

Honorable Jack E. Tanner

FOR YOUR INFORMATION

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CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON AT TACOMA DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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UNITED STATES OF AMERICA, ON)
BEHALF OF THE UNITED STATES)
ENVIRONMENTAL PROTECTION)
AGENCY, THE UNITED STATES)
DEPARTMENT OF THE INTERIOR, AND)
THE NATIONAL OCEANIC AND)
ATMOSPHERIC ADMINISTRATION,)
STATE OF WASHINGTON; PUYALLUP)
TRIBE OF INDIANS; MUCKLESHOOT)
INDIAN TRIBE,)

Plaintiffs,)

v.)

SIMPSON TACOMA KRAFT COMPANY,)
CHAMPION INTERNATIONAL)
CORPORATION, AND STATE OF)
WASHINGTON DEPARTMENT OF)
NATURAL RESOURCES,)

Defendants.)

No. C91 - 5260T

COMMENCEMENT BAY
NEARSHORE/ TIDEFLATS
SUPERFUND SITE; ST. PAUL
WATERWAY PROBLEM AREA
CONSENT DECREE

AMENDMENT NO. 1

Thomas W. Swegle
WA Bar Number 15667
U.S. Department of Justice
Washington, D.C. 20530
(202) 514-3143

1 BACKGROUND

2 A. On December 13, 1991, the Court entered a federal consent decree providing for the
3 cleanup of contaminated sediments in the St. Paul Waterway Problem Area under the federal
4 Superfund law, resolving natural resource damage claims for this Problem Area against Simpson
5 Tacoma Kraft Company (Simpson), Champion International Corporation (Champion) and the
6 Washington State Department of Natural Resources (DNR), and providing for long term
7 monitoring of the 17 acre cleanup and habitat restoration area (Consent Decree or Federal
8 Consent Decree). Simultaneously with entering the Consent Decree, the parties, with the
9 exception of EPA, entered into a Settlement Agreement, Exhibit C to the Consent Decree, to
10 settle natural resource damage claims against Simpson, Champion and DNR for the St. Paul
11 Waterway Problem Area.

12 B. On December 30, 1991, Simpson, Champion, DNR and the Washington State
13 Department of Ecology (Ecology) entered into an amendment of a State Consent Decree (Wa.
14 State Dept. of Ecology v. Simpson Tacoma Kraft Co. and Wa. State Dept. of Natural Resources,
15 Pierce County Superior Court No. 87-2-07673-9, December 24, 1989) (the State Consent
16 Decree) concerning the St. Paul Waterway Problem Area. The State Consent Decree preceded
17 the Federal Consent Decree and approved the cleanup of contaminated sediments in the St. Paul
18 Waterway Problem Area under applicable state law. In the amendment, the parties to the State
19 Consent Decree recognized the Federal Consent Decree and confirmed, under paragraph 8 of
20 the amendment to the State Consent Decree, that the State Consent Decree "shall not provide
21 a basis for any natural resource damages claims or liabilities and that any such claims with
22 respect to the St. Paul Waterway Problem Area are fully settled (subject to paragraph 99 [of the
23 Federal Consent Decree]) under the Federal Consent Decree."

24 C. Among other things, the Settlement Agreement under the Federal Consent Decree

1 provided for construction of an additional restoration project in the Commencement Bay
2 environment, to be planned jointly by Simpson and Champion, DNR, and the Natural Resource
3 Trustees and implemented under a memorandum of agreement or cooperative agreement
4 between the Natural Resource Trustees and the appropriate settling party or parties (Simpson,
5 Champion and/or DNR). Under the Settlement Agreement, Simpson and Champion deposited
6 \$500,000.00 into a Commencement Bay Restoration Project Trust Fund (the Fund) to provide
7 for the additional restoration project.

