

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

UNITED STATES OF AMERICA,	)	CIVIL ACTION NO.
	)	C91-5528 B
Plaintiff,)	
)	
v.	)	COMMENCEMENT BAY
	)	NEARSHORE/TIDEFLATS
POINT RUSTON, LLC	)	SUPERFUND SITE --
	)	ASARCO TACOMA SMELTER
Defendant.	)	FOURTH AMENDMENT
	)	TO CONSENT
	)	DECREE BETWEEN THE
	)	UNITED STATES AND
	)	POINT RUSTON, LLC
_____)	

A. On January 3, 1997, the Court entered a consent decree in this action (the “Asarco Tacoma Smelter Consent Decree”) providing for the cleanup of the former Asarco Smelter and Slag Peninsula in Tacoma, Washington. The original consent decree was entered into by the United States Environmental Protection Agency (“EPA”) and Asarco pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9601 *et seq.* The consent decree has been amended three times since it was originally entered, including two amendments in 2006 and 2016 to specify the cleanup obligations

undertaken by the new owner of the site — Point Ruston, LLC (“Point Ruston”). This Amendment is intended to modify the Third Amended Consent Decree as described below.

B. From the time of lodging and entry of the Second Amendment through the date of this Fourth Amended Consent Decree, Point Ruston has undertaken plans to develop the site as a residential mixed-use neighborhood with the lower portion of the site being developed with condominiums, apartments and other residential units along with commercial, retail, recreation, entertainment and public use facilities. Single-family dwellings have been developed only on the upper portion of the site known as Stack Hill. Point Ruston plans to complete the redevelopment of the Site through the development of a residential mixed-use neighborhood.

C. Under the terms of Paragraph 69 of the Third Amended Consent Decree Point Ruston is obligated to pay the balance of monies due to the United States.

D. The Parties have recently encountered a new circumstance created by the Metropolitan Parks District of Tacoma’s (“Metro Parks”) recent cleanup of contaminated soils on Metro Parks-owned property located adjacent to the Purchased Property. Metro Park’s contractor excavated approximately 8,300 cubic yards of contaminated soil from Metro Park’s Waterfront Phase I project (the “Metro Parks Soil”), and has been temporarily storing the Metro Parks Soil on a part of Point Ruston’s site referred to as Lot 15 and/or the Materials Management Zone (“Lot 15/MMZ”) (which is legally described as Lot D or Town of Ruston Boundary Line Adjustment No. SUB 14-02 as recorded under Pierce County Auditor’s Recording No. 201411255003).

E. As identified and described below, the Parties have reached an agreement wherein Point Ruston’s obligation to pay the balance due under Paragraph 69 will be extinguished and, in turn, Point Ruston will agree to perform work associated with the currently stockpiled Metro Parks Soil.

F. In accordance with Paragraph 62 of the Consent Decree and as set forth in the Guarantee Agreement in Appendix G, MC Construction, Michael A. Cohen, Kenneth J. and Kathryn Thomsen have executed personal guarantees associated with the Third Amended Consent

Decree. These guarantors are signatories to this agreement and have been informed of and concur in this Amendment and recognize their guarantee obligations remain in force.

G. The Parties recognize, and the Court by entering this Consent Decree finds, that this Amendment has been negotiated by the Parties in good faith and implementation of this Amendment will expedite the remediation of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Amendment is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed that the Third Amended Consent Decree is amended as follows:

1. The definition of Work is amended to include Point Ruston's obligation to accept, temporarily manage and dispose of the Metro Parks Soil from Metro Park's Waterfront Phase I project, which is a component of the Commencement Bay Nearshore/Tideflats OU 02 (Asarco Smelter Site), currently stored on Lot 15/MMZ, and Point Ruston shall dispose of the Metro Parks Soil on or before December 31, 2021 ("Disposal Deadline"), either on-site under a final cap constructed as part of the EPA-approved site-wide remedial action or in an EPA-approved off-site landfill. Point Ruston shall submit, for EPA approval, a Metro Parks Soil Management Plan for dealing with these Metro Parks Soils on or before April 1, 2019 ("Soil Plan Deadline"), which may be updated by Point Ruston with EPA's written approval annually until the disposal deadline. The Metro Parks Soils must be managed and disposed of in accordance with the SOW and the Third Amended Consent Decree.

2. The Disposal Deadline and the Soil Plan Deadline identified in Paragraph 1 shall be subject to the the stipulated penalty provisions set forth in Paragraph 87.

3. Point Ruston's obligation to pay the remaining amount due under Paragraph 69 of the Third Amended Consent Decree is hereby extinguished and the United States agrees that no further monies are owed by Point Ruston pursuant to Paragraph 69.

