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**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SSA CONTAINERS, INC.,

Defendant.

NO. _____

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and SSA Containers, Inc. (SSA) under this Decree is to provide for remedial action
4 at a facility where there has been a release or threatened release of hazardous substances. This
5 Decree requires SSA to undertake the remedial action specified in the Cleanup Action Plan
6 attached as Exhibit B to this Decree. Ecology has determined that the actions described in the
7 Cleanup Action Plan are necessary to protect human health and the environment.

8 B. The Complaint in this action is being filed simultaneously with this Decree. An
9 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
10 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition,
11 the Parties agree that settlement of these matters without litigation is reasonable and in the
12 public interest and that entry of this Decree is the most appropriate means of resolving these
13 matters.

14 C. By signing this Decree, the Parties agree to its entry and agree to be bound by
15 its terms.

16 D. By entering into this Decree, the Parties do not intend to discharge non-settling
17 parties from any liability they may have with respect to matters alleged in the Complaint. The
18 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
19 sums expended under this Decree.

20 E. This Decree may not be construed as proof of liability or responsibility for any
21 releases of hazardous substances or costs for remedial action nor an admission of any facts;
22 provided, however, that SSA may not challenge the authority of the Attorney General and
23 Ecology to enforce this Decree.

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

26 It is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1 **II. JURISDICTION**

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

4 B. Authority is conferred upon the Washington State Attorney General by
5 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
6 after public notice and any required hearing, Ecology finds the proposed settlement would lead
7 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
8 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

9 C. Ecology has determined that a release or threatened release of hazardous
10 substances has occurred at the Site that is the subject of this Decree.

11 D. Ecology has given notice to SSA of Ecology's determination that SSA is a PLP
12 for the Site, as required by RCW 70.105D.020(21) and WAC 173-340-500.

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

15 F. This Decree has been subject to public notice and comment.

16 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
17 hazardous substances at the Site in compliance with the cleanup standards established under
18 RCW 70.105D.030(2)(e), Chapter 173-340 WAC, and Chapter 173-303 WAC.

19 H. SSA has agreed to undertake the actions specified in this Decree and consents to
20 the entry of this Decree under MTCA.

21 **III. PARTIES BOUND**

22 This Decree will apply to and be binding upon the Parties to this Decree, their
23 successors and assigns. The undersigned representative of each party hereby certifies that he
24 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
25 comply with this Decree. SSA agrees to undertake all actions required by the terms and
26 conditions of this Decree. No change in ownership or corporate status will alter SSA's

1 responsibility under this Decree. SSA will provide a copy of this Decree to all agents,
2 contractors, and subcontractors retained to perform work required by this Decree, and will
3 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
4 this Decree.

5 IV. DEFINITIONS

6 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
7 WAC 173-340-200 will control the meanings of the terms in this Decree.

8 A. Site: The Site is referred to as the Reichhold/SSA Containers Facility and is
9 generally located at 3320 Lincoln Ave., Tacoma, Washington, 98421. The Site includes the
10 Property located at 3320 Lincoln Ave., Tacoma, Washington, 98421 and any area beyond the
11 Property where hazardous substances released at or from the Property have come to be located.
12 The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a
13 Facility under RCW 70.105D.020(4). The term “Facility” is used interchangeably with “Site”
14 throughout this Decree.

15 B. Parties: Refers to the State of Washington, Department of Ecology and
16 SSA Containers, Inc.

17 C. SSA: Refers to SSA Containers, Inc.

18 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
19 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
20 The terms “Consent Decree” or “Decree” will include all exhibits to this Consent Decree.

21 E. CAMU: Refers to a grandfathered Corrective Action Management Unit
22 designated by Ecology pursuant to WAC 173-303-64640 for the purpose of implementing the
23 corrective action requirements of WAC 173-303-64620 and subject to First Amended Agreed
24 Interim Action Administrative Order No. 1578.

1 F. Day or Days: Refers to a calendar Day(s) unless otherwise specified. In
2 computing any period of time under this Decree, if the last Day falls on a Saturday, Sunday, or
3 a state or federal holiday, the period will run until the end of the next Day that is not a
4 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
5 occurrence of any act or event will begin on the Day after the act or event.

6 G. Property: Means the real property located at 3320 Lincoln Ave., Tacoma,
7 Washington, 98421.

8 V. FINDINGS OF FACTS

9 Ecology makes the following findings of fact without any express or implied
10 admissions of such facts by SSA.

11 A. Reichhold, Inc. (Reichhold) owned the Property from 1956 to 2006. Reichhold
12 operated on the Property starting in 1956 for, among other things, the production of a variety of
13 chemical products, including pentachlorophenol, formaldehyde, calcium chloride solution, and
14 formaldehyde catalyst. Reichhold ceased all of its manufacturing operations at the Property in
15 September 1990.

16 B. Reichhold owned and operated the Property as a dangerous waste management
17 facility on or after November 19, 1980, the date that subjects facilities to RCRA permitting
18 requirements pursuant to Section 3005 of RCRA and implementing regulations thereunder,
19 including authorized state regulations promulgated in Chapter 173-303 WAC.

