

IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	
Hamilton and Labree Roads Groundwater	)	
Contamination Superfund Site	)	U.S. EPA Region X
Chehalis, Lewis County, Washington	)	CERCLA Docket No. 10-2020-0105
	)	
S.C. Breen Construction Company	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA,
SETTLING PARTY	)	42 U.S.C. § 9622(h)(1)
	)	

**CERCLA SECTION 122(h)(1) CASHOUT SETTLEMENT AGREEMENT**

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and has been re-delegated through the Director, Superfund and Emergency Response Division, to the Branch Chief, Remedial Cleanup Branch by EPA Re-Delegation R10 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General for the Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA and S.C. Breen Construction Company (“Settling Party”). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Settlement Agreement concerns the Hamilton and Labree Roads Groundwater Contamination Superfund Site (“Site”) located generally at the intersection of Hamilton Road North and Labree Road, and to the east-southeast along and near Hamilton Road North and Berwick Creek, both of which are located approximately three miles south of Chehalis, Lewis County, Washington. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future. The Site contains at least two distinct source areas where Tetrachloroethylene (“PCE”) was disposed of improperly, including on the property owned by Settling Party. PCE contamination was first detected in 1993. EPA and the State of Washington have performed response actions at the Site, including Settling Party’s removal of drums from the Breen Property in accordance with a Washington State Department of Ecology Agreed Order in 1999. EPA placed the Site on the National Priorities List in 2000. EPA selected an interim remedy for the area known as the Hamilton Road Impacted Area (HRIA), or Operable Unit 1 in a Record of Decision dated August 2013.

5. In performing response actions at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information and Insurance Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs

incurred and to be incurred at the Site. Based upon this Financial Information and Insurance Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site. EPA has reviewed information about contributions of PCE at the Site from the Breen Property and the HRIA. As of the date of this Settlement Agreement, EPA has no information or knowledge that demonstrates that activities conducted by Settling Party were responsible for PCE contamination upgradient from the Breen Property, including in soil and groundwater within and emanating from the HRIA.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its heirs, successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. STATEMENT OF PURPOSE**

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment and to implement land use restrictions to address its alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

### **V. DEFINITIONS**

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"Breen Property" shall mean the real property currently or formerly owned by Settling Party, the S.C. Breen Construction Company, including "Building B" and the "Washdown Pad" area, the description of which is included as Appendix A to this Settlement Agreement.

"Building B" shall mean the area on the Breen Property as indicated on the map attached as Appendix A to this Settlement Agreement and known as the former drum cache and an area of PCE contamination.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601–9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Financial Information” shall mean those financial documents identified in Appendix B.

“Hamilton Labree Roads Groundwater Contamination Superfund Site Operable Unit 2 Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Hamilton Road Impacted Area” or “HRIA,” also known as “Operable Unit 1” or “OU1” shall mean the area depicted in Appendix A to this Settlement Agreement and known as an area of PCE contamination.

“Insurance Information” shall mean those insurance documents identified in Appendix C.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operable Unit 2” or “OU2” shall mean all areas outside OU1/HRIA where hazardous substances are present, including the Breen Property, Thurman Berwick Creek Area, and the areas west and northwest of Labree Road.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower-case letter.

“Parties” shall mean EPA and Settling Party.

“Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA, or DOJ on behalf of EPA, has paid or will pay in the future at or in connection with the Site, including costs for the water line extension, investigations, listing on the National Priorities List, remediation activities, and monitoring, plus accrued interest on all such costs.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean the S.C. Breen Construction Company and its shareholders, officers, and directors acting in their capacities as shareholders, officers, and directors of the Settling Party.

“Site” shall mean the Hamilton Labree Roads Groundwater Contamination Superfund Site, encompassing approximately 400 acres, comprising Operable Units 1 and 2, and which includes the Breen Property and the HRIA, all source areas of PCE located on the Breen Property, in the HRIA, and in the general vicinity of the intersection of Hamilton Road North and Labree Road, and all areas where the PCE groundwater plume attributable to these source areas has come to be located. The Site is generally located at the intersection of Hamilton Road North and Labree Road, approximately 3 miles south of Chehalis, Lewis County, Washington, and depicted generally on the map attached as Appendix A.

“State” shall mean the State of Washington.

