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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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In the Matter of Remedial Action by: )

The Port of Port Angeles )  
338 West First Street )  
PO Box 1350 )  
Port Angeles, WA 98362 )

And )

ChevronTexaco Products Company )  
a division of Chevron U.S.A. Inc. )  
PO Box 6004 )  
San Ramon, CA 94583 )

AGREED ORDER  
No. DE 03TCPSR-5738

I.

Jurisdiction

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

II.

Findings of Fact

The Washington State Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by the Port of Port Angeles (Port), or ChevronTexaco Products Company, a division of Chevron U.S.A. Inc.

(Chevron) (collectively the Marine Trades Area Group or MTA Group).

1. The Port is a municipal corporation under the laws of Washington and owns or formerly owned parcels within the

Marine Trades Area (MTA), and K-Ply, Inc. (K-Ply, formerly PenPly/Rayonier) mill property. The MTA, formerly known as the Port of Port Angeles Log Sort Yard and the Port of Port Angeles Marine Terminal (marine terminals No. 1 and 3), consists of several parcels owned or formerly owned by the Port (Exhibit B), and filled harbor area owned by the State of Washington and managed by the Port pursuant to RCW 79.90.475 and Port Management Agreement No. 22-080013, by and between the Port of Port Angeles and the State of Washington Department of Natural Resources. The MTA includes three former bulk fuel facilities; Standard Oil, ARCO and D&D Distributors/Phillips.

2. The K-Ply mill is an active plywood mill that was formerly operated by Rayonier and is currently operated by a Native Alaskan Corporation. During Rayonier's operation, hydraulic oil leaked from press machinery to soil and groundwater under the mill structure. In 1990, Consent Order No. DE 90-S255 was signed by Rayonier and Ecology to implement a cleanup remedy for the hydraulic oil including extraction, oil recovery, and long term monitoring.

Groundwater monitoring data collected from 1998 to 2002 indicates increasing concentrations of benzene and gasoline in certain monitoring wells which is not consistent with a

hydraulic oil release. The source of these concentrations of benzene is unclear.

3. In 1990, petroleum hydrocarbon contamination was discovered in subsurface soils during a geotechnical exploration program in the MTA portion of the Site. The discovery of contamination was reported to Ecology. An Environmental Site Assessment (ESA) was independently performed by the Port in October 1990 to assess soil contamination and potential groundwater contamination. The ESA included drilling four boreholes and installing a monitoring well in each borehole. Analytical results revealed the presence of petroleum hydrocarbons in soil and groundwater above Washington State Model Toxics Control Act (MTCA) cleanup levels. Groundwater samples from these four monitoring wells were also collected and analyzed in May 1992, September 1992, and April 1993.

In 1992, Ecology assessed a hazard ranking for the MTA, as required by MTCA. Ecology calculated a hazard ranking of 1 (with 1 being the highest relative risk and 5 being the lowest) for the MTA.

To identify probable sources and potential migration pathways of petroleum hydrocarbon contamination at the MTA, the Port conducted a Source Investigation in 1995 and 1996 under Agreed Order No. DE 94TC-S342. The Source Investigation

included documentation of petroleum contamination in soil and the installation and sampling of an additional 14 monitoring wells. Analytical data from the 17 monitoring wells sampled during the study revealed concentrations of diesel (1000-12,000 ppb), gasoline (1000-66,000 ppb), and benzene (20-3000 ppb) well in excess of Washington cleanup levels. The Source Investigation also included a tidal study where changing tide levels were observed to affect groundwater levels at distances greater than 600 feet from the shore. The tidal study also defined Tumwater Creek as a "losing" creek, creating a hydraulic boundary to contaminant migration.

In 1995, Admiral Marine leased a portion of the MTA and constructed a pile-supported building that is used for yacht repair and service. The building is currently operated by Platypus Marine.

In 2002, Westport Marine ("Westport") purchased the western portion of the MTA from the Port and is currently building a facility for luxury yacht construction. Prior to the sale, the Port undertook to make the property "pad-ready", including removing bark-rich soil and granular fill to a depth of up to three feet, and performing subsurface utility work. In conjunction with subsurface utility work, the Port removed about 50 tons of petroleum-contaminated soil and installed a

geomembrane vapor barrier (Floyd, Snider, McCarthy, Inc., Draft Site Characterization Report Addendum, 2003).

