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**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MURRAY PACIFIC CORPORATION,
LOUISIANA PACIFIC
CORPORATION, and WASSER &
WINTERS INC.,

Defendants.

NO.

CONSENT DECREE WITH
MURRAY PACIFIC CORPORATION

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	JURISDICTION	4
III.	PARTIES BOUND	4
IV.	DEFINITIONS	5
V.	STATEMENT OF FACTS	6
VI.	WORK TO BE PERFORMED.....	9
VII.	DESIGNATED PROJECT COORDINATORS.....	10
VIII.	PERFORMANCE.....	11
IX.	ACCESS	11
X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY	12
XI.	PROGRESS REPORTS.....	13
XII.	RETENTION OF RECORDS	14
XIII.	RESOLUTION OF DISPUTES	15
XIV.	AMENDMENT OF DECREE.....	17
XV.	EXTENSION OF SCHEDULE.....	17
XVI.	ENDANGERMENT	19
XVII.	COVENANT NOT TO SUE	20
XVIII.	CONTRIBUTION PROTECTION.....	21
XIX.	INDEMNIFICATION	22
XX.	COMPLIANCE WITH APPLICABLE LAWS	22

1	XXI.	REMEDIAL ACTION COSTS	24
	XXII.	PAYMENTS TO THE STATE & ELECTION TO CREATE TRUST	24
2	XXIII.	IMPLEMENTATION OF REMEDIAL ACTION.....	25
	XXIV.	PUBLIC PARTICIPATION	26
3	XXV.	EFFECT AND DURATION OF DECREE.....	28
	XXVI.	CLAIMS AGAINST THE STATE.....	28
4	XXVII.	EFFECTIVE DATE.....	28
	XXVIII.	WITHDRAWAL OF CONSENT	29

- 5
- 6 EXHIBIT A. Final CAP
- 7 EXHIBIT B. Scope of Work and Schedule
- 8 EXHIBIT C. Outline of Administrative File & Record
- 9 EXHIBIT D. Covered Substances
- 10 EXHIBIT E. Public Participation Plan
- 11 EXHIBIT F. Site Diagram
- 12 EXHIBIT G. Trust Account Document

I. INTRODUCTION

10 A. In entering into this Consent Decree (Decree), the mutual objective of the State
11 of Washington, Department of Ecology (Ecology) and of Murray Pacific Corporation (“Murray
12 Pacific” or “MPC”) is to provide for remedial action at a location where there has been a
13 release of hazardous substances. This Decree requires Murray Pacific to undertake portions of
14 the remedial action specified in the Cleanup Action Plan attached as Exhibit A to this Decree,
15 and to provide funding to be utilized by Ecology in implementing the other portions of the
16 Cleanup Action Plan. Ecology has determined that the actions described in the Cleanup Action
17 Plan are necessary to protect human health and the environment.

18 B. Ecology and the Defendants have also entered into a settlement agreement with
19 ASARCO LLC, one of the debtors in the U.S. Bankruptcy Court matter styled, In re ASARCO
20 LLC et al., Bankr. S.D. Texas, Case No. 05-21207 (the “Bankruptcy Settlement Agreement”).
21 Under the Bankruptcy Settlement Agreement, the Debtors have agreed that Murray Pacific will
22 have an allowed general unsecured claim in the amount of 20 million dollars in exchange for
23 certain covenants not to sue, and other consideration from Defendants and Ecology as more
24 fully described in the Bankruptcy Settlement Agreement.

1 C. In entering into this Decree, the parties are addressing and responding to the
2 unique facts presented by the ASARCO bankruptcy proceedings and the history of litigation
3 and similar difficulties that have surrounded this Site for almost 20 years. Because of this
4 unique history, this Consent Decree contains some deviations from other MTCA Consent
5 Decrees that are only appropriate under these unique conditions.

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

12 E. By signing this Decree, the Parties agree to its entry and agree to be bound by
13 its terms.

14 F. By entering into this Decree, the Parties do not intend to discharge non-settling
15 parties from any liability they may have with respect to matters alleged in the Complaint other
16 than as provided in the Bankruptcy Settlement Agreement. The Parties retain the right to seek
17 reimbursement, in whole or in part, from any liable persons other than the Debtors for sums
18 expended under this Decree.

19 G. This Decree shall not be construed as proof of liability or responsibility for any
20 releases of hazardous substances or cost for remedial action nor an admission of any facts;
21 provided, however, MPC shall not challenge the authority of the Attorney General and
22 Ecology to enforce this Decree.

23 The Court is fully advised of the reasons for entry of this Decree, and good cause
24 having been shown: Now, therefore, it is **HEREBY ORDERED, ADJUDGED, AND**
25 **DECREED** as follows:
26

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

9 B. 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 C. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(15),
12 of Ecology’s determination that each Defendant is a PLP for the Site and that there has been a
13 release or threatened release of hazardous substances at the Site.

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

16 E. This Decree has been subject to public notice and comment.

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

20 G. Defendant Murray Pacific has agreed to undertake the actions specified in this
21 Decree, and to provide the funding required by this Decree, and consents to the entry of this
22 Decree under MTCA.