20 C. On June 30, 1986, Reichhold entered into a Consent Agreement and Order
21 (No. 1086-04-33-3008) (1986 Order) with EPA Region 10 and Ecology to undertake an
22 investigation to characterize the Site soils and hydrogeology and to research and identify areas
23 at the Facility that would correspond to RCRA-regulated units, solid waste management units
24 (SWMUs), and Areas of Concern. The 1986 Order was terminated when the 1988 RCRA
25 Permit described below became effective.
26

1 D. In July 1987 EPA performed a RCRA Facility Assessment (RFA) at the
2 Facility. Pursuant to the RFA Report and the 1986 Order, among other information, EPA
3 and Ecology identified various RCRA-regulated units, SWMUs, and Areas of Concern at the
4 Facility. Reichhold evaluated each of these units and areas to determine whether any of them
5 potentially could release hazardous substances into the environment. Based on the results
6 of this evaluation, a subset of the total number of the identified RCRA-regulated units,
7 SWMUs, and Areas of Concern was determined to warrant further investigation and possible
8 corrective action.

9 E. Based on past studies, soil at the Facility is contaminated with hazardous
10 substances and dangerous waste constituents including, but not limited to, 2-Chlorophenol,
11 2,3,4,6-Tetrachlorophenol, 2,4-Dichlorophenol, 2,4,5-Trichlorophenol, 2,4,6-Trichlorophenol,
12 Pentachlorophenol, Tetrachloroethene, Trichloroethene, Molybdenum, and Aroclor 1248.
13 Groundwater at the Property and beyond the Property boundaries is contaminated with
14 hazardous substances and dangerous waste constituents including, but not limited to,
15 2-Chlorophenol, 2,3,4,6-Tetrachlorophenol, 2,4-Dichlorophenol, 2,4,6-Trichlorophenol,
16 Pentachlorophenol, Tetrachloroethene, Trichloroethene, and Vinyl chloride.

17 F. In 1988 EPA issued a RCRA storage and corrective action permit, effective
18 December 4, 1988 (1988 RCRA Permit). The 1988 RCRA Permit was replaced in 2004 by
19 a Dangerous Waste Management Permit for Corrective Action, as described in paragraph I
20 below.

21 G. Working with both EPA and Ecology under the 1986 Order and the 1988
22 RCRA Permit, Reichhold undertook several investigations and corrective actions at the Facility
23 to address those RCRA-regulated units, SWMUs, and Areas of Concern that were determined
24 to require further investigation. Between 1991 and 2004, Reichhold closed the wastewater
25 treatment ponds, the drum storage area, and the pilot plant drum storage under EPA and
26 Ecology oversight.

1 H. On October 20, 2000, Reichhold submitted an application for designation of
2 a CAMU at the Facility in the form of a document entitled *Technical Summary, RCRA*
3 *Corrective Action Management Unit Summary, Reichhold, Inc., 3320 Lincoln Avenue, Tacoma,*
4 *WA 98421.* Ecology reviewed the application and determined that it was substantially
5 complete in a letter dated November 22, 2000. Reichhold submitted revised versions of this
6 document in November 2001 and March 2004.

7 I. Effective July 30, 2004, under Ecology's authorization to satisfy RCRA and
8 HWMA corrective action requirements through MTCA and the regulations promulgated
9 thereunder, Ecology issued a Dangerous Waste Management Permit for Corrective Action;
10 a separate enforceable order under MTCA for a remedial investigation and feasibility study
11 (Agreed Order No. 1577); and a CAMU Order to establish a CAMU at the Facility (Agreed
12 Interim Action Administrative Order No. 1578). The two Orders, as amended, are
13 incorporated by reference into the Facility's Dangerous Waste Management Permit for
14 Corrective Action, as amended.

15 J. Reichhold submitted the Final Focused Remedial Investigation Work Plan for
16 the Site to Ecology on May 2, 2005. The Final Focused Remedial Investigation Report was
17 submitted to Ecology on April 26, 2006, and Ecology provided Reichhold with formal
18 approval of the Final Focused Remedial Investigation Report on July 26, 2006.

19 K. Effective July 27, 2006, Reichhold sold the Facility to SSA. Under the terms of
20 the Reichhold and SSA Purchase and Sale Agreement, and as confirmed to Ecology in a letter
21 agreement dated February 6, 2006, SSA agreed to assume and accept full responsibility for
22 compliance with the Permit and Agreed Orders as of the closing date. Effective on the closing
23 date, Ecology approved Reichhold's request for a minor Class 1 Permit Modification to the
24 existing Dangerous Waste Management Permit, transferring the Facility's Dangerous Waste
25 Management Permit for Corrective Action and associated Agreed Orders from Reichhold to
26 SSA. The Agreed Orders were reissued as First Amended Agreed Order No. 1577 and First

1 Amended Agreed Interim Action Administrative Order No. 1578 to reflect SSA's ownership of
2 the property and acceptance of the associated obligations.

3 L. On March 15, 2007, SSA submitted a Focused Feasibility Study Work Plan to
4 Ecology. Ecology subsequently approved this Focused Feasibility Study Work Plan on
5 June 21, 2007. SSA submitted the Ecology Final Focused Feasibility Study Report to Ecology
6 on June 27, 2008.

7 M. SSA submitted a draft Compliance Monitoring and Contingency Plan to
8 Ecology on June 27, 2008. A proposed Cleanup Action Plan was submitted to Ecology on
9 August 6, 2008.

10 N. On [REDACTED], 2008, Ecology issued a Draft Cleanup Action Plan to
11 address the remaining contamination at the Facility. The Draft Cleanup Action Plan
12 established the cleanup standards and selected a cleanup action that meets those cleanup
13 standards for the Facility and was subject to public notice and comment. After revisions in
14 response to the public comments, Ecology issued a Final Clean Action Plan (FCAP) on
15 [REDACTED], 2008, which is attached as Exhibit B to this decree.

