
3 Property.

4 D. Aronson maintains that the circumstances of this matter exclude it from the  
5 definition of an "owner or operator" under MTCA, RCW 70.105D.020(12)(b)(iv) because  
6 Aronson maintains the hazardous substances in groundwater beneath the Property came to be  
7 located there solely as a result of groundwater migration from a source off the Property.  
8 Aronson also maintains it has not caused or contributed to the release of these hazardous  
9 substances. In addition, Aronson maintains it does not engage in activities that damage or  
10 interfere with operation of remedial actions installed on the Property or engage in activities that  
11 result in exposure of humans or the environment to the contaminated groundwater that has  
12 migrated onto the Property. Aronson is allowing both Ecology and PSC to conduct remedial  
13 actions on the Property as required by Ecology. Alternatively, Aronson maintains that the  
14 circumstances of this matter entitle it to avail itself of the third party and innocent landowner  
15 defenses under MTCA, RCW 70.105D.040(3)(a)(iii) and RCW 70.105D.040(3)(b). Rather  
16 than litigate these issues, however, the parties agree that a settlement of liability as outlined  
17 below is appropriate. Solely for the purposes of RCW 70.105D.040(4) and for the limited  
18 purpose of implementing the actions required by this Decree to facilitate PSC's remedial  
19 actions in response to the release or threatened release of hazardous substances from the PSC  
20 facility, Aronson voluntarily accepts its status as a potentially liable person and waives its right  
21 to notice and comment pursuant to WAC 173-340-500(5).

22 E. The actions to be taken pursuant to this Decree are necessary to protect public  
23 health and the environment.

24 F. Aronson has agreed to undertake the actions specified in this Decree and  
25 consents to the entry of this Decree under MTCA.  
26

1 **III. PARTIES BOUND**

2 A. This Decree shall apply to, inure to the benefit of, and be binding upon the  
3 Parties to this Decree, and their respective members, heirs, personal representatives, successors  
4 and assigns. The undersigned representative of each party hereby certifies that he or she is  
5 fully authorized to enter into this Decree and to execute and legally bind such party to comply  
6 with the Decree. Aronson agrees to undertake all actions required by the terms and conditions  
7 of this Decree. No change in ownership or corporate status shall alter Aronson's responsibility  
8 under this Decree. Aronson shall provide a copy of this Decree to all agents, contractors, and  
9 subcontractors retained to perform work required by this Decree, and shall ensure that all  
10 agents, contractors and subcontractors covenant to undertake such work in compliance with  
11 this Decree.

12 B. This Decree, with the exception of Sections VI.C and XVIII, also shall apply to,  
13 benefit, and bind Aronson's successors and assigns, if these successors and assigns become  
14 owners of all or a part of the Property, subject to and in accordance with the provision for  
15 successors-in-interest to settling parties in RCW 70.105D.040(4)(e).

16 **IV. DEFINITIONS**

17 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200  
18 apply to the terms in this Decree.

19 A. Site: The Site, referred to as the Georgetown Plume Site, is coextensive with  
20 the areal extent of hazardous substances released from the Burlington Environmental,  
21 Inc./Philip Services Corporation facility at 734 South Lucile Street, Seattle, Washington. In  
22 general terms, the areal extent of these releases runs west and southwest from that facility. It is  
23 approximately bounded to the north by South Bennett Street and to the west by the Duwamish  
24 Waterway. To the south, the approximate boundary lies within blocks of the PSC facility at its  
25 eastern end, while Slip 2 of the Duwamish Waterway is its western terminus. The area  
26 encompassed by the Site is roughly 0.5 square kilometers. The Site is more particularly

1 described in Exhibit A to this Decree, which is a detailed Site diagram. The Site constitutes a  
2 Facility under RCW 70.105D.020(4).

3 B. Parties: Refers to the Washington State Department of Ecology (“Ecology”)  
4 and Aronson.

5 C. Aronson: Refers to Aronson Investment Company, LLC (“Aronson”) and its  
6 members, heirs, personal representatives, successors and assigns.

7 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
8 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
9 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

10 E. Property: Refers to that real property located at 5300 Denver Avenue South,  
11 Seattle, WA, 98108, currently owned by Aronson.

12 F. PSC: Refers to Burlington Environmental, Inc., a wholly owned subsidiary of  
13 Philip Services Corporation, and/or Philip Services Corporation, and any corporate successors  
14 or assigns.