“Tetrachloroethylene” or “PCE” is a chemical commonly used as a solvent in metal degreasing, cleaning operations, dry cleaning, and other industrial applications. PCE is a “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The term PCE includes contaminants that are breakdown or daughter products of PCE.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Washdown Pad” shall mean the area on the Breen Property indicated on the map attached as Appendix A to this Settlement Agreement and known as an area of PCE contamination.

## VI. PAYMENT OF RESPONSE COSTS

12. **Payment of Response Costs.** Settling Party shall pay to EPA the principal amount of \$3,250,000. The payment shall be made within 30 days after the Effective Date and, if timely paid, shall include no Interest.

13. Settling Party's payment shall be made to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

The payment shall reference Site/Spill ID Number 10AA and the EPA docket number for this action.

14. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 12 (Payment of Response Costs) shall be deposited by EPA in the Hamilton Labree Roads Groundwater Contamination Site Operable Unit 2 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

15. **Notice of Payment.** At the time of payment, Settling Party shall also send notice that such payment has been made: (a) to EPA in accordance with Section XV (Notices and Submissions); and (b) to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

**EPA CFC by email:** cinwd\_acctsreceivable@epa.gov

**EPA CFC by regular mail:** EPA Cincinnati Finance Center  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number and EPA docket number for this action.

## VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. **Interest on Payments.** If Settling Party fails to make the payment required by Paragraph 12 (Payment of Response Costs) by the required due date, Interest shall accrue on the unpaid balance from the Effective Date through the date of payment.

### 17. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 12 (Payment of Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement



Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 16 (Interest on Payments), \$1000 per violation per day that such payment is late.

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by Fedwire EFT to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number 10AA, and the EPA docket number for this action.

c. At the time of each payment, Settling Party shall send notice that payment has been made as provided in Paragraph 15 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

18. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

19. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

### **VIII. COVENANTS BY EPA**

20. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site, including with regard to Response Costs. With respect to present and future liability, these



covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement. These covenants are also conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by Settling Party and the financial, insurance, and indemnity certification made by Settling Party in Paragraph 45. These covenants extend only to Settling Party and do not extend to any other person.

## **IX. RESERVATIONS OF RIGHTS BY EPA**

21. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within Paragraph 20 (Covenants by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party;
- f. liability for violations of federal or state law which occur after signature of this Settlement Agreement by Settling Party; and
- g. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

22. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information or the Insurance Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Paragraph 45, is false or, in any material respect, inaccurate.

23. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

## **X. COVENANTS BY SETTLING PARTY**

24. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

25. Except as provided in Paragraph 27 (claims against other PRPs) and Paragraph 32 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 21.a (liability for failure to meet a requirement of the Settlement Agreement) or 21.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

26. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

27. Settling Party agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

## **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

28. Except as provided in Paragraph 27 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or

response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

29. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 21.a (liability for failure to meet a requirement of the Settlement Agreement) or 21.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

30. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

31. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Party. In addition, Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

32. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

33. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 29, and that, in any action brought by the United States related to the “matters addressed,” Settling Party will not assert, and may not maintain, any defense or claim based upon principles

of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

## **XII. PROPERTY REQUIREMENTS**

34. **Agreements Regarding Access and Non-Interference.** Settling Party shall, with respect to the Breen Property:

a. Provide the United States, the State, and their representatives, contractors, and subcontractors with access at all reasonable times to the Breen Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States or the State;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions at or near the Site;
- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XIII (Access to Information);
- (6) Assessing Settling Party's compliance with the Settlement Agreement;
- (7) Determining whether the Breen Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement;
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Breen Property; and
- (9) Implementing remedial actions on the Breen Property, or in support of remedial action occurring on surrounding properties.
- (10) EPA will make all reasonable efforts to provide 48 hours' notice prior to exercising its right to access under paragraph 34.a except in cases of emergencies.

b. Refrain from using the Breen Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site, including the following restrictions:

- (1) Prohibiting the following activities which could interfere with response actions at the Site: drilling new groundwater wells; extracting groundwater; and interference with any remedial measures, including cap(s) if any, constructed on the Breen Property;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: any ground disturbing activities within 50 feet of Building B or the historic Washdown Pad, as designated on the map in Appendix A; disturbing or moving more than 5 cubic yards of soil or digging deeper than 5 feet within the Breen Property unless authorized by EPA;
- (4) Ensuring that any new structures on the Breen Property will not be constructed in any manner except above-ground using slab-on-grade foundations, unless otherwise authorized by EPA. EPA maintains the right to access soil and groundwater beneath new and/or existing structures.