In 2003, on behalf of the MTA Group, Floyd Snider McCarthy, Inc. submitted to Ecology recent information regarding the Marine Trades Area portion of the Site. Such information included a Draft Site Characterization Report (Report) in April 2003 and an Addendum to the Site Characterization Report (Addendum) in June 2003. The Report confirmed the existence of gasoline, diesel and benzene in soil and groundwater at the MTA, in concentrations significantly exceeding cleanup levels. The report also presented new information about land use at the MTA- e.g., the purchase in 2002 of a substantial portion of the MTA by Westport Marine to construct a yacht-building facility.

The Report also provided a preliminary conceptual site model of the Marine Trades Area, identified some current data gaps in the MTA, and described a proposed scope for a remedial investigation to fill these data gaps. The Addendum presented additional information that was collected during the Port's activities at the MTA to prepare for construction of a yacht building facility.

In 2003, the MTA Group approached Ecology with a plan to conduct a Supplemental Remedial Investigation/Focused Feasibility Study for the Marine Trades Area.

4. Chevron is a corporation under the laws of Washington and formerly owned Chevron Bulk Fuel Terminal #1001372. This property sits across Marine Drive from the Marine Trades Area and is located at 638 Marine Drive, Port Angeles. (Exhibit B) Clallam County records indicate that Chevron was the owner of this property from 1928 to 1988. In 1988, Chevron sold this property to Pettit Oil. Correspondence from Ecology to Chevron dated March 29, 1984 regarding a Dangerous Waste inspection conducted on March 20, 1984, documents petroleum released to highly permeable soil within the tank farm area.

Subsurface exploration conducted on behalf of Chevron by GeoEngineers, Inc. prior to sale of the property in 1988 documents petroleum contaminated soil on the property ranging in concentration from 200 to 90,000 parts per million (ppm) Total Petroleum Hydrocarbons as diesel and a petroleum sheen on the groundwater. (GeoEngineers, Inc., Subsurface Exploration and Testing, March 31, 1987). In 1989, Chevron commissioned Rittenhouse-Zeman & Associates, Inc. to perform similar environmental sampling with similar results. A petroleum sheen was noted on the groundwater in several of the borings. A 675 gallon heating oil tank was removed from the property (near the

north boundary) in June of 1989. Total Petroleum Hydrocarbons concentrations were found to be 1500 ppm in the confirmation samples of the excavation.

In November of 1989 additional groundwater samples were collected and analyzed from new and existing monitoring wells (Exhibit C) and additional soil borings confirming petroleum contamination in soil and groundwater. One monitoring well had free floating product consisting of 20% gasoline and 80% diesel fuel.

In August of 1992, Ecology assessed a hazard ranking for the former Chevron property, as required by MTCA. Ecology calculated a hazard ranking of 1 (with 1 being the highest relative risk and 5 being the lowest) for the property.

Groundwater monitoring has continued on a semi-annual basis since 1992 consistently demonstrating levels of Total Petroleum Hydrocarbons as gasoline, diesel, heavy oil and benzene well in excess of regulatory limits. In addition, free phase product has been consistently documented in monitoring wells MW-3 and RZ-2 (Exhibit C).

5. The Port of Port Angeles Marine Trades Area Site (Site) includes any area where hazardous substances have come to be located (WAC 173-340-200). This includes the Marine Trades Area, K-Ply mill property and Pettit Oil property (former Chevron Bulk Fuel Plant #1001372). (Exhibit B) The

Site is located in Sections 3 and 4, Township 30 North, Range 6 West, Willamette Meridian in Clallam County (Exhibit A).

Legal descriptions are presented in Exhibit D.

6. The Site is crossed by water and sewer pipelines required to service the surrounding area and, at various times, there were at least eight fuel pipeline "routes" along which the piping ran which connected the fuel docks to the bulk plants. The individual pipeline routes may have consisted of a single or multiple pipes of varying diameters. The pipeline systems were used to pump fuel from terminal facilities at the docks to the three former bulk plants on the MTA, the Chevron property, as well as three former bulk fuel facilities around the area (Exhibit B). By 1989 the majority of the fuel pipelines were removed from the Port's property or abandoned by the Port and Chevron.