16 VI. WORK TO BE PERFORMED

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

20 A. The work to be performed by SSA is the work set forth in the Cleanup Action
21 Plan (including all attachments thereto), which is attached as Exhibit B. As more fully
22 described in the Cleanup Action Plan and its attachments, this work includes excavation and
23 off-site disposal or treatment of in-situ soil, remedial action in soil treatment cells,
24 development of a CAMU Closure Plan, and groundwater monitoring.

1 B. SSA will furnish all personnel, materials, and services necessary for, or
2 incidental to, the planning, initiation, completion, and reporting of the work described in
3 Exhibit B.

4 C. As provided in the scope of work and schedule contained in Section 7.0 of
5 Exhibit B to this Decree, SSA will commence work and thereafter complete all tasks set forth
6 in Section 7.0 of Exhibit B in the time frames and framework indicated therein, unless Ecology
7 grants an extension in accordance with Section XVI of this Decree. SSA will design,
8 construct, and operate the remedial action consistent with WAC 173-340-400.

9 D. SSA agrees not to perform any remedial actions at the Site that are outside the
10 scope of this Decree unless Ecology modifies the Cleanup Action Plan to cover these actions.
11 All work conducted by SSA under this Decree will be done in accordance with Chapter
12 173-340 WAC and Chapter 173-303 WAC, as amended, and all other applicable federal, state,
13 and local laws and regulations unless otherwise provided herein.

14 VII. DESIGNATED PROJECT COORDINATORS

15 The Project Coordinator for Ecology is:

16 Name: Stan Leja
17 Address: Department of Ecology, SW Regional Office
P.O. Box 47775
Olympia, Washington 98504-7775
18 Telephone: (360) 407-6345
19 FAX: (360) 407-6305
E-mail: slej@ecy.wa.gov

20 The Project Coordinator for SSA is:

21 Name: Skip Sahlin
22 Address: SSA Containers, Inc.
1131 SW Klickitat Way
Seattle, Washington 98134
23 Telephone: (206) 654-3510
24 FAX: (206) 381-5186
E-mail: Skip.Sahlin@SSAMarine.com

25 Each Project Coordinator will be responsible for overseeing the implementation of this
26 Decree. Ecology's Project Coordinator will be Ecology's designated representative for the

1 Site. To the maximum extent possible, communications between Ecology and SSA and all
2 documents, including reports, approvals, and other correspondence concerning the activities
3 performed pursuant to the terms and conditions of this Decree will be directed through the
4 Project Coordinators. The Project Coordinators may designate, in writing, working level staff
5 contacts for all or portions of the implementation of the work to be performed required by
6 this Decree.

7 Any party may change its respective project coordinator. Written notification will be
8 given to the other party at least ten (10) calendar Days prior to the change.

9 **VIII. PERFORMANCE**

10 A. All geologic and hydrogeologic work performed pursuant to this Decree will be
11 under the supervision and direction of a geologist licensed in the State of Washington or under
12 the direct supervision of an engineer registered in the State of Washington, except as otherwise
13 provided for by Chapters 18.220 and 18.43 RCW.

14 B. All engineering work performed pursuant to this Decree will be under the direct
15 supervision of a professional engineer registered in the State of Washington, except as
16 otherwise provided for by RCW 18.43.130.

17 C. All construction work performed pursuant to this Decree will be under the direct
18 supervision of a professional engineer or a qualified technician under the direct supervision of
19 a professional engineer. The professional engineer must be registered in the State of
20 Washington, except as otherwise provided for by RCW 18.43.130.

21 D. Any documents submitted containing geologic, hydrologic, or engineering work
22 will be under the seal of an appropriately licensed professional as required by Chapter 18.220
23 RCW or RCW 18.43.130.

24 E. SSA will notify Ecology in writing of the identity of any engineer(s) and
25 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
26 of this Decree, in advance of their involvement at the Site.

1 **IX. ACCESS**

2 Ecology or any Ecology authorized representative will have full authority to enter and
3 freely move about all property at the Site that SSA either owns, controls, or has access rights to
4 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
5 contracts related to the work being performed pursuant to this Decree; reviewing SSA's
6 progress in carrying out the terms of this Decree; conducting such tests or collecting such
7 samples as Ecology may deem necessary; using a camera, sound recording, or other
8 documentary type equipment to record work done pursuant to this Decree; and verifying the
9 data submitted to Ecology by SSA. SSA will make all reasonable efforts to secure access
10 rights for those properties within the Site not owned or controlled by SSA where remedial
11 activities or investigations will be performed pursuant to this Decree. Ecology or any Ecology
12 authorized representative will give reasonable notice before entering any Site property owned
13 or controlled by SSA unless an emergency prevents such notice. All Parties who access the
14 Site pursuant to this Section will comply with any applicable health and safety plan(s).
15 Ecology employees and their representatives will not be required to sign any liability release or
16 waiver as a condition of Site property access.

17 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

18 With respect to the implementation of this Decree, SSA will make the results of all
19 sampling, laboratory reports, and/or test results generated by it or on its behalf available to
20 Ecology. Pursuant to WAC 173-340-840(5), all sampling data will be submitted to Ecology in
21 both printed and electronic formats in accordance with Section XI (Progress Reports),
22 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
23 subsequent procedures specified by Ecology for data submittal.

24 If requested by Ecology, SSA will allow Ecology and/or its authorized representative to
25 take split or duplicate samples of any samples collected by SSA pursuant to the
26 implementation of this Decree. SSA will notify Ecology seven (7) Days in advance of any

1 sample collection or work activity at the Site. Ecology will, upon request, allow SSA and/or
2 its authorized representative to take split or duplicate samples of any samples collected by
3 Ecology pursuant to the implementation of this Decree, provided that doing so does not
4 interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
5 (Access), Ecology will notify SSA prior to any sample collection activity unless an emergency
6 prevents such notice.