15 G. Subsurface Easement: Refers to that subsurface easement attached hereto as  
16 Exhibit C.

## 17 V. STATEMENT OF FACTS

18 Ecology makes the following findings of fact without any express or implied  
19 admissions by Aronson.

20 A. Burlington Environmental Inc., a wholly owned subsidiary of Philip Services  
21 Corporation (hereinafter “PSC”), is the owner and operator of a dangerous waste treatment and  
22 storage facility at 734 South Lucile Street, Seattle, WA. This facility lies to the southeast of  
23 the Property located at 5300 Denver Avenue South, which property is owned by Aronson. A  
24 RCRA permit under the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C.  
25 § 6901 et seq., and the Washington Hazardous Waste Management Act (HWMA), chapter  
26 70.105 RCW, was issued to the facility jointly by the United States Environmental Protection

1 Agency (EPA) and Ecology on August 5, 1991 (RCRA Permit No. WAD 00812909). This  
2 permit is now under the jurisdiction of Ecology under the HWMA.

3 B. As part of the HWMA permit for what is now the PSC facility, corrective  
4 actions are necessary to protect human health and the environment from releases of hazardous  
5 constituents from that facility. Specifically, hazardous constituents have been released to soils  
6 and to groundwater beneath the PSC facility which continue to migrate. Hazardous  
7 constituents released from the PSC facility and measured in media samples on-site include  
8 petroleum hydrocarbons such as benzene, solvents such as trichloroethene (TCE) and  
9 tetrachloroethene, metals, polychlorinated biphenyls (PCBs), and semi-volatiles such as  
10 phenols.

11 C. From the results of groundwater sampling conducted by PSC pursuant to  
12 requirements in their permit, it is apparent that hazardous constituents have migrated with  
13 groundwater beyond the property boundary of the PSC facility and have contaminated  
14 groundwater in areas downgradient of the PSC facility. One such area is the Property.  
15 Measurements of groundwater contamination in areas on the Property, as well as in monitoring  
16 wells downgradient of the Property, indicate that hazardous constituents such as TCE and other  
17 chlorinated organic contaminants, associated with the PSC facility have migrated in a generally  
18 westerly and southwesterly direction.

19 D. Hazardous substances have been found on the Property that are associated with  
20 releases at the PSC facility which have migrated with groundwater, at levels in groundwater  
21 that exceed State Model Toxics Control Act cleanup levels. Certain volatile constituents are  
22 also at levels in shallow groundwater that may pose a potential threat to human health by  
23 contaminating indoor air via vapor intrusion.

24 E. Hazardous constituents have been found in groundwater below the PSC facility,  
25 and below properties downgradient of PSC, that may pose a threat to ecological receptors at  
26 the Duwamish River, or humans who harvest and consume fish and shellfish from the river.

1 F. Due to the potential risks associated with contaminant migration to the  
2 Duwamish River, and the objective of containing the highest levels of groundwater  
3 contamination east of Denver Avenue, where there may also be contamination in the form of  
4 dense non-aqueous phase liquids, and to protect future downgradient receptors from risks  
5 posed by vapor intrusion, EPA and Ecology modified the PSC facility permit to require  
6 hydraulic containment of near-site groundwater. As a result, PSC proposed a subsurface  
7 barrier wall interim measure, installed as an enclosure around the 734 South Lucile Street and  
8 5400 Denver Avenue South properties, both of which are owned by PSC.

9 G. In approving this barrier wall concept, Ecology has required PSC to request  
10 access from Aronson for the purpose of expanding the wall alignment to include the southern  
11 portion of the Property. In particular, an area extending approximately fifty feet into the south  
12 parking lot area of the Property is known to have groundwater contamination associated with  
13 releases from the PSC facility that exceeds cleanup levels under the Model Toxics Control Act.  
14 Ecology has determined that this area should be enclosed behind a barrier wall.

15 H. Prior to formation of Aronson as a limited liability company, the Property was  
16 purchased on or about October 26, 1966, by Aronson Investment Company, a general  
17 partnership comprised at various times of the following general partners: Richard J. Aronson,  
18 Miriam Aronson, Leonard Aronson, Marian Aronson, Abe Aronson, Hilda Aronson, Samuel  
19 Werner, Rose Werner, Millicent Aronson Kauffman, Mark Aronson, Hilda T. Aronson  
20 Testamentary Trust, Jo Ann W. Basin as co-trustee for Samuel and Rose Werner, and Henry  
21 Aronson, individually and as personal representative of the estate of Miriam Aronson.  
22 Ecology is not aware of any evidence to suggest that hazardous substances have been used,  
23 placed, managed, or otherwise handled on the Property in a manner likely to cause or  
24 contribute to the release or threatened release of hazardous substances that have been detected  
25 in the groundwater beneath and/or have migrated onto the Property.  
26

1 **VI. WORK TO BE PERFORMED**

2 This Decree contains a program designed to protect human health and the environment  
3 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
4 or from the Site.