23 **III. PARTIES BOUND**

24 This Decree shall apply to and be binding upon the Parties to this Decree, their
25 successors and assigns. The undersigned representative of each party hereby certifies that he
26 or she is fully authorized to enter into this Decree and to execute and legally bind such party to

1 comply with this Decree. Murray Pacific agrees to undertake all actions required by the terms
2 and conditions of this Decree. No change in ownership or corporate status shall alter Murray
3 Pacific's responsibility under this Decree. Defendant Murray Pacific shall provide a copy of
4 this Decree to all agents, contractors, and subcontractors retained to perform work required by
5 this Decree, and shall ensure that all work undertaken by such agents, contractors, and
6 subcontractors complies with this Decree.

7 **IV. DEFINITIONS**

8 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
9 WAC 173-340-200 shall control the meanings of the terms used in this Decree.

10 A. Landfill: The Landfill, as more fully described in the Cleanup Action Plan,
11 consists of an area of approximately 13 acres where landfilled wood waste is present and
12 capped. The Landfill is located on the B&L Property, comprising approximately 18.5 acres in
13 unincorporated Pierce County, Washington.

14 B. B&L Property: The B&L Property includes the parcels on which the Landfill is
15 located. It is owned by entities who are not parties to this Decree, but who operated and
16 permitted the Landfill.

17 C. Site: The Site, as more fully described in the Cleanup Action Plan, includes
18 both the Landfill and adjacent areas (B&L Property, wetlands, ditches, etc.) where
19 contamination from the Landfill has come to be located. The Site is part of the Commencement
20 Bay Nearshore/Tideflats Superfund site, which was added in 1983 by the United States
21 Environmental Protection Agency ("EPA") to the National Priorities List established under the
22 Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"),
23 42 U.S.C. § 9601 et seq. The Site constitutes a "facility" under RCW 70.105D.020(4).

24 D. Parties: Refers to the State of Washington, Department of Ecology, and Murray
25 Pacific Corporation, collectively.
26

1 E. Defendants: Refers to Murray Pacific Corporation, Louisiana Pacific
2 Corporation, and Wasser & Winters, Inc.

3 F. Consent Decree or Decree: Refers to this Decree and each of the exhibits to this
4 Decree. All exhibits are integral and enforceable parts of this Decree. The terms “Consent
5 Decree” or “Decree” shall include all exhibits to this Decree.

6 G. Day or Days: Refers to a calendar day(s) unless otherwise specified. In
7 computing any period of time under this Decree, if the last day falls on a Saturday, Sunday, or
8 a state or federal holiday, the period shall run until the end of the next day which is not a
9 Saturday, Sunday, or a state or federal holiday. Any time period scheduled to begin on the
10 occurrence of an act or event shall begin on the day after the act or event.

11 H. Section: Refers to a portion of this Decree identified by a Roman numeral.

12 I. Debtors: Refers to the several debtors in the bankruptcy case styled *In re*
13 *ASARCO LLC et al.*, Bankr. S.D. Texas., Case No. 05-21207 including ASARCO LLC
14 (ASARCO). The Debtors are not Parties to this Consent Decree.

15 V. STATEMENT OF FACTS

16 Ecology makes the following findings of fact without any express or implied
17 admissions of such facts by Defendants.

18 A. The Landfill was used for the disposal of wood waste materials, some of which
19 included slag from smelting operations of ASARCO that had been made available to other
20 parties with a representation that the slag was inert and non-toxic. Each of the Defendants
21 arranged for the disposal at the Landfill of wood waste materials containing such ASARCO-
22 generated slag.

23 B. In 1988, Ecology notified ASARCO, Murray Pacific, Louisiana Pacific
24 Corporation, Wasser & Winters Inc., and others that they were PLPs in regard to the Site.

25 C. In January 1989, Murray Pacific entered into a consent decree with Ecology to
26 undertake a Remedial Investigation and Feasibility Study for the Site. That consent decree was

1 entered by the Court on February 27, 1989, in an action in this Court styled State of
2 *Washington Department of Ecology v. Murray Pacific Corporation*, No. 89-2-00319-3.
3 Murray Pacific timely and fully completed the work required by that decree.

4 D. The Remedial Investigation indicated that a number of hazardous substances
5 had been released at the Site, including antimony, arsenic, chromium, copper, lead, nickel,
6 zinc, benzoic acid, and phenol. The respective liabilities of ASARCO, Murray Pacific,
7 Louisiana Pacific, Wasser & Winters, Inc. and other parties for the remediation of the Site was
8 the subject of extensive prior litigation, as part of an action styled *Louisiana-Pacific Corp. et al*
9 *v. Asarco*, No. C-5259RJB (the “Federal Action”), filed in the United States District Court for
10 the Western District of Washington. Ecology was not a party to that action. Relevant claims
11 of the parties relating to the Site were tried to a jury and to the court, and a judgment was
12 entered. ASARCO appealed from the judgments, and the Ninth Circuit’s final opinion was
13 entered on August 30, 1994. 24 F.3d 1565. On January 9, 1995, the Supreme Court denied
14 certiorari.