7 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses will be
8 conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to
9 be conducted, unless otherwise approved by Ecology.

10 **XI. PROGRESS REPORTS**

11 A. Until the completion of in-situ Soil Final Remedial Actions described in the
12 Cleanup Action Plan (Exhibit B), SSA will submit to Ecology written monthly Progress
13 Reports that describe the actions taken during the previous month to implement the
14 requirements of this Decree. The Progress Reports will include the following:

- 15 1. A list of on-site activities that have taken place during the month;
- 16 2. Detailed description of any deviations from required tasks not otherwise
17 documented in project plans or amendment requests;
- 18 3. Description of all deviations from the Implementation Schedule (Section
19 7.0 of Exhibit B) during the current month and any planned deviations in the upcoming
20 month;
- 21 4. For any deviations in schedule, a plan for recovering lost time and
22 maintaining compliance with the schedule;
- 23 5. All raw data (including laboratory analyses) received by SSA during the
24 past month and an identification of the source of the sample; and
- 25 6. A list of deliverables for the upcoming month if different from the
26 schedule.

1 B. Following the completion of In-situ Soil Final Remedial Actions in the Cleanup
2 Action Plan (Exhibit B), SSA will submit to Ecology a Progress Report within 45 Days after
3 any compliance monitoring event. This Progress Report will describe the actions taken since
4 the immediately prior Progress Report to implement the requirements of this Decree and will
5 include the following:

6 1. A list of on-site activities that have taken place since the immediately
7 prior Progress Report;

8 2. Detailed description of any deviations from required tasks not otherwise
9 documented in project plans or amendment requests;

10 3. Description of all deviations from the Implementation Schedule (Section
11 7.0 of Exhibit B) since the immediately prior Progress Report and any planned future
12 deviations;

13 4. For any deviations in schedule, a plan for recovering lost time and
14 maintaining compliance with the schedule;

15 5. All raw data (including laboratory analyses) received by SSA since
16 the immediately prior Progress Report and an identification of the source of the
17 sample; and

18 6. A list of future deliverables if different from the schedule.

19 C. All Progress Reports will be submitted by the tenth (10th) Day of the month
20 in which they are due after the effective date of this Decree. Unless otherwise specified,
21 Progress Reports and any other documents submitted pursuant to this Decree will be sent
22 by certified mail, return receipt requested, to Ecology's Project Coordinator.

23 XII. RETENTION OF RECORDS

24 During the pendency of this Decree, and for ten (10) years from the date this Decree is
25 no longer in effect as provided in Section XXVIII (Duration of Decree), SSA will preserve all
26 records, reports, documents, and underlying data in its possession relevant to the

1 implementation of this Decree and will insert a similar record retention requirement into all
2 contracts with project contractors and subcontractors. Upon request of Ecology, SSA will
3 make all records available to Ecology and allow access for review within a reasonable time.

4 **XIII. TRANSFER OF INTEREST IN PROPERTY**

5 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
6 interest in any portion of the Site may be consummated by SSA without provision for
7 continued operation and maintenance of any containment system, treatment system, and/or
8 monitoring system installed or implemented pursuant to this Decree.

9 Before SSA's transfer of any interest in all or any portion of the Site, and during the
10 effective period of this Decree, SSA will provide a copy of this Decree to any prospective
11 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least
12 ninety (90) Days before finalization of any transfer that results in a change in owner or
13 operator status, SSA will notify Ecology of the contemplated transfer by submitting a request
14 for modification of its HWMA permit. Upon transfer of any interest, SSA will restrict uses
15 and activities to those consistent with this Consent Decree and notify all transferees of the
16 restrictions on the use of the Property.

17 **XIV. RESOLUTION OF DISPUTES**

18 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
19 other decision or action by Ecology's Project Coordinator, or an itemized billing statement
20 under Section XXIV (Remedial Action Costs), the Parties will utilize the dispute resolution
21 procedure set forth below.

22 1. Upon receipt of Ecology's Project Coordinator's written decision, or the
23 itemized billing statement, SSA has fourteen (14) Days within which to notify
24 Ecology's Project Coordinator in writing of its objection to the decision or itemized
25 statement.
26

1 2. The Parties' Project Coordinators will then confer in an effort to resolve
2 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14)
3 Days, Ecology's Project Coordinator will issue a written decision.

4 3. SSA may then request regional management review of the decision.
5 This request will be submitted in writing to the Southwest Region Hazardous Waste &
6 Toxics Reduction Program Section Manager within seven (7) Days of receipt of
7 Ecology's Project Coordinator's written decision.

8 4. Ecology's Regional Section Manager will conduct a review of the
9 dispute and will endeavor to issue a written decision regarding the dispute within
10 thirty (30) Days of SSA's request for review.

11 5. If SSA finds Ecology's Regional Section Manager's decision
12 unacceptable, SSA may then request final management review of the decision. This
13 request will be submitted in writing to the Hazardous Waste & Toxics Reduction
14 Program Manager within seven (7) Days of receipt of the Regional Section Manager's
15 decision.

16 6. Ecology's Hazardous Waste & Toxics Reduction Program Manager will
17 conduct a review of the dispute and will endeavor to issue a written decision regarding
18 the dispute within thirty (30) Days of SSA's request for review of the Regional Section
19 Manager's decision. The Hazardous Waste & Toxics Reduction Program Manager's
20 decision will be Ecology's final decision on the disputed matter.