c. Execute and record in the Recorder's Office of Lewis County, State of Washington, an easement, running with the land, that (i) grants a right of access to the Breen Property for the purpose of conducting any response activity under CERCLA including, but not limited to, those activities specified or to be specified in any Record of Decision for the Site and those activities specified in Paragraph 34.a. of this Settlement Agreement and (ii) grants the right to enforce the land/water use restrictions which EPA deems are appropriate for the Breen Property as specified or to be specified in any Record of Decision for the Site and pursuant to Paragraph 34.a(10). of this Settlement Agreement, or other restrictions which EPA deems are appropriate to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Breen Property. Settling Party shall grant the access rights and the rights to enforce the land/water use restrictions for the Breen Property to one or more of the following persons, to be determined by EPA: (i) the United States, on behalf of the EPA, and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate grantees. Settling Party shall, within 60 days of EPA's issuance of a Record of Decision for the OU2 or within 120 days prior to transfer of the Breen Property, whichever is earlier, submit to EPA for review and approval with respect to the Breen Property:

- (1) A draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Washington, and
- (2) A current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Party is unable to obtain release or subordination of such prior liens or encumbrances).

35. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Breen Property, Settling Party shall cooperate with EPA's efforts to secure and ensure compliance with such institutional controls.

**36. Notice to Successors-in-Title**

a. Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Breen Property in the appropriate land records. The notice must: (1) include a proper legal description of the Breen Property; (2) provide notice to all successors-in-title: (i) that the Breen Property is part of, or related to, the Site; and (ii) that EPA will select a response action for the Site; and (3) identify the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Party shall:

- (1) Record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.
- (2) Update the notice within 30 days after EPA's signature of a Record of Decision for the Breen Property (Operable Unit 2) by identifying the document requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter.

b. Settling Party shall, prior to entering into a contract to Transfer the Breen Property, or 60 days prior to Transferring the Breen Property, whichever is earlier:

- (1) Notify the proposed transferee that the property is part of a CERCLA Site, and that EPA has selected, or will select, a response action regarding the Site, and provide the transferee a copy of this Settlement Agreement and the Easement filed pursuant to paragraph 34.c; and
- (2) Notify EPA and the State of the name and address of the proposed transferee and provide EPA and the State with a copy of the above notice that it provided to the proposed transferee.

37. In the event of any Transfer of the Breen Property, unless EPA otherwise consents in writing, Settling Party shall continue to comply with its obligations under the Settlement Agreement.

38. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.



### **XIII. ACCESS TO INFORMATION**

39. Settling Party shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as “Records”) within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site, except for those records identified in Appendix D which Breen has previously transmitted to EPA.

#### **40. Privileged and Protected Claims**

a. Settling Party may assert that all or part of a Record is privileged or protected as provided under federal law, provided it complies with Paragraph 40.b, and except as provided in Paragraph 40.c.

b. If Settling Party asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Party shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Settling Party shall retain all Records that it claims to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Settling Party’s favor.

c. Settling Party may make no claim of privilege or protection regarding:

- (1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or
- (2) the portion of any Record that Settling Party is required to create or generate pursuant to this Settlement Agreement.

41. **Business Confidentiality Claims.** Settling Party may assert that all or part of a Record submitted to EPA under this Section or Section XIV (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Settling Party asserts a business confidentiality claim. Records that Settling Party claims to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Party.



42. Notwithstanding any provision of this Settlement Agreement, EPA retain all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

#### **XIV. RETENTION OF RECORDS**

43. Until ten (10) years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that if Settling Party is potentially liable as an owner or operator of the Site, Settling Party must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of these requirements shall apply regardless of any corporate retention policy to the contrary.

44. At the conclusion of the document retention period, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 40 (Privileged and Protected Claims), Settling Party shall deliver any such Records to EPA.

45. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site and Settling Party's financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

#### **XV. NOTICES AND SUBMISSIONS**

46. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

**As to EPA:**

Nick Vidargas  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
M/S 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
Vidargas.Nick@epa.gov

**As to Settling Party:**

Tod Gold  
Joyce Ziker Partners, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, Washington 98403  
tgold@jzplaw.com

## **XVI. INTEGRATION/APPENDICES**

47. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” includes maps and a legal description showing the Hamilton/Labree Roads Groundwater Contamination Superfund Site, including the locations of the “Breen Property,” which includes “Building B,” and the “Washdown Pad” area, and the “HRIA” area of the Site (called “Operable Unit 1” or “OU 1”);

“Appendix B” is a list of the financial documents submitted to EPA by Settling Party that EPA used to determine that the Settling Party has an inability to pay the full amount of the United States’ Response Costs incurred and paid at the Site;

“Appendix C” is a list of the insurance documents submitted to EPA by Settling Party.

“Appendix D” is a list of all documents previously transmitted by Breen to EPA.

“Appendix E” is a draft easement form referred to in Paragraph 34.c of this Settlement Agreement.

## **XVII. PUBLIC COMMENT**

48. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

## **XVIII. EFFECTIVE DATE**

49. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 48 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

August 26, 2020

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Dated

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

**CALVIN  
TERADA**

 Digitally signed by CALVIN TERADA  
Date: 2020.08.26 15:46:31 -07'00'


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Calvin Terada, Director  
Superfund and Emergency Management Division  
U.S. EPA, Region 10

Signature Page for Settlement Agreement Regarding Hamilton Labree Roads Groundwater  
Contamination Superfund Site

**FOR S.C. Breen Construction Company:**

7-13-2020  
Dated

  
Sterling Breen  
Vice-President  
S.C. Breen Construction Company  
P.O. Box 1347  
Chehalis, Washington 98532

***Appendix A: Maps and Legal Description of the Hamilton/Labree Roads Groundwater Contamination Superfund Site, including the locations of the Breen Property, Building B, the Washdown Pad, and the HRIA areas of the Site.***

Legal Description:

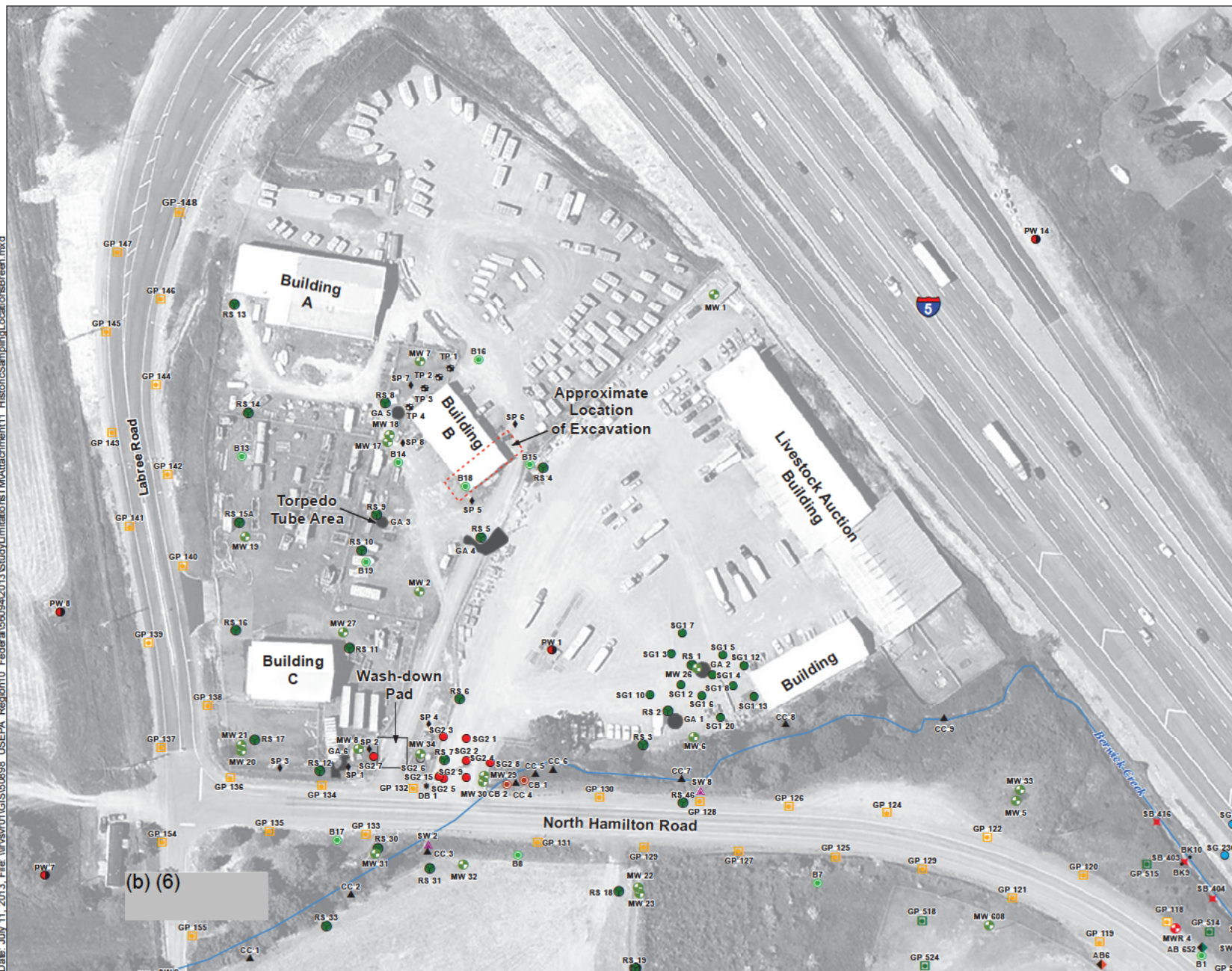
Parcel Number in Lewis County Assessor's Office: 017729001002