15 E. On June 17, 1992, after it was determined in the Federal Action that ASARCO
16 had the majority of the liability for the Site, Ecology issued Enforcement Order
17 No. 92TC-S214 (the Enforcement Order) to ASARCO and Murray Pacific (and to the owner
18 and operator of the Landfill) requiring them to implement a 1991 Final Cleanup Action Plan
19 (1991 FCAP) for the B&L Site. The 1991 FCAP provided for, among other things, the
20 consolidation of materials within the B&L Site, and the construction of a specified cover
21 system over the consolidated materials. ASARCO and Murray Pacific implemented the
22 remedy specified in the 1991 FCAP.

23 F. Sampling conducted following completion of construction of the remedy set
24 forth in the 1991 FCAP has shown that a plume of contaminated groundwater is emanating
25 from the Landfill, and that a wetland adjacent to the Landfill appears to have been impacted by
26 arsenic and possibly other constituents from the Landfill. On February 25, 2005, Ecology

1 issued an Order to ASARCO and Murray Pacific (and one other party) constituting a Second
2 Amendment to the Enforcement Order No. DE 92TC-S214 (the “Second Amendment”). The
3 Second Amendment required the respondents to implement a “Contingency Plan for the B&L
4 Landfill,” (i) to investigate groundwater contamination in the vicinity of the Landfill and to
5 take appropriate corrective action, and (ii) to study, design and implement measures to
6 remediate the adjacent wetland.

7 G. On August 5, 2005, ASARCO filed with the United States Bankruptcy Court for
8 the Southern District of Texas voluntary petitions for relief under the United States Bankruptcy
9 Code (the “Bankruptcy Cases”).

10 H. Following the filing of the Bankruptcy Cases, Murray Pacific undertook and
11 funded the activities required by the Second Amendment, and submitted to Ecology in January
12 2007 a Draft Groundwater Alternatives Evaluation analyzing potential remedial options.

13 I. In June 2007, Ecology issued a Draft Cleanup Action Plan (the “draft 2007
14 CAP”) to address the migration of hazardous substances from the Landfill. The draft 2007
15 CAP was subject to public notice and comment. A public meeting to present the remedy
16 outlined in the draft 2007 CAP and address public concerns was held on July 18, 2007.
17 Subsequent to the public hearing, the draft 2007 CAP was revised by Ecology to address
18 comments and has been finalized as the 2008 Final Cleanup Action Plan (2008 FCAP). The
19 2008 FCAP is Exhibit A to this Decree.

20 J. The Remedial Action selected in the 2008 FCAP includes construction of a
21 containment system around the Landfill, cleanup of groundwater, long-term operation of a
22 groundwater recovery and treatment system, and long-term post-closure operations,
23 maintenance, and monitoring.

24 K. Consistent with the Bankruptcy Settlement Agreement (see Section I
25 (Introduction)), Murray Pacific has agreed to implement certain elements of the Remedial
26 Action defined in the 2008 FCAP. These elements are described in Section VI (Work to be

1 Performed) of this Decree. Ecology will be responsible for the portions of the Remedial
2 Action defined in the 2008 FCAP that are not included in Section VI (Work to be Performed)
3 of this Decree.

4 **VI. WORK TO BE PERFORMED**

5 This Decree contains a program designed to protect human health and the environment
6 from the known release, or threatened release, of hazardous substances or contaminants at, on,
7 or from the Site. The responsibility to perform the work described in this section shall be
8 solely that of Murray Pacific. Louisiana Pacific and Wasser & Winters, Inc. shall have no
9 responsibility in this regard.

10 A. The work to be performed by Murray Pacific is the completion of the work
11 generally described in the 2008 FCAP, and specifically described in the Scope of Work and
12 Schedule. The 2008 FCAP is attached as Exhibit A. The Scope of Work defining the Initial
13 Construction is described in Exhibit B, Scope of Work and Schedule.

14 B. Murray Pacific shall furnish all personnel, materials and services necessary for,
15 or incidental to, the planning, initiation, completion, and reporting of the work described in
16 Exhibit B, Scope of Work and Schedule.

17 C. The Initial Construction Phase of the 2008 FCAP and each element thereof are
18 designed and shall be implemented and completed in accordance with MTCA (Chapter
19 70.105D RCW) and its implementing regulations (Chapter 173-340 WAC) as amended, and all
20 applicable federal, state, and local laws and regulations.

21 D. As provided in the agreed upon schedule, contained within Exhibit B to this
22 Decree, Murray Pacific shall commence work and thereafter complete all tasks set forth in
23 Exhibit B in the time frames and framework indicated unless Ecology grants an extension in
24 accordance with Section XV (Extension of Schedule) of this Decree.

25 E. Murray Pacific agrees not to perform any remedial actions at the Site that are
26 outside the scope of this Decree unless the Parties agree to amend the Initial Construction

1 Phase to cover these actions. All work conducted by Murray Pacific under this Decree shall be
2 done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

3 F. Because the Site includes a landfill, a deed restriction will need to be placed on
4 the property on which the Landfill is located, and additional deed restriction(s) may be
5 required for at least portions of adjacent properties. Ecology and Murray Pacific acknowledge
6 that Murray Pacific does not own any of the properties that compose the Site. Murray Pacific
7 shall use reasonable efforts, short of litigation, in placing the deed restrictions, and Ecology
8 agrees that these efforts shall be included in MPC Implementation Costs.