8 D. In September 1993, the Natural Resource Trustees, other Federal and State Agencies,
9 Simpson and Champion (the Project Planning Group) selected and proposed a project called the
10 Middle Waterway Shore Restoration Project (the Restoration Project) as the additional
11 restoration project called for in the Settlement Agreement described above in paragraph C. The
12 Planning Group selected the Restoration Project after considering several potential sites and
13 projects, evaluating each for conformity with preliminary restoration criteria, for cost, and for
14 functional connectivity to the 17 acre habitat restoration area on the St. Paul Waterway. The
15 Project Planning Group selected the Restoration Project, in part, because of the group's
16 expectation that the Restoration Project: (1) would provide valuable riparian and estuarine
17 wetland/mudflat habitat in close proximity to the St. Paul Waterway habitat restoration area; (2)
18 did not appear to be exposed to contamination that would jeopardize the Restoration Project's
19 long-term ecological value; and (c) could provide valuable information for planning future
20 restoration projects in the Commencement Bay Environment. The proposed Restoration Project
21 is located along the southeastern shore of the Middle Waterway on property owned by Simpson
22 (the Restoration Property). The Restoration Property is adjacent to, and includes a portion of,
23 one of the few remaining original mudflats in Commencement Bay.

24 E. Simpson submitted permit applications for the Restoration Project in September 1993

1 and has certified that it has received all of the necessary federal and state permits for the
2 Restoration Project. Thereafter, Simpson and the Natural Resource Trustees entered into a
3 cooperative agreement to implement the Restoration Project and maintain it in perpetuity
4 (Cooperative Agreement). Under the terms of this Cooperative Agreement, (1) Simpson
5 agreed to implement the Restoration Project and maintain it in perpetuity, (2) the Trustees
6 agreed to reimburse Simpson for costs incurred in developing and implementing the
7 Restoration Project, (3) Simpson agreed to place a restrictive covenant on the deed to the
8 Restoration Property to make the land available for restoration and habitat use in perpetuity
9 (Deed Restriction), and (4) the Trustees agreed to pay \$625,000.00 to Simpson as
10 compensation for the diminution in value of the Restoration Property as a result of Simpson's
11 obligations under the Cooperative Agreement, including Simpson's incurring of otherwise
12 unreimbursable expenses in association with the design, selection and implementation of the
13 Restoration Project, the placement of the Deed Restriction on the Restoration Property, and
14 Simpson's agreement to pay the property tax liability allocable to the Restoration Property.
15 This Cooperative Agreement is attached to this Amendment as Enclosure No. 1, and by this
16 reference incorporated herein and made a part of this Amendment to the Consent Decree,
17 except that this Amendment supersedes the payment terms of Schedule 1 of the Cooperative
18 Agreement.

19 F. This Amendment to the Consent Decree incorporates the terms of a settlement of
20 claims by the Natural Resource Trustees against Simpson and Champion for natural resource
21 damages as a result of releases of hazardous substances (as that term is defined in 42 U.S.C.
22 § 9601(14) and RCW 70.105D.020(5)) into the Commencement Bay Environment for which
23 Simpson and Champion may be responsible and have not yet settled. It extends the previous
24 settlement under the Consent Decree of natural resource damage claims by the Natural
25

1 Resource Trustees against Simpson and Champion for the St. Paul Waterway Problem Area
2 to include the Commencement Bay Environment, and fully settles with respect to Simpson
3 and Champion all federal, state and tribal claims for Natural Resource Damages with respect
4 to the St. Paul Waterway Problem Area and the Commencement Bay Environment, as those
5 terms are defined in paragraph 3 herein, subject to paragraph 99 of the Consent Decree as
6 modified herein.

7 G. Although the Natural Resource Trustees have initiated but not yet completed a
8 natural resource damage assessment for the Commencement Bay Environment, the Natural
9 Resource Trustees have concluded that they can determine with a reasonable degree of
10 reliability the level of damages appropriate to assign to Simpson and Champion for
11 settlement purposes. The settlement of Natural Resource Damages provided in this
12 Amendment is based upon extensive studies, including targeted natural resource data
13 collection specifically requested of Simpson and Champion by the Trustees in the Consent
14 Decree and other targeted natural resource data collection subsequently undertaken by the
15 Trustees. The data indicated that injury to natural resources resulting from releases of
16 hazardous substances from the Tacoma Kraft Mill principally occurred close to the mill in
17 the St. Paul Waterway area, and chemicals of concern originating at the mill (including
18 polychlorinated dibenzodioxins and polychlorinated dibenzofurans) were not detected at
19 levels of concern in areas widely dispersed from the mill. The settlement builds in a
20 premium for natural resource damage elsewhere in the Commencement Bay Environment to
21 the extent there remains scientific uncertainty on this point.