Partial Legal Description: Section 09 Township 13N Range  
02W PT NE4 SE4 LYING SW OF SR 5

Addresses: 151 and 159 Labree Road, Chehalis

Total Acres: 5.750





(b) (6)

### Legend

- AB6 ♦ Auger Boring
- AB-052 ♦ Auger Boring
- B1 ● Soil Boring
- CC-8 ▲ Creek Channel
- GP-118 □ Geoprobe Boring
- GP-524 □ Geoprobe Boring
- MW-33 ● Monitoring Well
- MWR-4 ● Monitoring Well/Recovery Well
- PW-1 ● Private Well
- RS-1 ● Reconnaissance Boring
- SB-403 × Stream Bank
- SG1-10 ● Soil Gas
- SG2-9 ● Soil Gas
- SG-230 ● Soil Gas
- SP-1 ♦ Strataprobe Boring
- SW-2 ▲ Surface Water
- TP-1 ● Test Pit
- BK10 ● Bank Sample
- DB-1 ● Shallow Soil
- CB-1 ● Boring
- GA-6 ● Geophysical Survey Area



100 0 100  
Feet

Sources:  
1. Paramatrix (March, 2010)  
[Ecology and Environment, Inc. 2002]  
2. Image from ©2011 Google™

### Attachment A Historical Sampling Locations Breen Property and Adjacent



Hamilton / Labree Roads  
Superfund Site





***Appendix B: List of Financial Documents Submitted by S.C. Breen Construction Company to EPA***

EPA and Settling Party have been communicating about the Site since at least 2000. S.C. Breen Construction Company's (Breen) current records on what financial documents have been sent to EPA may not be complete. To the best of Breen's knowledge the following financial documents have been submitted to EPA:

- Minutes of Annual Meeting of Stockholders (1990-2001)
- Corporation Registrations and Licenses (1993-2001)
- Response to EPA's Request for Information (2004), which included a Title Report, Insurance Specimen Forms (1976-2000), Federal Tax Returns (1998-2003), IRS Form 8821, Corporate Disclosure Form, and 2003 Lewis County Property Statement.
- 2005 correspondence from Durgin, Calkins & Holmes, LLP, the accounting firm for S. C. Breen Construction Company ("Breen"), that indicated that Breen paid \$270,096.63 out of its own accounts for investigation and cleanup activities at the Hamilton/LaBree Roads Superfund Site ("Site"), including a \$65,000.00 payment to the Department of Ecology ("Ecology") in settlement of Ecology's claim for past costs incurred at the Site against Breen.
- Breen's Federal Tax Returns (2010-2014).
- Breen's 2015 monthly bank statements.
- Property Market Appraisal (2015).
- Reports submitted to the Washington Secretary of State's Office 2013-2015.
- Response to EPA's Corporation Ability to Pay Initial Information Request dated 2016.
- Response to EPA's CERCLA Section 104(e) Information Request dated January 15, 2016.