9 VII. DESIGNATED PROJECT COORDINATORS

10 The project coordinator for Ecology is:

11 Dom Reale, P.E.
12 Department of Ecology
13 Southwest Regional Office
14 300 Desmond Drive
15 Lacey, WA 98503
16 (360) 407-6266

17 The project coordinator for the Defendant Murray Pacific is:

18 Teri A. Floyd, Ph.D.
19 Floyd Snider Inc.
20 Two Union Square
21 601 Union Street, Suite 600
22 Seattle, WA 98101-2341
23 (206) 292-2078 ext. 2165

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
26 To the maximum extent possible, communications between Ecology and Defendant Murray
Pacific and all documents, including reports, approvals, and other correspondence concerning
the activities performed pursuant to the terms and conditions of this Decree, shall be directed
through the project coordinators. The project coordinators may designate, in writing, working
level staff contacts for all or portions of the implementation of the work required by this
Decree. The project coordinators may agree to minor modifications to the Work to be

1 Performed without formal amendments to this Decree. Minor modifications will be
2 documented in writing by Ecology. Substantial changes shall require amendment of this
3 Decree.

4 Any Party may change its respective project coordinator. Written notification shall be
5 given to the other Party at least ten (10) calendar days prior to the change.

6 **VIII. PERFORMANCE**

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

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

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

18 D. Any documents submitted containing geologic, hydrologic or engineering work
19 shall be under the seal of an appropriately licensed professional as required by Chapter 18.220
20 RCW or RCW 18.43.130.

21 E. Defendant Murray Pacific shall notify Ecology in writing of the identity of any
22 engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in
23 carrying out the terms of this Decree, in advance of their involvement at the Site.

24 **IX. ACCESS**

25 Ecology or any Ecology authorized representative shall have full authority to enter and
26 freely move about all property at the Site that Defendant Murray Pacific either owns, controls,

1 or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records,
2 operation logs, and contracts related to the work being performed pursuant to this Decree;
3 reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests
4 or collecting such samples as Ecology may deem necessary; using a camera, sound recording,
5 or other documentary type equipment to record work done pursuant to this Decree; and
6 verifying the data submitted to Ecology by Defendant. Ecology and Murray Pacific
7 acknowledge that Murray Pacific does not own any of the properties that compose the Site.
8 Murray Pacific shall make all reasonable efforts, short of litigation, to secure access rights to
9 the Site, and Ecology agrees that these efforts shall be included in MPC Implementation Costs.
10 Ecology or any Ecology authorized representative shall give reasonable notice, at least two (2)
11 days, if feasible, before entering any Site property controlled by Defendant Murray Pacific
12 unless an emergency prevents such notice. All Parties who access the Site pursuant to this
13 Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and
14 their representatives shall not be required by Defendant Murray Pacific to sign any liability
15 release or waiver as a condition of Site property access.

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

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

23 If requested by Ecology, Murray Pacific shall allow Ecology and/or its authorized
24 representative to take split or duplicate samples of any samples collected by Murray Pacific
25 pursuant to the implementation of this Decree. Murray Pacific shall notify Ecology seven (7)
26 days in advance of any sample collection or work activity at the Site. Ecology shall, upon

1 request, allow Murray Pacific and/or its authorized representative to take split or duplicate
2 samples of any samples collected by Ecology pursuant to the implementation of this Decree,
3 provided that doing so does not interfere with Ecology's sampling. Without limitation on
4 Ecology's rights under Section IX (Access), Ecology shall notify Murray Pacific prior to any
5 sample collection activity unless an emergency prevents such notice. In accordance with
6 WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory
7 accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless
8 otherwise approved by Ecology.

9 **XI. PROGRESS REPORTS**

10 Murray Pacific shall submit to Ecology written Progress Reports as provided in the
11 Scope of Work, Exhibit B of this Decree. Depending on the activities being performed, these
12 progress reports may be required at different frequencies (e.g., weekly, monthly, quarterly) as
13 described in the Scope of Work, and subsequent Work Plans developed to support the Work to
14 be Performed by Murray Pacific as part of this Decree, that describe the actions taken during
15 the previous period to implement the requirements of this Decree. The Progress Reports shall
16 include the following:

17 A. A list of on-site activities that have taken place during the preceding reporting
18 period;

19 B. Detailed description of any deviations from required tasks not otherwise
20 documented in project plans or amendment requests;

21 C. Description of all deviations from the Scope of Work and Schedule (Exhibit B)
22 during the preceding reporting period and any planned deviations in the upcoming reporting
23 period;

24 D. For any deviations in schedule, a plan for recovering lost time and maintaining
25 compliance with the schedule unless an extension of the schedule is approved by Ecology in
26 accordance with Section XV (Extension of Schedule);

1 E. All raw data (including laboratory analyses) received by Defendant Murray
2 Pacific during the past reporting period and an identification of the source of the sample; and

3 F. A list of deliverables for the upcoming reporting period if different from the
4 schedule.

5 G. All Progress Reports shall be submitted by the tenth (10th) day of the month in
6 which they are due after the effective date of this Decree. Unless otherwise specified, Progress
7 Reports and any other documents submitted pursuant to this Decree shall be sent by certified
8 mail, return receipt requested, to Ecology's project coordinator. At the discretion of the
9 Project Coordinators, progress meetings may be substituted for written progress reports.