22 H. Under the settlement provided in this Amendment, Simpson and Champion will
23 perform restoration actions in Commencement Bay estimated by the parties to this
24 Amendment to have a value over \$1,000,000.00. These restoration actions include: (1)

1 Making the Restoration Property along the Middle Waterway available for the Restoration
2 Project outright (in lieu of receiving \$625,000.00 from the Trustees as compensation for the
3 diminution in value of the Restoration Property as a result of Simpson's obligations under the
4 Cooperative Agreement); (2) Bearing a majority of the costs of developing and
5 implementing the Restoration Project (in lieu of receiving full reimbursement from the
6 Trustees of Restoration Project costs under the Cooperative Agreement); and (3) Paying the
7 Trustees for oversight costs incurred with respect to the Commencement Bay Environment.
8 The settlement will result (1) directly in the establishment of over three acres of intertidal,
9 salt marsh and riparian habitat along the Middle Waterway, a high priority location for
10 restoration in the Commencement Bay Environment and one in close proximity to the
11 existing St. Paul Waterway habitat restoration area, (2) save the Trustees a cash outlay that
12 would otherwise be needed for making the Restoration Property available for restoration and
13 habitat use, and (3) make almost half of the \$500,000.00 deposited in the Fund as a result of
14 the previous Settlement Agreement available for the planning or implementation of another
15 restoration project in the Commencement Bay Environment.

16 I. The parties to this Amendment recognize, and the Court by entering this Amendment
17 to the Consent Decree finds, that this Amendment has been negotiated by the parties hereto
18 in good faith, that its implementation will expedite the restoration of natural resources
19 injured by releases of hazardous substances into the Commencement Bay Environment and
20 will avoid prolonged and complicated litigation between the parties hereto, and that this
21 Amendment to the Consent Decree is fair, reasonable, and in the public interest.

22 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed that, as provided for
23 in Article XXIX, this Consent Decree be modified as follows:

24 1. Paragraph 27 is amended to include the following after "Area," and before "address"

1 on line 13:

2 "and, in the case of Simpson and Champion, claims for Natural Resource Damages with
3 respect to the Commencement Bay Environment."

4 2. Paragraph 31(A) is amended and replaced with the following:

5 "Consent Decree" means this Decree and Appendices and Exhibits attached hereto and all
6 Amendments and Exhibits attached to such Amendments.

7 3. Paragraph 31 is amended to include the following:

8 (AA) "Amendment Number 1" means the amendment to the Consent Decree incorporating
9 the terms of a settlement of claims by the Natural Resource Trustees against Simpson and
10 Champion for natural resource damages as a result of releases of hazardous substances (as
11 that term is defined in 42 U.S.C. § 9601(14) and RCW 70.105D.020(5)) into the
12 Commencement Bay Environment for which Simpson and Champion may be responsible
13 and have not yet settled.

14 (BB) "Commencement Bay Environment" shall consist of the Site, as defined herein, plus
15 areas of Commencement Bay between the Site and a line drawn from Point Defiance to Dash
16 Point.

17 (CC) "Natural Resource Damages" shall mean damages, including costs of damages
18 assessment, recoverable under Section 107 of CERCLA, Chapter 70.105D RCW, or other
19 applicable law for injury to, destruction of, or loss of natural resources resulting from
20 releases of hazardous substances into the Commencement Bay Environment.

21 4. Clause (ii) of Paragraph 32 is amended and replaced with the following:

22 "(ii) to restore habitat and natural resources with respect to past activities in the St. Paul
23 Waterway Problem Area, and, in the case of Simpson and Champion, in the Commencement
24 Bay Environment".

1 5. Paragraph 34 is amended and replaced with the following:

2 The obligations of Settling Defendants to finance and perform the Work and to reimburse
3 the United States for its Past Response Costs, Oversight Response Costs and Future
4 Response Costs under this Consent Decree are joint and several. Simpson and Champion
5 shall be jointly and severally liable for any Past Response Costs, Oversight Response Costs
6 and Future Response Costs incurred by the Natural Resource Trustees with respect to
7 injuries to natural resources outside of the St. Paul Waterway Problem Area but within the
8 Commencement Bay Environment. In the event of the insolvency or other failure of any one
9 or more Settling Defendants to implement the requirements of this Consent Decree, the
10 remaining Settling Defendants shall complete all such requirements, provided however that
11 DNR shall have no obligation to implement the requirements of this Consent Decree with
12 respect to Natural Resource Damages outside of the St. Paul Waterway Problem Area but
13 within the Commencement Bay Environment.

