

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
Atlantic Richfield Company, Cherry Point)
Refinery, 4519 Grandview Road,)
Blaine, Washington 98231)

AGREED ORDER

NO. DE 01TCPIS-1959

TO: Mr. Rick E. Porter
Atlantic Richfield Company
Cherry Point Refinery
4519 Grandview Road
Blaine, WA 98231

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by Atlantic Richfield Company(ARCO).

1. Atlantic Richfield Company presently owns property at 4519 Grandview Road; Blaine, Washington; 98231. The property is a petroleum refinery. The refinery was built in 1971 and currently still owned by Atlantic Richfield Company.
2. The facility had or currently has unlined ponds, impoundments and settlement basins that contained or collected wastewater and stormwater containing petroleum hydrocarbons (petroleum or petroleum products) as defined in RCW 70.105D.020(7)(d).
3. Unlined or poorly lined ponds, lagoons, pits, impoundments and settlement basins containing pollutants can impact the groundwater quality.
4. Ecology has notified Atlantic Richfield Company that they are a PLP. Atlantic Richfield Company is a generator of hazardous wastes.

III.

Ecology Determinations

Ecology makes the following determinations, without admission of such determinations by Atlantic Richfield Company (ARCO).

1. The Atlantic Richfield Company, Cherry Point Refinery is a "facility" as defined in RCW 70.105D.020(4). The "site" is defined as any current or historic unlined pond, lagoon, pit, impoundment or basin, which collected or contained wastewater or stormwater containing hazardous substances.
2. The facility is known as Atlantic Richfield Company, Cherry Point Refinery and is located at 4519 Grandview Road near Blaine, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By letter dated November 29, 2000, Ecology notified Atlantic Richfield Company of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

Based on the foregoing facts, Ecology believes the groundwater impact study required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby Ordered that Atlantic Richfield Company take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

The Department has promulgated Ground Water Quality Standards (Chapter 173-200 WAC) to protect beneficial uses of ground water. The effect of any discharge through the unlined native clay bottoms of the wastewater ponds on ground water cannot be determined without further investigation. To determine what this effect may be, Atlantic Richfield Company shall:

1. **Prepare and submit to the Department for approval a ground water impact study plan by November 1, 2002.** The plan shall include sampling plans for determining the concentrations of the constituents listed in the Ground Water Quality Standards (WAC 173-200-040, excepting pesticides, radionuclides, PCBs, PBBs and dioxin), in each of the unlined wastewater ponds [the stormwater pond, sedimentation ponds 1 & 2, the final holding pond, and Styer's pond (emergency wastewater holding pond)]. Random composite grab samples will be acceptable for sampling the ponds. It must also include a plan for a hydrogeologic study. Guidance for preparation of hydrogeologic studies and monitoring plans is provided in the *Implementation Guidance for the Ground Water Quality Standards (Pub. #96-02, April 1996)*, and can be obtained from the Permit Manager. Existing information on hydrogeologic conditions can be used if it is in accordance with the guidance.
2. **Prepare and submit to the Department for review a report detailing the results of the ground water impact study by May 1, 2004.** The report shall contain a monitoring plan if it is determined that there is a potential for the wastewater to impact the ground water.

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. **Public Notices.** WAC 173-340-600(10)(c) requires a 30-day public comment period before this agreed order on a state RI/FS becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations, which indicate to Ecology that the Order is inadequate or improper in any respect.
3. **Remedial Action Costs.** Atlantic Richfield Company shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Atlantic Richfield Company shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.
4. **Designated Project Coordinators.** The project coordinator for Ecology is:

Name: Mr. Don Kjosness
Address: Department of Ecology
Industrial Section
P.O. Box 47706
Olympia, Washington 98504-7706

The project coordinator for Atlantic Richfield Company is:

Name: Mr. Scott McCreery
Address: Atlantic Richfield Company
Cherry Point Refinery
4519 Grandview Road
Blaine, Washington 98231

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Atlantic Richfield Company, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinators. Should Ecology or Atlantic Richfield Company change project coordinator(s), written notification shall be provided to Ecology or Atlantic Richfield Company at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site or ground water investigation and cleanup. Atlantic Richfield Company shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Atlantic Richfield Company shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Atlantic Richfield Company shall not perform any remedial actions at the Cherry Point Refinery's wastewater treatment system ponds, outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Atlantic Richfield Company. By signing this Agreed Order, Atlantic Richfield Company agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Atlantic Richfield Company during an inspection unless doing so interferes with Ecology's sampling. Atlantic Richfield Company shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation. Atlantic Richfield Company and Ecology shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Atlantic Richfield Company shall help coordinate and implement public participation for the site.

8. Retention of Records. Atlantic Richfield Company shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order.

Should any portion of the work performed hereunder be undertaken through contractors or agents of Atlantic Richfield Company, then Atlantic Richfield Company agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Atlantic Richfield Company may request Ecology to resolve disputes, which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. Atlantic Richfield Company is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Atlantic Richfield Company to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Atlantic Richfield Company to require those remedial actions required by this Agreed Order, provided Atlantic Richfield Company complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Cherry Point Refinery.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Atlantic Richfield Company to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Atlantic Richfield Company without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Atlantic Richfield Company may have in the site or any portions thereof, Atlantic Richfield Company shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Atlantic Richfield Company shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws All actions carried out by Atlantic Richfield Company pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Atlantic Richfield Company's receipt of written notification from Ecology that Atlantic Richfield Company has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

Enforcement

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event Atlantic Richfield Company refuses, without sufficient cause, to comply with any term of this Order, Atlantic Richfield Company will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: July 01

Atlantic Richfield Company

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Rick E. Porter
Refinery Manager

Carol Kraege
Industrial Section Manager

By _____

By _____