10 XII. RETENTION OF RECORDS

11 During the pendency of this Decree, and for ten (10) years from the date when the
12 Construction Closeout Report is submitted to Ecology and Ecology assumes full responsibility
13 for the Site as provided in Section XXV (Effect and Duration of Decree), Murray Pacific shall
14 preserve all records, reports, documents, and underlying data in its possession relevant to the
15 implementation of this Decree and shall insert a similar record retention requirement into all
16 contracts with project contractors and subcontractors. Upon request of Ecology, Murray
17 Pacific shall make all records available to Ecology and allow access for review within a
18 reasonable time. Nothing in this Decree is intended to waive any right Murray Pacific may
19 have under applicable law to limit disclosure of records protected by the attorney work-product
20 doctrine, the attorney-client privilege, or any other privilege recognized under Washington law.
21 If Murray Pacific withholds any requested records based on an assertion of privilege, it shall
22 provide Ecology with a privilege log specifying the records withheld and the applicable
23 privilege. No data collected on Site, or required pursuant to the Scope of Work and Schedule
24 shall be considered privileged.

25 As described in Section XXV (Effect and Duration of Decree) and Exhibit C to this
26 Decree, Murray Pacific will provide Ecology with an Administrative File/Record containing

1 documents pertaining to the Site that Murray Pacific has gathered from Ecology, Pierce County
2 Health Department, Murray Pacific, Floyd Snider, and other public sources. These documents
3 will be provided in electronic format (e.g., CD-ROMs or DVD-ROMs) at the time this Decree
4 is filed in court. The Administrative File is intended to provide the historical, technical and
5 legal support for the Decree and to embody the facts known to the Parties at the time the
6 Decree is entered. The Administrative Record will be comprised of documents selected from
7 the Administrative File, and will be updated throughout the duration of this Decree as
8 additional documents are created by and/or made available to Murray Pacific and its
9 contractors. The information referred to in the first paragraph of this section will be added to
10 the Administrative Record as it becomes available. At the completion of this project, the
11 complete Administrative Record will be transferred to Ecology in electronic format. Details
12 regarding the electronic format of the Administrative File/Record will be determined by the
13 Project Coordinators. Ecology agrees that creating and maintaining the Administrative
14 File/Database shall be included in MPC Implementation Costs.

15 **XIII. RESOLUTION OF DISPUTES**

16 A. In the event a dispute arises as to an approval, disapproval, proposed change, or
17 other decision or action by Ecology's project coordinator, or an itemized billing statement
18 under Section XXI (Remedial Action Costs), the Parties shall utilize the dispute resolution
19 procedure set forth below.

20 1. Upon receipt of Ecology's project coordinator's written decision, or the
21 itemized billing statement, Defendant Murray Pacific has fourteen (14) days within which to
22 notify Ecology's project coordinator in writing of its objection to the decision or itemized
23 statement.

24 2. The Parties' project coordinators shall then confer in an effort to resolve
25 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,
26 Ecology's project coordinator shall issue a written decision.

1 3. Defendant Murray Pacific may then request regional management
2 review of the decision. This request shall be submitted in writing to the Southwest Region
3 Toxics Cleanup Program Section Manager within seven (7) days of receipt of Ecology's
4 project coordinator's written decision.

5 4. Ecology's Regional Section Manager shall conduct a review of the
6 dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30)
7 days of Defendant's request for review.

8 5. If Defendant Murray Pacific finds Ecology's Regional Section
9 Manager's decision unacceptable, Defendant may then request final management review of the
10 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager
11 within seven (7) days of receipt of the Regional Section Manager's decision.

12 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
13 the dispute and shall endeavor to issue a written decision regarding the dispute within thirty
14 (30) days of Defendant's request for review of the Regional Section Manager's decision. The
15 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed
16 matter.

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

24 C. The Parties agree to only utilize the dispute resolution process in good faith and
25 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
26

1 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,
2 the other Party may seek sanctions.

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

6 **XIV. AMENDMENT OF DECREE**

7 Except for minor modifications agreed to pursuant to Section VII (Designated Project
8 Coordinators) and extensions that do not constitute a substantial change granted in accordance
9 with Section XV (Extension of Schedule), this Decree may only be amended by a written
10 stipulation among the Parties to this Decree that is entered by the Court or by order of the
11 Court. All amendments shall become effective upon entry by the Court. Agreement to amend
12 shall not be unreasonably withheld by any Party to the Decree.

13 Any Party may propose an amendment to the Decree. A Party that receives a request
14 for amendment shall indicate its approval or disapproval in a timely manner after the request
15 for amendment is received. If the amendment to the Decree is substantial, Ecology will
16 provide public notice and opportunity for comment. Reasons for the disapproval shall be
17 stated in writing. If any Party does not agree to any proposed amendment, the disagreement
18 may be addressed through the dispute resolution procedures described in Section XIII
19 (Resolution of Disputes) of this Decree.