5 A. Pursuant to the terms of Paragraph 2 of the Subsurface Easement and until this  
6 Consent Decree is dismissed by the Court, Aronson shall provide access to the surface area of  
7 the easement to PSC or any successor or assign of PSC, and provide access to the Property to  
8 Ecology, and/or any other party or entity directed or authorized by Ecology as may be  
9 necessary for the purposes of (1) taking samples from groundwater monitoring wells or taking  
10 air or soil samples; (2) inspecting, constructing, repairing, altering, or reconstructing the  
11 subsurface barrier wall; (3) other minor remedial, investigative, or monitoring activities such as  
12 access for installing additional monitoring wells; or (4) any other remedial measures  
13 determined to be necessary by Ecology pursuant to the reopener provisions contained in  
14 Section XV.B of this Decree; or (5) for any reasonable purpose consistent with MTCA and not  
15 inconsistent with the Subsurface Easement and the continued use of the Property by Aronson  
16 and by Aronson's lessees and invitees. The Parties will consult in good faith regarding how  
17 any such activities can be implemented, with the goal of avoiding interruptions to the business  
18 operations of Aronson or its lessees and invitees. If more active groundwater treatment  
19 measures other than monitoring (including but not limited to the installation of a groundwater  
20 treatment system, such as extraction wells, trenches, piping or other components, outside of the  
21 surface area covered by the Subsurface Easement) is requested by PSC or required by Ecology,  
22 Aronson shall provide such access; provided, however, that Aronson shall be entitled to  
23 condition such access on negotiation of a mutually-acceptable access agreement on such  
24 reasonable terms and conditions as are appropriate given the work to be done on the Property.

25 B. Aronson agrees to provide access to the Property to PSC, any successor or  
26 assign of PSC, Ecology, and/or any other party or entity directed or authorized by Ecology to

1 | install, maintain, monitor and (when authorized by Ecology) eventually abandon groundwater  
2 | monitoring wells used to establish a groundwater conditional point of compliance located on  
3 | the Property pursuant to WAC 173-340-720(8)(d)(ii), in the event that the use of such a  
4 | conditional point of compliance is approved by Ecology in a final Cleanup Action Plan related  
5 | to the Site.

6 |       C.     Within three business days of receiving a copy of this Consent Decree as  
7 | entered by Court, Aronson shall deliver fully-executed copies of the Subsurface Easement and  
8 | this Consent Decree to PSC. PSC has agreed to record the Subsurface Easement and this  
9 | Consent Decree on the title of the Property, as well as the Subsurface Easement on the title of  
10 | the PSC facility, as further described in Section XVII below, within fifteen (15) days of the  
11 | date of entry of this Decree. The Subsurface Easement is intended to meet the requirements  
12 | for a Restrictive Covenant in RCW 70.105D.030(1)(f) and (g), and WAC 173-340-440.

13 |       D.     Aronson shall comply with the Easement Area Use Restrictions set forth in  
14 | Paragraph 3 of the Subsurface Easement, which restrictions (1) are consistent with a  
15 | Restrictive Covenant pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440; (2)  
16 | constitute covenants running with the Property, as well as the property owned by PSC; (3)  
17 | constitute equitable servitudes imposed upon the Property for the benefit of PSC's property  
18 | and PSC; (4) are binding upon all persons having or acquiring any right, title or interest in the  
19 | Property or any portion thereof; (5) are for the benefit of the property owned by PSC and each  
20 | and every successor to PSC as owner thereof, subject to compliance by PSC and its successors  
21 | or assigns as owners of PSC's property with the other duties and obligations imposed on PSC  
22 | under the Subsurface Easement; and (6) were reviewed by Ecology prior to PSC's and  
23 | Aronson's execution of the Subsurface Easement.

24 |       E.     Aronson agrees not to perform any remedial actions outside the scope of this  
25 | Decree unless the Parties agree to modify this Consent Decree to cover these actions. All  
26 |