***Appendix C: List of Insurance Documents Provided by S.C. Breen Construction Company to EPA***

- Safeco Commercial Policy (CP) 546067
- Safeco CP 766273
- Safeco CP 766273-A
- Safeco CP 766273-B
- Safeco UL 751110
- Safeco UL 766273
- RLI Insurance Co. R02422U
- Safety Mutual Casualty Co. UM9461 WA

***Appendix D: List of Documents Submitted by S.C. Breen Construction Company to EPA:***

The following is a list of key documents provided to EPA by Breen since 2001. It is not an exclusive list and does not represent all documents, reports, and other written communications provided since that time.

- All documents identified in Appendices B and C
- The following documents prepared by Farallon Consulting, L.L.C.:

Farallon Consulting, L.L.C. 2002. Drinking Water Monitoring Plan, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. May 24.

———.2002. Phase I Investigation Work Plan, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. May 24.

———.2002. Project Management Plan, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. May 22.

———.2002. Monthly Status Report – September 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. October 9.

———.2002. Monthly Status Report – October 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. November 11.

———.2002. Drinking Water Program Quarterly Report for June to August 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. December 10.

———.2002. Monthly Status Report – November 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. December 11.

———.2003. Monthly Status Report – December 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. January 10.

———.2003. Drinking Water Program Quarterly Report: September to November 2002, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. February 17.

———.2003. Monthly Status Report – February 2003, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. March 13.

———.2003. Monthly Status Report – March 2003, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. April 8.

- .2003. Remedial Investigation/Feasibility Study Work Plan, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. July 10.
- .2003. Monthly Status Report – September 2003, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. October 9.
- .2004. Monthly Status Report – March 2004, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. April 12.
- .2004. Monthly Status Report – April 2004, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. May 7.
- .2004. Email from Riley Conkin/Farallon to Bob Kievit/EPA with aquifer test data and summary tables with groundwater and reconnaissance soil samples. July 8.
- .2004. Monthly Status Report – June 2004, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. July 9.
- .2004. Technical Memorandum – Allocation of Environmental Response Costs, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. November 2.
- .2005. Email from Peter Jewett/Farallon to J. Johnston/Parametrix with excel spreadsheets showing location coordinates and elevations and summary table of field parameters used during sampling. September 27.
- .2012. Technical Memorandum – Comments on EPA 2011 and 2012 Documents, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. November 9.
- . 2017. Sampling and Analysis Plan Supplemental Investigation, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. November 3.
- .2018. Supplemental Investigation Summary Report, Hamilton/Labree Roads Groundwater Contamination Superfund Site, Chehalis, Washington. April 18.
- . 2018. Conceptual Site Model for Contamination Associated with the Breen Property Tech Memo, Hamilton/Labree Roads Superfund Site, Chehalis, Washington. July 13.
- . 2018. Response to EPA Comments on Conceptual Site Model for the Breen Property, Operable Unit (OU) 2, Tech Memo, Hamilton/Labree Roads Superfund Site, Chehalis, Washington. September 25.
- Other documents provided to EPA:

- 2001. Letter from Tod Gold to Dean Ingemansen regarding Safeco Insurance Company's funding of RI/FS work (with enclosure). November 16.
- 2003. Letter from Tod Gold to Dean Ingemansen with Additional Financial Information. October 6.
- 2004. Letter from Tod Gold to Dean Ingemansen with Breen's Response to EPA's Request for Information (with enclosures). September 16.
- 2009. Letter from William Joyce to Jennifer Byrne with Supplement to Breen's Response to EPA's Request for Information (with enclosures). May 7.
- 2012. Letter from Tod Gold to Tamara Langton/EPA with Comments on Behalf of S.C. Breen Construction Co. on EPA's Draft Feasibility Study and Proposed Plan for Hamilton Labree Roads Superfund Site. November 9.