20 **XV. EXTENSION OF SCHEDULE**

21 A. An extension of schedule shall be granted only when a request for an extension
22 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
23 deadline for which the extension is requested, and good cause exists for granting the extension.
24 All extensions shall be requested in writing. The request shall specify:

- 25 1. The deadline that is sought to be extended;
- 26 2. The length of the extension sought;

1 3. The reason(s) for the extension; and

2 4. Any related deadline or schedule that would be affected if the extension
3 were granted.

4 B. The burden shall be on Defendant Murray Pacific to demonstrate to the
5 satisfaction of Ecology that the request for such extension has been submitted in a timely
6 fashion and that good cause exists for granting the extension. Good cause may include, but
7 may not be limited to:

8 1. Circumstances beyond the reasonable control and despite the due
9 diligence of Defendant Murray Pacific including delays caused by unrelated third parties or
10 Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
11 documents submitted by Defendant Murray Pacific or delays in obtaining access, after making
12 reasonable efforts short of litigation to obtain access, to properties required to perform the
13 Work required by this Decree; or

14 2. Acts of God or war, including fire, flood, blizzard, extreme
15 temperatures, storm, earthquake, or other unavoidable casualty;

16 3. Endangerment as described in Section XVI (Endangerment); or

17 4. Other circumstances agreed to by Ecology to be exceptional or
18 extraordinary.

19 However, neither increased costs of performance of the terms of the Decree nor
20 changed economic circumstances shall be considered circumstances beyond the reasonable
21 control of Defendant.

22 C. Ecology shall act upon any written request for extension in a timely fashion.
23 Ecology shall give Defendant Murray Pacific written notification of any extensions granted
24 pursuant to this Decree. A requested extension shall not be effective until approved by Ecology
25 or, if required, by the Court. Unless the extension is a substantial change, it shall not be
26

1 necessary to amend this Decree pursuant to Section XIV (Amendment of Decree) when a
2 schedule extension is granted.

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

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

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

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

11 **XVI. 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 Murray Pacific to cease such activities for such period of time as needed to abate the danger.
15 Murray Pacific shall immediately comply with such direction.

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

24 If Ecology concurs with or orders a work stoppage pursuant to this Section, Murray
25 Pacific's obligations with respect to the ceased activities shall be suspended until Ecology
26 determines the danger is abated, and the time for performance of such activities, as well as the

1 time for any other work dependent upon such activities, shall be extended, in accordance with
2 Section XV (Extension of Schedule), for such period of time as Ecology determines is
3 reasonable under the circumstances.

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

6 **XVII. COVENANT NOT TO SUE**

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

11 This Decree covers only the Site. This Decree does not cover any other hazardous
12 substance or area. Ecology retains all of its authority relative to any substance or area not
13 covered by this Decree.

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

- 15 1. Criminal liability;
- 16 2. Any Ecology action, including cost recovery, against PLPs not a party to
17 this Decree.

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

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

- 25 1. Upon Murray Pacific's failure without good cause to perform the work
26 required by this Decree;

1 The Parties also intend that this Decree has resolved Murray Pacific’s liability as defined in
2 CERCLA §113(f)(2). For the purpose of this section, “Matters Addressed” includes all
3 investigative, remedial actions, and other response actions at the Site. “Matters Addressed”
4 also includes all investigative and remedial actions previously undertaken at the Site to
5 characterize the contamination or to enable the selection of a remedial action, and all oversight
6 costs paid to Ecology.

7 **XIX. INDEMNIFICATION**

8 Defendant Murray Pacific agrees to indemnify and save and hold the State of
9 Washington, its employees, and agents harmless from any and all claims or causes of action for
10 death or injuries to persons or for loss or damage to property to the extent arising from or on
11 account of acts or omissions of Defendant Murray Pacific, its officers, employees, agents, or
12 contractors in entering into and implementing this Decree. However, Defendant Murray
13 Pacific shall not indemnify the State of Washington nor save nor hold its employees and agents
14 harmless from any claims or causes of action to the extent arising out of either the State of
15 Washington’s or any of its agencies’ status as potentially liable persons with respect to
16 contamination at the Site or the intentional, reckless, or negligent acts or omissions of the State
17 of Washington, or the employees or agents of the State, in entering into or implementing this
18 Decree.

19 **XX. COMPLIANCE WITH APPLICABLE LAWS**

20 A. All actions carried out by Defendant Murray Pacific pursuant to this Decree
21 shall be done in accordance with all applicable federal, state, and local requirements, including
22 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The
23 permits or other federal, state or local requirements that the agency has determined are
24 applicable and that are known at the time of entry of this Decree have been identified in the
25 2008 FCAP (Exhibit A).
26

1 B. Pursuant to RCW 70.105D.090(1), Defendant Murray Pacific is exempt from
2 the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW
3 and of any laws requiring or authorizing local government permits or approvals. However,
4 Defendant Murray Pacific shall comply with the substantive requirements of such permits or
5 approvals. The exempt permits or approvals and the applicable substantive requirements of
6 those permits or approvals, as they are known at the time of entry of this Decree, have been
7 identified in the 2008 FCAP (Exhibit A).