21 B. If Ecology's final written decision is unacceptable to SSA, SSA has the right to
22 submit the dispute to the Court for resolution. The Parties agree that one judge should retain
23 jurisdiction over this case and will, as necessary, resolve any dispute arising under this Decree.
24 In the event SSA presents an issue to the Court for review, the Court will review the action or
25 decision of Ecology on the basis of whether such action or decision was arbitrary and
26 capricious and render a decision based on such standard of review.

1 C. The Parties agree to only utilize the dispute resolution process in good faith
2 and agree to expedite, to the extent possible, the dispute resolution process whenever it is
3 used. Where either party utilizes the dispute resolution process in bad faith or for purposes of
4 delay, the other party may seek sanctions.

5 D. Implementation of these dispute resolution procedures will not provide a basis
6 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
7 schedule extension or the Court so orders.

8 **XV. AMENDMENT OF DECREE**

9 The project coordinators may agree to minor changes to the work to be performed
10 without formally amending this Decree. Minor changes will be documented in writing
11 by Ecology.

12 Substantial changes to the work to be performed will require formal amendment of this
13 Decree. This Decree may only be formally amended by a written stipulation among the Parties
14 that is entered by the Court, or by order of the Court. Such amendment will become effective
15 upon entry by the Court. Agreement to amend the Decree will not be unreasonably withheld
16 by any party.

17 SSA will submit a written request for amendment to Ecology for approval. Ecology
18 will indicate its approval or disapproval in writing and in a timely manner after the written
19 request for amendment is received. If the amendment to the Decree is a substantial change,
20 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval
21 of a proposed amendment to the Decree will be stated in writing. If Ecology does not agree to
22 a proposed amendment, the disagreement may be addressed through the dispute resolution
23 procedures described in Section XIV (Resolution of Disputes).

1 **XVI. EXTENSION OF SCHEDULE**

2 A. An extension of schedule will be granted only when a request for an extension
3 is submitted in a timely fashion, generally at least thirty (30) Days prior to expiration of the
4 deadline for which the extension is requested, and good cause exists for granting the extension.

5 All extensions will be requested in writing. The request will specify:

- 6 1. The deadline that is sought to be extended;
- 7 2. The length of the extension sought;
- 8 3. The reason(s) for the extension; and
- 9 4. Any related deadline or schedule that would be affected if the extension
10 were granted.

11 B. The burden will be on SSA to demonstrate to the satisfaction of Ecology that
12 the request for such extension has been submitted in a timely fashion and that good cause
13 exists for granting the extension. Good cause may include, but may not be limited to:

- 14 1. Circumstances beyond the reasonable control and despite the due
15 diligence of SSA including delays caused by unrelated third parties or Ecology, such as
16 (but not limited to) delays by Ecology in reviewing, approving, or modifying
17 documents submitted by SSA;
- 18 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
19 storm, or other unavoidable casualty; or
- 20 3. Endangerment as described in Section XVII (Endangerment).

21 However, neither increased costs of performance of the terms of this Decree nor
22 changed economic circumstances will be considered circumstances beyond the reasonable
23 control of SSA.

24 C. Ecology will act upon any written request for extension in a timely fashion.
25 Ecology will give SSA written notification of any extensions granted pursuant to this Decree.
26 A requested extension will not be effective until approved by Ecology or, if required, by the

1 Court. Unless the extension is a substantial change, it will not be necessary to amend this
2 Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is granted.

3 D. An extension will only be granted for such period of time as Ecology
4 determines is reasonable under the circumstances. Ecology may grant schedule extensions
5 exceeding ninety (90) Days only as a result of:

6 1. Delays in the issuance of a necessary permit which was applied for in
7 a timely manner;

8 2. Other circumstances deemed exceptional or extraordinary by
9 Ecology; or

10 3. Endangerment as described in Section XVII (Endangerment).

11 **XVII. ENDANGERMENT**

12 In the event Ecology determines that any activity being performed at the Site is creating
13 or has the potential to create a danger to human health or the environment, Ecology may direct
14 SSA to cease such activities for such period of time as it deems necessary to abate the danger.
15 SSA will immediately comply with such direction.

16 In the event SSA determines that any activity being performed at the Site is creating or
17 has the potential to create a danger to human health or the environment, SSA may cease such
18 activities. SSA will notify Ecology's Project Coordinator as soon as possible, but no later than
19 twenty-four (24) hours after making such determination or ceasing such activities. Upon
20 Ecology's direction, SSA will provide Ecology with documentation of the basis for the
21 determination or cessation of such activities. If Ecology disagrees with SSA's cessation of
22 activities, it may direct SSA to resume such activities.

23 If Ecology concurs with or orders a work stoppage pursuant to this Section, SSA's
24 obligations with respect to the ceased activities will be suspended until Ecology determines the
25 danger is abated, and the time for performance of such activities, as well as the time for any
26 other work dependent upon such activities, will be extended, in accordance with Section XVI

1 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
2 circumstances.

3 Nothing in this Decree will limit the authority of Ecology, its employees, agents, or
4 contractors to take or require appropriate action in the event of an emergency.

5 **XVIII. COVENANT NOT TO SUE**

6 A. Covenant Not to Sue: In consideration of SSA's compliance with the terms and
7 conditions of this Decree, Ecology covenants not to institute legal or administrative actions
8 against SSA regarding the release or threatened release of hazardous substances covered by
9 this Decree.

10 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
11 and those hazardous substances that Ecology knows are located at the Site as of the date of
12 entry of this Decree. This Decree does not cover any other hazardous substance or area.
13 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

14 This Covenant Not to Sue will have no applicability whatsoever to:

- 15 1. Criminal liability;
- 16 2. Liability for damages to natural resources; and
- 17 3. Any Ecology action, including cost recovery, against PLPs not a party to
18 this Decree.