***Appendix E: Draft Easement Referred to in Paragraph 34 of the Settlement Agreement***

**ENVIRONMENTAL PROTECTION EASEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the S.C. Breen Construction Company, ("Grantor"), having an address of \_\_\_\_\_, and, \_\_\_\_\_ ("Grantee"), having an address of \_\_\_\_\_.

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the county of Lewis, State of Washington, more particularly described on Exhibit A attached hereto and made a part hereof (the "Breen Property" or "Property"); and

3. WHEREAS, the Property is part of the Hamilton/Labree Roads Groundwater Contamination Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 27, 2000 (65 Fed. Reg. 46,096); and

4. WHEREAS, the EPA Region 10 Regional Administrator has issued a Record of Decision (the "ROD") which selected a "remedial action" for the Site, which provides, in part, for the following actions:

and

5. WHEREAS, with the exception of the buried drum cleanup conducted by the Grantor at the Breen Property in 1999 and 2000, and with the exception of the installation of the City of Chehalis water line extension by EPA at the Site, the remedial action chosen by EPA in the ROD for the Site has not yet been implemented at the Site, but both the Grantor and EPA anticipate that the restrictions on the Breen Property will prohibit withdrawal of groundwater for domestic



purposes and prohibit interference with remedial measures including a cap(s), if any, constructed on the Breen Property; and

6. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantee and to the EPA for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land and shall be binding on all parties and all persons under them, including all successors or assigns to title on the Property or parts thereof, for the purpose of protecting human health and the environment; and

7. WHEREAS, Grantor wishes to cooperate fully with the Grantee and with EPA in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Settlement Agreement between the United States and S.C. Breen Construction Company, CERCLA Docket No \_\_\_, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title: 1) the perpetual right to enforce said use restrictions; and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land and shall be binding on all parties and all persons under them, including all successors or assigns to title on the Breen Property or parts thereof, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

[To be determined by EPA at the time that Breen delivers draft Easement pursuant to paragraph 34.c]

11. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantee. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

12. Environmental Protection Easement: Grantor hereby grants to the Grantee an irrevocable, permanent and continuing right of access at all reasonable times – with 48 hours' prior notice except in emergencies – to the Property for purposes of:

- a) Implementing the response actions in the ROD;
- b) Verifying any data or information submitted to EPA;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Property and conducting investigations relating to contamination on or near the Property and the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if EPA or the Grantee, in their sole discretion, determine: i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action' in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 20\_\_\_\_, RECORDED IN THE PUBLIC LAND RECORDS ON \_\_\_\_\_, 20\_\_\_\_, IN BOOK \_\_\_\_\_ PAGE \_\_\_\_\_ IN FAVOR OF THE \_\_\_\_\_ [insert name of Grantee], AND ENFORCEABLE BY THE \_\_\_\_\_ [insert name of Grantee] AND THE UNITED STATES OF AMERICA.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

18. Enforcement: The Grantee and EPA shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee or EPA, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or EPA of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee or EPA under this instrument.

19. Damages: Grantee and EPA shall be entitled to recover damages for Grantor's material violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. Waiver of Certain Defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

21. Covenants: Grantor hereby covenants to and with the Grantee and the United States, and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on **Exhibit D** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

22. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Tod Gold, Attorney for S.C. Breen Construction Company  
Joyce Ziker Partners, PLLC  
1601 Fifth Avenue, Suite 2040  
Seattle, WA 98403  
tgold@jzplaw.com

To Grantee:

To EPA:

Region 10, Office of Regional Counsel.  
1200 6th Avenue, Suite 155  
Mail Stop 11-C07  
Seattle, WA 98101

23. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the

Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by the parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

By: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF LEWIS )

Witness my hand and official seal hereto affixed the day and year written above.

My Commission Expires: \_\_\_\_\_.

This easement is accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
[typed name of Grantee]

By: \_\_\_\_\_  
\_\_\_\_\_

This easement is accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

UNITED STATES OF AMERICA

U.S. ENVIRONMENTAL  
PROTECTION AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_

Attachments:	Exhibit A	-	Legal Description of the Property
	Exhibit B	-	Identification of Proposed Uses and Construction Plans for the Property
	Exhibit C	-	Identification of Existing Uses of the Property
	Exhibit D	-	List of Permitted Title Encumbrances