14 6. Paragraph 98 is amended to include the following after "following" and before ":" on
15 line 14 of page 57:

16 "for all of the Settling Defendants".

17 7. Clause (C) of the term "Covered Matters" in Paragraph 98 is amended and replaced
18 with the following:

19 (C) Covered Matters under subparagraphs (A) and (B) of this paragraph do not include
20 the Middle Waterway Problem Area described in the ROD.

21 8. The term "Covered Matters" in Paragraph 98 is amended to include the following
22 after subparagraph (C):

23 "Covered Matters" also means the following for Simpson and Champion only:

24 (D) With respect to the Commencement Bay Environment, liability for any and all civil

1 claims available to the United States on behalf of the federal Natural Resource Trustees and
2 the other Natural Resource Trustees under Sections 106 and 107 of CERCLA, Section 311 of
3 the Federal Water Pollution Control Act, Chapter 70.105D RCW, Chapter 90.48 RCW, or
4 any other federal, state, tribal or common law for damages on behalf of the public, including
5 the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe and their members, for
6 injury to, destruction of, or loss of natural resources under federal, state, and tribal
7 trusteeship resulting from releases of hazardous substances, and claims for recovery of Past
8 Response Costs, Oversight Response Costs, and Future Response Costs incurred by the
9 Natural Resource Trustees with respect to the Commencement Bay Environment.

10 9. Clause (i)(H) of Paragraph 99 is amended and replaced with the following:

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

13 10. Clause (i)(J) of Paragraph 99 is amended and replaced with the following:

14 (J) With respect to DNR, liability for damages for injury to, destruction of, or loss of natural
15 resources, including damages with respect to petroleum product releases occurring after July
16 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area. With
17 respect to Simpson and Champion, liability for injury to, destruction of, or loss of natural
18 resources resulting from releases of hazardous substances into the Commencement Bay
19 Environment occurring after the Effective Date of Amendment No. 1 to the Consent Decree.

20 11. Clause (C) of Paragraph 100 is renumbered (D) and a new Clause (C) is added to
21 read as follows:

22 (C) With respect to Simpson and Champion, the Natural Resource Trustees further
23 reserve their rights to institute proceedings in this action or in a new action seeking to
24 compel Simpson and Champion to reimburse the Natural Resource Trustees for Natural

1 Resource Damages in the Commencement Bay Environment if the Natural Resource
2 Trustees find, based on these previously unknown conditions or information described in
3 subparagraph (A), together with site-specific and any other relevant information, that there is
4 injury to, destruction of, or loss of natural resources in the Commencement Bay Environment
5 that was unknown at the time of entry of Amendment Number 1 to this Consent Decree and
6 uncompensated for under the settlement provided by Amendment Number 1.

7 12. Paragraph 105 is amended and replaced with the following:

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

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

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

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

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

20 With regard to claims for contribution against Simpson and Champion for matters addressed
21 in this Consent Decree or any amendment thereto, the parties hereto agree that Simpson and
22 Champion are also entitled as of the effective date of such amendment to this Consent
23 Decree to such protection from contribution actions or claims as provided in CERCLA §
24 113(f)(2), 42 U.S.C. § 9613(f)(2), RCW 70.105D.080, and other applicable federal, state or

1 tribal law for matters addressed in subparagraphs (E) through (F) below.

2 (E) The Natural Resource Damages with respect to the Commencement Bay
3 Environment.

4 (F) The Natural Resource Trustees' Past Response Costs, Oversight Response Costs and
5 Future Response Costs with respect to the Commencement Bay Environment.

6 13. The addresses of individual representatives of parties other than DNR provided in
7 Paragraph 116 are amended and replaced with the following:

8 As to the United States:

9 Chief, Environmental Enforcement Section
10 Environment and Natural Resources Division
11 U.S. Department of Justice
12 P. O. Box 7611
13 Ben Franklin Station
14 Washington, D.C. 20044

15 and

16 Director, Hazardous Waste Division
17 United States Environmental Protection Agency
18 Region 10
19 1200 Sixth Avenue
20 Seattle, Washington 98101

21 As to EPA:

22 Karen Keeley or Alison Hiltner
23 EPA Project Coordinator
24 United States Environmental Protection Agency
25 Region 10
26 1200 Sixth Avenue
Seattle, Washington 98101