19 If factors not known at the time of entry of the settlement agreement are discovered and
20 present a previously unknown threat to human health or the environment, the Court will amend
21 this Covenant Not to Sue.

22 B. Reopeners: Ecology specifically reserves the right to institute legal or
23 administrative action against SSA to require it to perform additional remedial actions at the
24 Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
25 following circumstances:
26

1 **XXI. FINANCIAL ASSURANCES**

2 A. Pursuant to WAC 173-340-440(11), SSA will maintain sufficient and adequate
3 financial assurance mechanisms to cover all costs associated with engineered and/or
4 institutional controls. Provided, financial assurance mechanisms pursuant to WAC 173-340-
5 440(11) will not be required if SSA can demonstrate it has sufficient financial resources
6 available and in place to provide for the long-term effectiveness of any engineered and/or
7 institutional controls. Because the Property is subject to a Dangerous Waste Management
8 Permit for Corrective Action, which incorporates requirements that SSA provide sufficient and
9 adequate financial assurance to implement operation and closure of the CAMU, SSA must
10 also meet the financial assurance requirements of WAC 173-303-64620(1). Ecology's
11 Financial Assurance Officer will determine when SSA's actions and submissions meet the
12 requirements of WAC 173-303-64620(1).

13 B. Unless otherwise specified, the definitions and requirements for allowable
14 financial assurance mechanisms set forth in the current financial assurance rules covering
15 closure and post-closure (40 C.F.R. 264.143, 40 C.F.R. 264.145, 40 C.F.R. 264.151, and
16 WAC 173-303-620) will serve as the requirements for any financial assurance required
17 under this Decree. Acceptable financial assurance mechanisms include trust funds, surety
18 bonds, letters of credit, insurance, the financial test, and the corporate guarantee. Ecology may
19 allow other financial assurance mechanisms if they are consistent with the laws of Washington
20 and if SSA demonstrates to the satisfaction of Ecology that those mechanisms provide
21 adequate financial assurance.

22 C. In the absence of final federal regulations governing financial assurance for
23 corrective action, Ecology's Financial Assurance Officer will use the following resources as
24 secondary guidance:

- 25 1. The Financial Assurance for Corrective Action Proposed Rule, 51 Fed.
26 Reg. 37853 (October 24, 1986);

1 2. The financial assurance provisions of Corrective Action for Releases
2 from Solid Waste Management Units Advance Notice of Proposed Rulemaking,
3 61 Fed. Reg. 19432 (May 1, 1996); and

4 3. The Interim Guidance on Financial Responsibility for Facilities Subject
5 to RCRA Corrective Action (U.S. EPA, September 30, 2003); or

6 4. Any other guidance applicable to financial assurance and corrective
7 action that may be available at the time.

8 The financial assurance provisions of the Corrective Action for Solid Waste
9 Management Units at Hazardous Waste Management Facilities, 55 Fed. Reg. 30798 (July 27,
10 1990), may be used as secondary guidance at the discretion of Ecology.

11 Unless otherwise specified herein, where the language of this Decree conflicts with
12 these rules, proposed rules, notices, and guidance documents, the language of this Decree will
13 prevail.

14 D. If SSA seeks to establish financial assurance by using a surety bond for
15 payment or a letter of credit, SSA will at the same time establish and thereafter maintain a
16 standby trust fund acceptable to Ecology into which funds from the other financial assurance
17 instrument can be deposited, if the financial assurance provider is directed to do so by Ecology,
18 pursuant to the terms of this Decree.

19 E. All cost estimates must be based on the costs to the owner or operator of hiring
20 a third party to complete the work. A third party is neither a parent nor a subsidiary of SSA.
21 On a case-by-case basis, Ecology may also determine that a company that shares a common
22 higher-tier corporate parent or subsidiary might not qualify as a third party. A cost estimate
23 may not incorporate any salvage value that may be realized with the sale of wastes, facility
24 structures or equipment, land, or other assets associated with the facility. SSA may also not
25 incorporate a zero cost for wastes that might have economic value.

1 F. If SSA is required to submit an additional work plan(s) under this Decree, SSA
2 will submit a revised cost estimate for review and approval to Ecology's Financial Assurance
3 Officer and Project Coordinator within thirty (30) Days of approval of the additional work
4 plan. If Ecology rejects SSA's cost estimate as submitted, Ecology will provide a revised cost
5 estimate amount and will, if requested by SSA in writing, provide a written explanation of the
6 variance between SSA's proposed cost estimate and Ecology's revised amount. Within thirty
7 (30) Days after Ecology's final approval of the cost estimate amount, SSA will establish and
8 maintain continuous coverage of financial assurance in the amount of the approved cost
9 estimate and submit the applicable financial assurance documentation.

10 G. SSA currently has acceptable financial assurance mechanisms in place pursuant
11 to the First Amended Agreed Order No. 1577 and First Amended Agreed Interim Action
12 Administrative Order No. 1578. No increase in the costs covered by this financial assurance is
13 anticipated as a result of the adoption of this Consent Decree. Accordingly, absent any need to
14 revise the cost estimate as set forth in this Decree, the existing financial assurance will be
15 deemed acceptable until the next annual renewal date of June 8, 2009.

16 H. SSA will annually adjust all cost estimates for inflation. Adjustments for
17 inflation will be calculated in accordance with the procedure outlined in 40 C.F.R. 264.143(b).
18 If SSA is using the financial test or corporate guarantee to meet its financial assurance
19 obligation, the annual inflationary adjustment will occur within ninety (90) Days after the close
20 of SSA's fiscal year. If SSA is using any mechanism other than the financial test or corporate
21 guarantee, this adjustment will occur each year within thirty (30) Days after the anniversary of
22 the effective date of this Decree.