8 Defendant Murray Pacific has a continuing obligation to determine whether additional
9 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
10 remedial action under this Decree. In the event either Ecology or Defendant Murray Pacific
11 determines that additional permits or approvals addressed in RCW 70.105D.090(1) would
12 otherwise be required for the remedial action under this Decree, it shall promptly notify the
13 other party of this determination. Ecology shall determine whether Ecology or Defendant
14 Murray Pacific shall be responsible to contact the appropriate state and/or local agencies. If
15 Ecology so requires, Defendant Murray Pacific shall promptly consult with the appropriate
16 state and/or local agencies and provide Ecology with written documentation from those
17 agencies of the substantive requirements those agencies believe are applicable to the remedial
18 action. Ecology shall make the final determination on the additional substantive requirements
19 that must be met by Defendant Murray Pacific and on how Defendant Murray Pacific must
20 meet those requirements. Ecology shall inform Defendant Murray Pacific in writing of these
21 requirements. Once established by Ecology, the additional requirements shall be enforceable
22 requirements of this Decree. Defendant Murray Pacific shall not begin or continue the
23 remedial action potentially subject to the additional requirements until Ecology makes its final
24 determination.

25 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
26 exemption from complying with the procedural requirements of the laws referenced in

1 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
2 necessary for the State to administer any federal law, the exemption shall not apply and
3 Defendant Murray Pacific shall comply with both the procedural and substantive requirements
4 of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

5 **XXI. REMEDIAL ACTION COSTS**

6 Defendant Murray Pacific shall pay to Ecology the remedial action costs incurred by
7 Ecology for the Site pursuant to this Decree and consistent with WAC 173-340-550, provided
8 such costs shall be considered MPC Implementation Costs. These costs shall include work
9 performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW,
10 including remedial actions and Decree preparation, negotiation, oversight, and administration.
11 These costs shall include work performed both prior to and subsequent to the entry of this
12 Decree. Ecology's costs shall include costs of direct activities and support costs of direct
13 activities as defined in WAC 173-340-550(2). Defendant Murray Pacific agrees to pay the
14 required amount within ninety (90) days of receiving from Ecology an itemized statement of
15 costs that includes a summary of costs incurred, an identification of involved staff, and the
16 amount of time spent by involved staff members on the project. A general statement of work
17 performed will be provided with the statement of costs. Itemized statements shall be prepared
18 quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90)
19 days of receipt of the itemized statement will result in interest charges at the rate of twelve
20 percent (12%) per annum, compounded monthly.

21 **XXII. PAYMENTS TO THE STATE & ELECTION TO CREATE TRUST**

22 Within 30 days after the State has provided notice to Murray Pacific that the Initial
23 Construction Phase of the Work has been satisfactorily completed, Murray Pacific shall pay the
24 State the sum of \$21 million dollars less the MPC Implementation Costs. Payment shall be
25 made payable to the "Washington State Department of Ecology," and payment shall be sent via
26 Federal Express to:

1 Department of Ecology
2 ATTN: Gary Zeiler, Fiscal Manager
3 300 Desmond Drive S.E.
4 Lacey, WA 98503-1274

5 The term “MPC Implementation Costs” means the total of all costs reasonably and
6 necessarily incurred by Murray Pacific to implement the Initial Construction Phase of work as
7 required by this Decree. It shall include without limitation: (i) any amounts paid by Murray
8 Pacific to professional advisers or other consultants, third party vendors, suppliers,
9 laboratories, engineers, equipment lessors or other providers of goods and/or services; (ii) any
10 amounts paid by Murray Pacific to obtain access at or near the Site; (iii) any amounts paid by
11 Murray Pacific to obtain insurance with respect to the work required under this Decree; (iv)
12 any taxes paid by Murray Pacific with respect to the work required under this Decree; (v) any
13 amounts reimbursed by Murray Pacific pursuant to Section XXI (Remedial Action Costs) of
14 this Decree; and (vi) permit or license fees paid by Murray Pacific with respect to the work
15 required under this Decree.

16 Murray Pacific shall provide to Ecology on a semi-annual basis a summary of the MPC
17 Implementation Costs incurred during the prior six month period together with reasonable
18 supporting documentation and an estimate of what amounts will be spent during the following
19 six month period. If Ecology objects to the inclusion of any amount as MPC Implementation
20 Costs, it shall notify Murray Pacific within forty-five (45) days of the receipt of the semi-
21 annual report, and the dispute resolution procedure of Section XIII (Resolution of Disputes)
22 shall be utilized.

23 Murray Pacific may elect to satisfy certain of its obligations under this Decree by
24 establishing and funding a trust pursuant to the terms and conditions set forth in Exhibit G.