1 As to Simpson and Champion:

2 Edward J. Reeve
3 Senior Counsel
4 Simpson Tacoma Kraft Company
1201 Third Avenue
Seattle, Washington 98101

5 Kenneth S. Weiner or Konrad J. Liegel
6 Preston Gates & Ellis
701 Fifth Avenue, Suite 5000
Seattle, Washington 98104-7078

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

11 Michael R. Thorp or Kimberly Seely
12 Heller Ehrman White & McAuliffe
1201 Pacific Avenue, Suite 1400
Tacoma, Washington 98402

13 As to the Federal Natural Resource Trustees:

14 Robert A. Taylor
15 National Oceanic and Atmospheric Administration
16 Damage Assessment and Restoration Center
7600 Sand Point Way N.W.
Seattle, Washington 98115-0070

17 Barry Stein
18 Department of the Interior
19 Regional Solicitor's Office
500 NE Mulnomah, Suite 607
Portland, Oregon 97232

20 As to the State:

21 Fred Gardner
22 Department of Ecology
23 P. O. Box 47600
Olympia, Washington 98504-7600

1 As to the Puyallup and Muckleshoot Tribes:

2 Richard Du Bey
3 Special Environmental Counsel to the
4 Puyallup Tribe of Indians
5 Stoel Rives Boley Jones & Grey
6 3600 One Union Square, 600 University Street
7 Seattle, WA 98101

8 Robert Otsea
9 Muckleshoot Indian Tribe
10 39015 - 172nd Avenue SE
11 Auburn, WA 98002

12 IN ADDITION TO THE FOREGOING AMENDMENTS, it is further Ordered,
13 Adjudged and Decreed that:

14 14. Settlement of Claims Against Simpson and Champion for Natural Resource Damages
15 in the Commencement Bay Environment. In addition to the moneys previously provided by
16 Simpson and Champion for settlement of Natural Resource Damages in the St. Paul
17 Waterway Problem Area and for assessment and restoration activities elsewhere in the
18 Commencement Bay Environment (estimated by the parties to this Amendment to have a
19 value over \$2,800,000.00), Simpson and Champion shall perform the following actions
20 (estimated by the parties to this Amendment to have a value over \$1,000,000.00):

21 (A) Except as provided in subparagraphs (C) and (D), Simpson shall make the
22 Restoration Property along the Middle Waterway available to the Trustees for restoration
23 and habitat use, in accordance with the Cooperative Agreement (except for the terms of
24 Schedule 1 thereof), and shall assume all obligations as property owner under the
25 Cooperative Agreement.

26 (B) Except as provided in subparagraphs (C) and (D), Simpson and Champion shall

1 develop, implement, and bear all costs incident to: (1) All phases of the Restoration
2 Project under the Cooperative Agreement, including planning design, permitting,
3 sampling, final project design, construction and planting in accordance with the final
4 plans and specifications for the Restoration Project, and post-construction monitoring in
5 accordance with the monitoring and adaptive management plan for the Restoration
6 Project; (2) All obligations as property owner under the Cooperative Agreement,
7 including payment of taxes and maintenance of the Restoration Property; and (3) Other
8 obligations that arise as a consequence of permit conditions associated with the
9 Restoration Project.
10

11 (C) The Trustees shall contribute \$275,000.00 toward the funding of the Restoration
12 Project, to be drawn down from the Court Registry Account established under the
13 Consent Decree. The Trustees shall authorize counsel for the United States to make
14 application to the Court for payment of such amount, minus any moneys that have
15 previously been paid to Simpson pursuant to the Cooperative Agreement, to Simpson
16 from the Court Registry Account within ten (10) business days after entry of this Consent
17 Decree Amendment No. 1 or completion of the construction and planting of the
18 Restoration Project, whichever is later in time. Such payment shall be made to Simpson
19 in accordance with the Order Directing the Deposit of Natural Resource Damages into
20 the Registry of the Court entered in this matter on March 12, 1992.
21

22
23 (D) The Trustees, as opposed to Simpson and Champion, shall remain responsible for
24 covering the costs of certain construction contingency and adaptive management
25

1 activities at the Restoration Property as described below:

2 (1) Simpson shall be responsible for the first \$19,000.00 in change orders and
3 other cost overruns associated with construction of the Restoration Project. The
4 Trustees shall reserve and make available from funds deposited in the Court
5 Registry Account established under the Consent Decree \$10,000.00 for further
6 change orders and other cost overruns concurred in by the Trustees. Simpson
7 and the Trustees shall mutually agree upon the expenditure of any of the funds
8 described in this paragraph to cover unanticipated costs that occur during
9 construction of the Restoration Project. In the event that such unanticipated costs
10 are likely to exceed the \$29,000.00 set aside by Simpson and the Trustees, and
11 prior to the expenditure being incurred, Simpson and the Trustees shall meet and
12 discuss the matter, and use their best efforts to agree on an appropriate course of
13 action.
14

15
16 (2) The Trustees shall reserve and make available \$25,000.00 for adaptive
17 management activities, as defined in Section IV.C.3(b) of the Cooperative
18 Agreement, through the third growing season of the Restoration Project to ensure
19 adequate opportunity exists for site improvements. At the end of the third
20 growing season, the Trustees are free to make available for other restoration
21 projects in the Commencement Bay Environment whatever portion of the
22 \$25,000.00 remains unspent under the terms of this subparagraph. Simpson shall
23 cooperate with the Trustees in determining what further construction adaptive
24

1 management activities may be appropriate at the Restoration Property.

2 (E) Simpson and Champion shall reimburse the Trustees the sum of \$75,000.00 for
3 their governmental response/oversight costs for natural resource damage claims as
4 provided for in paragraph V.C.2.(b) of Exhibit C to the Consent Decree. Payment shall
5 be made within thirty (30) days of entry of this Amendment No. 1 in the amounts
6 specified and with payees and addresses as identified in writing by the Trustees. After
7 payment is made, the Trustees shall have no further claim against Simpson and
8 Champion for natural resource damage assessment costs with respect to the
9 Commencement Bay Environment.
10

11 15. Balance of Funds Remaining in the Court Registry Account. Simpson and
12 Champion acknowledge that the Trustees have satisfied all obligations the Trustees may have
13 had to Simpson and Champion under paragraph V.B.3(b) of Exhibit C to the Consent Decree.
14 Subject to the Trustees' obligations under paragraph 14(D) of this Amendment, the Trustees may
15 use the balance of the funds remaining in the Court Registry Account in connection with the
16 planning or implementation of an additional project or projects to restore, replace or acquire the
17 equivalent of injured natural resources in the Commencement Bay Environment.
18

19 16. Settlement of Claims Against DNR for Natural Resource Damages. This
20 Amendment is not intended to alter any the terms of the Consent Decree that apply to DNR and
21 shall be interpreted accordingly. Simpson and Champion hereby waive their rights, under
22 Section XXIX of the Consent Decree, to written notification and written approval of any future
23 settlement of claims against DNR for Natural Resource Damages in the Commencement Bay
24

1 Environment.

2 17. Effect of Settlement. Nothing in this Amendment shall be construed to create any
3 rights in, or grant any cause of action to, any person not a party to this Amendment. Each of the
4 parties hereto expressly reserves any and all rights, including any right to contribution, defenses,
5 claims, demands, and causes of action which each party may have with respect to any matter,
6 transaction, or occurrence relating in any way to the Commencement Bay Environment against
7 any person not a party hereto. Nothing in this Amendment shall limit the right of Simpson and
8 Champion to assert claims for contribution at any time against non-settling parties.
9

10 18. Lodging and Opportunity for Public Comment. This Amendment shall be lodged
11 with the Court for a period of not less than thirty (30) days and shall be made available for
12 public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
13 § 9622(D)(2), 28 C.F.R. § 50.7 and RCW 70.105D.040(4)(a). The United States reserves the
14 right to withdraw or withhold its consent if the comments regarding the Amendment disclose
15 facts or considerations that indicate that the Amendment is inappropriate, improper, or
16 inadequate. The State of Washington reserves the right to withdraw or withhold its consent if
17 the comments regarding the Amendment disclose facts or considerations that demonstrate that
18 the proposed settlement would not lead to a more expeditious cleanup of hazardous substances
19 as provided in RCW 70.105D.040(4)(a). Simpson and Champion consent to the entry of this
20 Amendment without further notice.
21

22 19. Voidability of Agreement. If for any reason the Court should decline to approve
23 this Amendment in the form presented, this agreement is voidable at the sole discretion of any
24

1 party and the terms of the agreement may not be used as evidence in any litigation between the
2 Parties.