23 I. SSA must submit the original executed or otherwise finalized financial
24 assurance instruments or documents to Ecology's Financial Assurance Officer; facsimiles or
25 photocopies are not acceptable to meet this requirement. In addition, SSA must also submit
26 copies of financial assurance instruments or documents to Ecology's Project Coordinator.

1 J. SSA will notify Ecology's Project Coordinator and Financial Assurance Officer
2 by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding,
3 naming SSA as debtor, within ten (10) Days after commencement of the proceeding.
4 A guarantor of a corporate guarantee must make such a notification if it is named as debtor as
5 required under the terms of the corporate guarantee.

6 K. Once SSA has established financial assurance with an acceptable mechanism as
7 described above, SSA will be deemed to be without the required financial assurance:

8 1. In the event of bankruptcy of the trustee or issuing institution; or

9 2. If the authority of the trustee institution to act as trustee has been
10 suspended or revoked; or

11 3. If the authority of the institution issuing the surety bond, letter or credit,
12 or insurance policy has been suspended or revoked.

13 In the event of bankruptcy of the trustee or a suspension or revocation of the authority
14 of the trustee institution to act as a trustee, SSA must establish a replacement financial
15 assurance mechanism by any means specified in WAC 173-303-620 or other financial
16 instrument as approved by Ecology within sixty (60) Days after such an event.

17 L. Ecology's Financial Assurance Officer is:

18 Kimberly Goetz
19 Department of Ecology
20 Hazardous Waste and Toxics Reduction Program
21 P.O. Box 47600
22 Olympia, Washington 98504-7600
23 Telephone: (360) 407-6754
24 FAX: (360) 407-6715
25 E-mail: kgoe461@ecy.wa.gov

26 **XXII. INDEMNIFICATION**

27 SSA agrees to indemnify and save and hold the State of Washington, its employees,
28 and agents harmless from any and all claims or causes of action for death or injuries to persons
29 or for loss or damage to property to the extent arising from or on account of acts or omissions

1 of SSA, its officers, employees, agents, or contractors in entering into and implementing this
2 Decree. However, SSA will not indemnify the State of Washington nor save nor hold its
3 employees and agents harmless from any claims or causes of action to the extent arising out of
4 the intentional, reckless or negligent acts or omissions of the State of Washington, or the
5 employees or agents of the State, in entering into or implementing this Decree.

6 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

7 A. All actions carried out by SSA pursuant to this Decree will be done in
8 accordance with all applicable federal, state, and local requirements, including requirements
9 to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or
10 other federal, state, or local requirements that the agency has determined are applicable
11 and that are known at the time of entry of this Decree have been identified in the Cleanup
12 Action Plan (Exhibit B).

13 B. Pursuant to RCW 70.105D.090(1), SSA is exempt from the procedural
14 requirements of Chapters 70.94, 70.95, 77.55, and 90.58 RCW and of any laws requiring or
15 authorizing local government permits or approvals. However, SSA will comply with the
16 substantive requirements of such permits or approvals. The exempt permits or approvals and
17 the applicable substantive requirements of those permits or approvals, as they are known at the
18 time of entry of this Decree, have been identified in the Cleanup Action Plan (Exhibit B).

19 SSA has a continuing obligation to determine whether additional permits or approvals
20 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action
21 under this Decree. In the event either Ecology or SSA determines that additional permits
22 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
23 remedial action under this Decree, it will promptly notify the other party of this determination.
24 Ecology will determine whether Ecology or SSA will be responsible to contact the appropriate
25 state and/or local agencies. If Ecology so requires, SSA will promptly consult with the
26 appropriate state and/or local agencies and provide Ecology with written documentation from

1 those agencies of the substantive requirements those agencies believe are applicable to the
2 remedial action. Ecology will make the final determination on the additional substantive
3 requirements that must be met by SSA and on how SSA must meet those requirements.
4 Ecology will inform SSA in writing of these requirements. Once established by Ecology, the
5 additional requirements will be enforceable requirements of this Decree. SSA will not begin or
6 continue the remedial action potentially subject to the additional requirements until Ecology
7 makes its final determination.

8 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
9 exemption from complying with the procedural requirements of the laws referenced in
10 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
11 necessary for the State to administer any federal law, the exemption will not apply and
12 SSA will comply with both the procedural and substantive requirements of the laws referenced
13 in RCW 70.105D.090(1), including any requirements to obtain permits.

14 **XXIV. REMEDIAL ACTION COSTS**

15 SSA will pay to Ecology costs incurred by Ecology pursuant to this Decree and
16 consistent with WAC 173-340-550(2). These costs will include work performed by Ecology or
17 its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and
18 Decree preparation, negotiation, oversight, and administration. These costs will include work
19 performed both prior to and subsequent to the entry of this Decree. Ecology's costs will
20 include costs of direct activities and support costs of direct activities as defined in
21 WAC 173-340-550(2). SSA will pay the required amount within ninety (90) Days of receiving
22 from Ecology an itemized statement of costs that includes a summary of costs incurred, an
23 identification of involved staff, and the amount of time spent by involved staff members on the
24 project. A general statement of work performed will be provided upon request. Itemized
25 statements will be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
26

1 Ecology's costs within ninety (90) Days of receipt of the itemized statement of costs will result
2 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

3 Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed
4 remedial action costs by filing a lien against real property subject to the remedial actions.