4. The Remedial Action deadlines set forth in Construction Management Plans (CMPs) 2, 3 and 4 for the parcels associated with Buildings 4, 9, 10, 11, 12, 14, 15 (MMZ), and

16 are hereby extended for six (6) months from their current deadlines. The new deadlines are: June 30, 2019 for the parcels associated with Buildings 12 (Parcel #0221231091), 14 (Parcel #0221231086 & #0221231089) and 15B&C (Part of Parcel #0221231100); June 30, 2020, for the parcels associated with Buildings 4 (Parcel #8950003396), 10A&B (Parcel #0221231097 & #0221231096) (the Ruston Way Tunnel), 10C (Parcel #0221231076, #0221231032, and #0221231033) and 9 & 11 (Parcel #0221231102); and June 30, 2021 for the parcels associated with Buildings 15A (Part of Parcel #0221231100) and 16 (Parcel #0221231087). Point Ruston may exchange any of the Remedial Action deadlines for any of these parcels by notifying EPA at least three months prior to the due date. However, any schedule extension requests, except one that occurs as part of an exchange permitted by the prior sentence, must be in accordance with Paragraph 31(g) or Section XVIII of the Third Amended Consent Decree.

5. In addition, due to a recent change in state law, Paragraph 28(b) of the Third Amended Consent Decree should be amended to add the new statutory citation as follows: “The obligations of Point Ruston with respect to the provision of access and the implementation of institutional controls under Section IX (Access and Institutional Controls) shall be binding upon any and all persons who subsequently acquire such interest or portion thereof (hereinafter "Successors-in-Title"). "Successor-in-Title" includes, but is not limited to, a condominium association formed under RCW 64.34 or **RCW 64.90**, but shall not mean unit owners as defined in RCW 64.34.020(32) or **RCW 64.90.010(58)** or persons who acquire only an interest in any portion of Stack Hill. [...]"

6. All other provisions of the Third Amended Consent Decree shall remain in effect.

7. The Effective Date of this Amendment shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

8. This Amendment shall be lodged with the Court for a period of not less than twenty (20) days for public notice and comment in accordance with Section 122(d)(2) of 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Amendment disclose facts or considerations which

indicate that the Amendment is inappropriate, improper, or inadequate. Point Ruston consents to the entry of this Amendment without further notice.

9. If, for any reason, the Court should decline to approve this Amendment in the form presented, this Amendment is voidable at the sole discretion of either Party and the terms of this Amendment may not be used as evidence in any litigation between the Parties.

10. Each undersigned representative of Point Ruston to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

11. Point Ruston hereby agrees not to oppose entry of this Amendment by this Court or to challenge any provision of this Amendment unless the United States has notified Point Ruston in writing that it no longer supports entry of the Amendment.

SO ORDERED THIS _____ DAY OF _____, 2019.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Amendment in the matter of United States v. Point Ruston, LLC, relating to the Asarco Tacoma Smelter Site, Operable Unit 02 and portions of Operable Unit 06 of the Commencement Bay Nearshore/Tideflats Superfund Site.

FOR THE UNITED STATES OF AMERICA

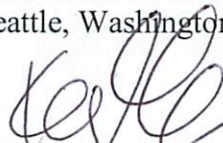
JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/ David L. Dain
DAVID L. DAIN
Environmental Enforcement Section
United States Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Telephone: (303) 844-7371
Email: david.dain@usdoj.gov

BRIAN KIPNIS
Civil Chief
Office of the United States Attorney
Western District of Washington
700 Stewaer St., Suite 5220
Seattle, WA 98101-1271
Email: Brian.Kipnis@usdoj.gov



CHRIS HLADICK
Regional Administrator, Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101



KELLY COLE
Assistant Regional Counsel, Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

FOR POINT RUSTON, LLC

MICHAEL A. COHEN
Manager
Point Ruston, LLC
2519 N. State Street, 100
Ruston, WA 98407
(253) 737-2123

FOR POINT RUSTON, LLC:

A handwritten signature in black ink, appearing to read "Michael A. Cohen", is written over a horizontal line.

MICHAEL A. COHEN
Manager
Point Ruston, LLC
5219 N. Shirley, Suite 100
Ruston, WA 98407
(253) 752-2185

APPROVED AS TO FORM:



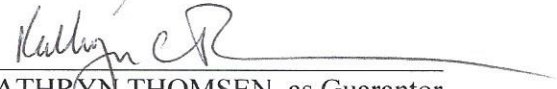
MICHAEL A. COHEN, as Guarantor



MC CONSTRUCTION CONSULTANTS INC., as Guarantor



KENNETH J. THOMSEN, as Guarantor



KATHRYN THOMSEN, as Guarantor