3 20. Effective Date. The effective date of this Amendment shall be the date upon
4 which it is entered by the Court, except as otherwise provided in this Paragraph. The covenants
5 not to sue, provided for in Article XVIII of the Consent Decree, shall take effect with respect to
6 the additional Covered Matters identified in Paragraph 8 of this Amendment upon the effective
7 date of this Amendment, or upon receipt by the Natural Resource Trustees of the recorded Deed
8 Restriction required under the Cooperative Agreement, whichever comes later.

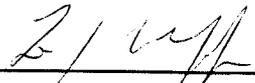
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10 21. Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for
11 the purpose of enabling any of the settling parties under this Amendment to apply to the Court at
12 any time for such order, direction, and relief as may be necessary or appropriate for
13 interpretation, construction, implementation, or modification of this Amendment or the
14 Cooperative Agreement, or to effectuate or enforce compliance with their terms, or to resolve
15 disputes in accordance with Section XV of the Consent Decree.

16
17 22. Signatories. Each undersigned representative of Simpson and Champion, the
18 Assistant Attorney General for Environment and Natural Resources of the Department of Justice,
19 and each representative of the State of Washington, the Puyallup Tribe of Indians and the
20 Muckleshoot Indian Tribe certifies that he or she is fully authorized to enter into the terms and
21 conditions of this Amendment and to execute and legally bind such party to this document.

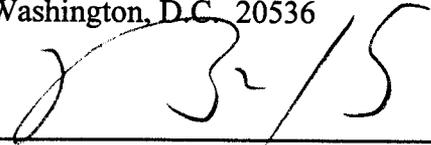
22
23 23. Agreement Not to Oppose Entry of Amendment. Simpson and Champion hereby
24 agree not to oppose entry by this Court of this Amendment in the form presented or to challenge

1
2 THE UNDERSIGNED SETTLING PARTIES enter into this Amendment
3 to the Consent Decree in the matter of United States v. Simpson Tacoma Kraft Company, et al.,
4 relating to the Commencement Bay Environment.

5
6 FOR THE UNITED STATES OF AMERICA

7 By:  Dated: 11/20/95
8 LOI J. SCHIFFER
9 Assistant Attorney General
10 Environment and Natural Resources Division
11 U.S. Department of Justice
12 Washington, D.C. 20530

13 By:  AVSA, for: Dated: 11/29/95
14 THOMAS W. SWEGLE
15 Attorney
16 Environment and Natural Resources Division
17 U.S. Department of Justice
18 Washington, D.C. 20536

19 By:  Dated: 11/29/95
20 BRIAN C. KIPNIS
21 Assistant United States Attorney
22 3600 Seafirst Fifth Avenue Plaza
23 800 Fifth Avenue
24 Seattle, Washington 98104

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By: Randall F Smith

Dated: June 27, 1995

Director, Hazardous Waste Division
EPA, Region 10
Seattle, Washington 98101

By: God Gold

Dated: June 15, 1995

Assistant Regional Counsel
EPA, Region 10
Seattle, Washington 98101

1 SIMPSON TACOMA KRAFT COMPANY

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3 By:

gc
R.P. Gumm

Dated:

7/12/95

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7 For matters arising under or relating to the Consent Decree or Amendment, service may be made on
8 Edward J. Reeve, Senior Counsel, Simpson Tacoma Kraft Company, 1201 Third Avenue, Seattle,
9 WA 98101. Telephone number: (206) 224-5045.

1 CHAMPION INTERNATIONAL CORPORATION

2
3 By: Jim W. Conway

Dated: 6-24-95

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7 For matters arising under or relating to the Consent Decree or Amendment, service may be made on
8 United States Corporation Company, 600 First Avenue, Suite 500, Seattle,
9 Washington 98104 Telephone number: (206) 754-9333

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1 WASHINGTON DEPARTMENT OF NATURAL RESOURCES

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3 By: Kaleen Cottingham

Dated: 8/24/95

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

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1 THE WASHINGTON DEPARTMENT OF ECOLOGY

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3 By: *[Signature]*

Dated: 6/28/95

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6 By: *Mary McCrea*
7 Assistant Attorney General
8 State of Washington

Dated: 7/6/95

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1 THE PUYALLUP TRIBE OF INDIANS

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3 By:

Luman Dilworth

Dated:

7/10/95

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1 THE MUCKLESHOOT INDIAN TRIBE

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3 By:

Virginia Cross

Dated:

6-19-95

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