5 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

6 If Ecology determines that SSA has failed without good cause to implement the
7 remedial action, in whole or in part, Ecology may, after notice to SSA, perform any or all
8 portions of the remedial action that remain incomplete. If Ecology performs all or portions of
9 the remedial action because of SSA's failure to comply with its obligations under this Decree,
10 SSA will reimburse Ecology for the costs of doing such work in accordance with Section
11 XXIV (Remedial Action Costs), provided that SSA is not obligated under this Section to
12 reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of
13 this Decree.

14 Except where necessary to abate an emergency situation, SSA will not perform any
15 remedial actions at the Site outside those remedial actions required by this Decree, unless
16 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
17 (Amendment of Decree).

18 **XXVI. PERIODIC REVIEW**

19 As remedial action, including groundwater monitoring, continues at the Site, the Parties
20 agree to review the progress of remedial action at the Site, and to review the data accumulated
21 as a result of monitoring the Site as often as is necessary and appropriate under the
22 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
23 Parties will meet to discuss the status of the Site and the need, if any, for further remedial
24 action at the Site. At least ninety (90) Days prior to each periodic review, SSA will submit a
25 report to Ecology that documents whether human health and the environment are being
26 protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to

1 require further remedial action at the Site under appropriate circumstances. This provision will
2 remain in effect for the duration of this Decree.

3 **XXVII. PUBLIC PARTICIPATION**

4 A Public Participation Plan (Exhibit D) is required for this Site. Ecology will review
5 any existing Public Participation Plan to determine its continued appropriateness and whether it
6 requires amendment, or if no plan exists, Ecology will develop a Public Participation Plan
7 alone or in conjunction with SSA.

8 Ecology will maintain the responsibility for public participation at the Site. However,
9 SSA will cooperate with Ecology, and will:

10 1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts
11 of public notices and fact sheets at important stages of the remedial action, such as the
12 submission of work plans, remedial investigation/feasibility study reports, cleanup
13 action plans, and engineering design reports. As appropriate, Ecology will edit,
14 finalize, and distribute such fact sheets and prepare and distribute public notices of
15 Ecology's presentations and meetings.

16 2. Notify Ecology's project coordinator prior to the preparation of all press
17 releases and fact sheets, and before major meetings with the interested public and local
18 governments. Likewise, Ecology will notify SSA prior to the issuance of all press
19 releases and fact sheets, and before major meetings with the interested public and local
20 governments. For all press releases, fact sheets, meetings, and other outreach efforts
21 by SSA that do not receive prior Ecology approval, SSA will clearly indicate to its
22 audience that the press release, fact sheet, meeting, or other outreach effort was not
23 sponsored or endorsed by Ecology.

24 3. When requested by Ecology, participate in public presentations on the
25 progress of the remedial action at the Site. Participation may be through attendance at
26 public meetings to assist in answering questions, or as a presenter.

1 4. When requested by Ecology, arrange and/or continue information
2 repositories at the following location:

3 Department of Ecology
4 Southwest Regional Office
5 Central Files
6 300 Desmond Drive
7 Lacey, WA 98503
8 Tel: (360) 407-6300

9 At a minimum, copies of all public notices, fact sheets, and press releases; all quality
10 assured monitoring data; remedial actions plans and reports, supplemental remedial
11 planning documents, and all other similar documents relating to performance of the
12 remedial action required by this Decree will be promptly placed in the Department of
13 Ecology central files.

14 **XXVIII. DURATION OF DECREE**

15 The remedial program required pursuant to this Decree will be maintained and
16 continued until SSA has received written notification from Ecology that the requirements of
17 this Decree have been satisfactorily completed. This Decree will remain in effect until
18 dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section
19 XIX (Contribution Protection) will survive.

20 **XXIX. CLAIMS AGAINST THE STATE**

21 SSA hereby agrees that it will not seek to recover any costs accrued in implementing
22 the remedial action required by this Decree from the State of Washington or any of its
23 agencies; and further, that SSA will make no claim against the State Toxics Control Account or
24 any local Toxics Control Account for any costs incurred in implementing this Decree. Except
25 as provided above, however, SSA expressly reserves its right to seek to recover any costs
26 incurred in implementing this Decree from any other PLP. This Section does not limit or
 address funding that may be provided under Chapter 173-322 WAC.

1 **XXX. PRIOR AGREEMENTS**

2 Entry of this Decree by the Court will satisfy and replace SSA's obligations under
3 Agreed Order No. 1577. The terms and conditions of First Amended Agreed Interim Action
4 Order No. 1578 will continue in force, unless inconsistent with the terms and conditions of
5 this Decree.

6 **XXXI. EFFECTIVE DATE**

7 This Decree is effective upon the date it is entered by the Court.

8 **XXXII. WITHDRAWAL OF CONSENT**

9 If the Court withholds or withdraws its consent to this Decree, it will be null and void at
10 the option of any party and the accompanying Complaint will be dismissed without costs and
11 without prejudice. In such an event, no party will be bound by the requirements of this Decree.

12 STATE OF WASHINGTON
13 DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

14 _____
15 KAY SEILER
16 Section Manager
17 Southwest Regional Office
18 Hazardous Waste & Toxics Reduction Program
19 (360) 407-6341

ANDREW A. FITZ, WSBA #22169
Assistant Attorney General
(360) 586-6752

20 Date: _____

Date: _____

21 SSA CONTAINERS, INC.

22 _____
23 EDWARD DENIKE
24 President
25 (206) 623-0304

26 Date: _____

ENTERED this ____ Day of _____ 2008.

JUDGE
Pierce County Superior Court