25 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

26 If Ecology determines that Defendant Murray Pacific has failed without good cause to
do the work required by this Decree, Ecology may, after written notice to Defendant Murray

1 Pacific and a reasonable opportunity for Murray Pacific to cure the failure, perform any or all
2 portions of the work required by this Decree that remain incomplete. If Ecology performs all
3 or portions of the work required by this Decree because of Defendant's failure to comply with
4 its obligations under this Decree, Murray Pacific shall pay the State, within fifteen (15) days
5 after the State notifies Murray Pacific of its decision to take over the work, the sum required
6 from Murray Pacific by Section XXII (Payments to the State & Election to Create Trust) less
7 all MPC Implementation Costs incurred through the date such notice is received by Murray
8 Pacific, provided that Murray Pacific is not obligated under this Section to reimburse Ecology
9 for costs incurred for work inconsistent with or beyond the scope of this Decree.

10 Except where necessary to abate an emergency situation, Murray Pacific shall not
11 perform any remedial actions at the Site outside those remedial actions required by this Decree,
12 unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section
13 XIV (Amendment of Decree).

14 **XXIV. PUBLIC PARTICIPATION**

15 Ecology shall maintain the responsibility for public participation at the Site. However,
16 Defendant Murray Pacific shall cooperate with Ecology, and shall:

17 A. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of
18 public notices and fact sheets at important stages of the remedial action, such as the submission
19 of work plans, remedial investigation/feasibility study reports, cleanup action plans, and
20 engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact
21 sheets and prepare and distribute public notices of Ecology's presentations and meetings.

22 B. Notify Ecology's project coordinator prior to the preparation of all press
23 releases and fact sheets, and before major meetings with the interested public and local
24 governments. Likewise, Ecology shall also provide Defendant Murray Pacific with an
25 opportunity to review and comment on all press releases, fact sheets, and other materials that
26 will be distributed to the public and local governments prior to issuance. For all press releases,

1 fact sheets, meetings, and other outreach efforts by Defendant Murray Pacific that do not
2 receive prior Ecology approval, Defendant Murray Pacific shall clearly indicate to its audience
3 that the press release, fact sheet, meeting, or other outreach effort was not sponsored or
4 endorsed by Ecology.

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

8 D. When requested by Ecology, arrange and/or continue information repositories at
9 the following locations:

- 10 1. Pierce County Library
11 1000 Laurel Street
12 Milton, WA98354
(253) 922-2870
- 13 2. Tacoma Main Library
14 1102 Tacoma Ave. South
Tacoma, WA 98402
(253) 591-5666
- 15 3. Citizens for a Healthy Bay
16 917 Pacific Ave., Suite 100
Tacoma, WA 98402
17 (253) 383-2429
- 18 4. WA State Department of Ecology
19 Southwest Regional Office
20 Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503
(360) 407-6365

21 At a minimum, copies of all public notices, fact sheets, and press releases; all quality
22 assured monitoring data; remedial actions plans and reports, supplemental remedial planning
23 documents; and all other similar documents relating to performance of the remedial action
24 required by this Decree shall be promptly placed in these repositories.

25 If desired by Ecology, Defendant Murray Pacific will support a project-specific website
26 during the activities covered by this Consent Decree.

1 **XXV. EFFECT AND DURATION OF DECREE**

2 This Decree shall supersede all prior consent decrees and enforcement orders entered
3 with respect to the Site, and those orders and decrees shall, upon the effective date of this
4 Decree, have no further force or effect.

5 This Decree shall remain in effect until Defendant Murray Pacific has received written
6 notification from Ecology that the requirements of this Decree have been satisfactorily
7 completed. Ecology shall issue such notification within sixty (60) days after the requirements
8 of this Decree have been satisfactorily completed. Thereafter, the Parties within thirty (30)
9 days shall jointly request that the Court vacate this Decree. After the Decree is vacated,
10 Section XVII (Covenant Not to Sue) and XVIII (Contribution Protection) shall survive and
11 continue in full force and effect.

12 **XXVI. CLAIMS AGAINST THE STATE**

13 Murray Pacific hereby agrees that it will not seek to recover any costs accrued in
14 implementing the remedial action required by this Decree, and that it will not seek to recover
15 the sums paid under this Decree, from the State of Washington or any of its agencies.
16 Defendant Murray Pacific will make no claim against the State Toxics Control Account or any
17 Local Toxics Control Account for any costs incurred in implementing this Decree. Except as
18 provided above, however, Defendant Murray Pacific expressly reserves its right to seek to
19 recover any costs incurred in implementing this Decree from any other PLPS, including
20 agencies of the State of Washington, other than the Debtors. This Section does not limit or
21 address funding that may be provided under Chapter 173-322 WAC.

22 **XXVII. EFFECTIVE DATE**

23 This Decree is effective upon the later of (1) the date it is entered by a final order of the
24 Court or (2) the Effective Date of the Bankruptcy Settlement Agreement.
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA
Attorney General

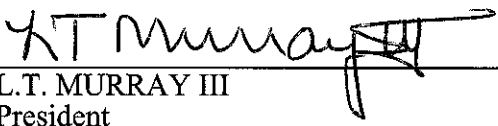
JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

ELLIOTT FURST, WSBA # 12026
Senior Counsel
Attorney for State of Washington
Department of Ecology
(360) 586-3513

Date: _____

Date: _____

MURRAY PACIFIC CORPORATION


L.T. MURRAY III
President
Murray Pacific Corporation
(253) 383-4911

Date: 4/29/08

DATED this _____ day of _____, 2008.

JUDGE
Pierce County Superior Court