7. The purpose of this Order is to provide for implementation of a RI/FS to characterize the extent and distribution of petroleum contamination at the Site and determine an appropriate remedial strategy as further described in WAC 173-340-350 and Exhibit E.



III.

Ecology Determinations

1. The Port and Chevron are "owner or operator"(s) as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

2. The facility is known as the Port of Port Angeles Marine Trades Area Site (Site) and includes any area where hazardous substances have come to be located (WAC 173-340-200).

This includes the area between Tumwater Creek on the west, the shoreline on the north, the K-Ply facility to the East, and Marine Drive to the south including one parcel (former Chevron Bulk Plant) across Marine Drive at 638 Marine Drive. (Exhibit B)

3. The gasoline, diesel and benzene found at the Site 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 Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).

5. By a letter of November 23, 1994, the Port of Port Angeles voluntarily waived its rights to notice and comment and accepted Ecology's determination that the Port is a

"potentially liable person" under RCW 70.105D.040 for purposes of this order.

6. By letter dated November 10, 2003, Chevron voluntarily waived its rights to notice and comment and accepted Ecology's determination that Chevron is a "potentially liable person" under RCW 70.105D.040 for purposes of this order.

7. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology 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.

8. Based on the foregoing facts, Ecology believes the remedial action 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 the MTA Group perform a Remedial Investigation and Feasibility Study in accordance with the scope of work and schedule attached to this Order as Exhibit E, and that these actions be conducted in accordance with Chapter 173-340-350 WAC unless otherwise specifically provided for herein.

The Remedial Investigation/Feasibility Study requirements outlined in Exhibit E build upon the previous independent and formally conducted investigations performed by the MTA Group, which are described in Section II of this Agreed Order.

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.

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. 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. Ecology shall provide the MTA Group an opportunity to review and comment on draft versions of public notice or public participation documents prior to their release. However, Ecology retains the authority to make the ultimate decision with regard to the content of public notice or public participation documents.

3. Remedial Action Costs. The MTA Group 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). The MTA Group 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 Lisa Pearson  
Address Department of Ecology  
Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775

The project coordinator for the MTA Group is:

Name Tom Colligan, RG  
Address Floyd Snider McCarthy, Inc.  
83 South King Street, Suite 614  
Seattle, WA 98104

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the MTA Group, 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 coordinator(s). Should Ecology or the MTA Group change project coordinator(s), written notification shall be provided to Ecology or the MTA Group 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 investigation and cleanup. The Port and Chevron 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. The MTA Group 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, the MTA Group shall not perform any remedial actions at the Site 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 the MTA Group. By signing this Agreed Order, the MTA Group 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 the MTA Group during an inspection unless doing so interferes with Ecology's sampling.

The MTA Group shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

Ecology and the Respondents acknowledge that the MTA Group does not own all of the properties that compose the Site.

The Respondents will use reasonable efforts to obtain access to the Site. If necessary, Ecology will exercise its authority under Chapter 70.105D RCW to ensure access to the Site or to facilitate remedial action at the Site.

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

8. Retention of Records. The MTA Group 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 the MTA Group, then the MTA Group agrees to include in its contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. The MTA Group may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing

and directed to Rebecca S. Lawson, P.E., Regional Section Manager, Southwest Regional Office, or her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. The MTA Group 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 the MTA Group 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 the MTA Group to require those remedial actions required by this Agreed Order, provided the MTA Group 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 Site.



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 the MTA Group 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 the MTA Group 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 the MTA Group may have in the Site or any portions thereof, the MTA Group 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, the MTA Group shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by the MTA Group pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

B. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and the MTA Group shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the MTA Group's receipt of written notification from Ecology that it accepts the final Remedial Investigation and Feasibility Study documents as required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

Enforcement

1. 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 the MTA Group refuses, without sufficient cause, to comply with any term of this Order, the MTA Group 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: \_\_\_\_\_

MARINE TRADES AREA GROUP

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

The Port of Port Angeles

By \_\_\_\_\_  
Robert E. McChesney  
Executive Director

By \_\_\_\_\_  
Rebecca S. Lawson, PE  
Southwest Region Section Manager  
Toxics Cleanup Program

ChevronTexaco Products Company,  
a division of Chevron U.S.A. Inc.

By \_\_\_\_\_

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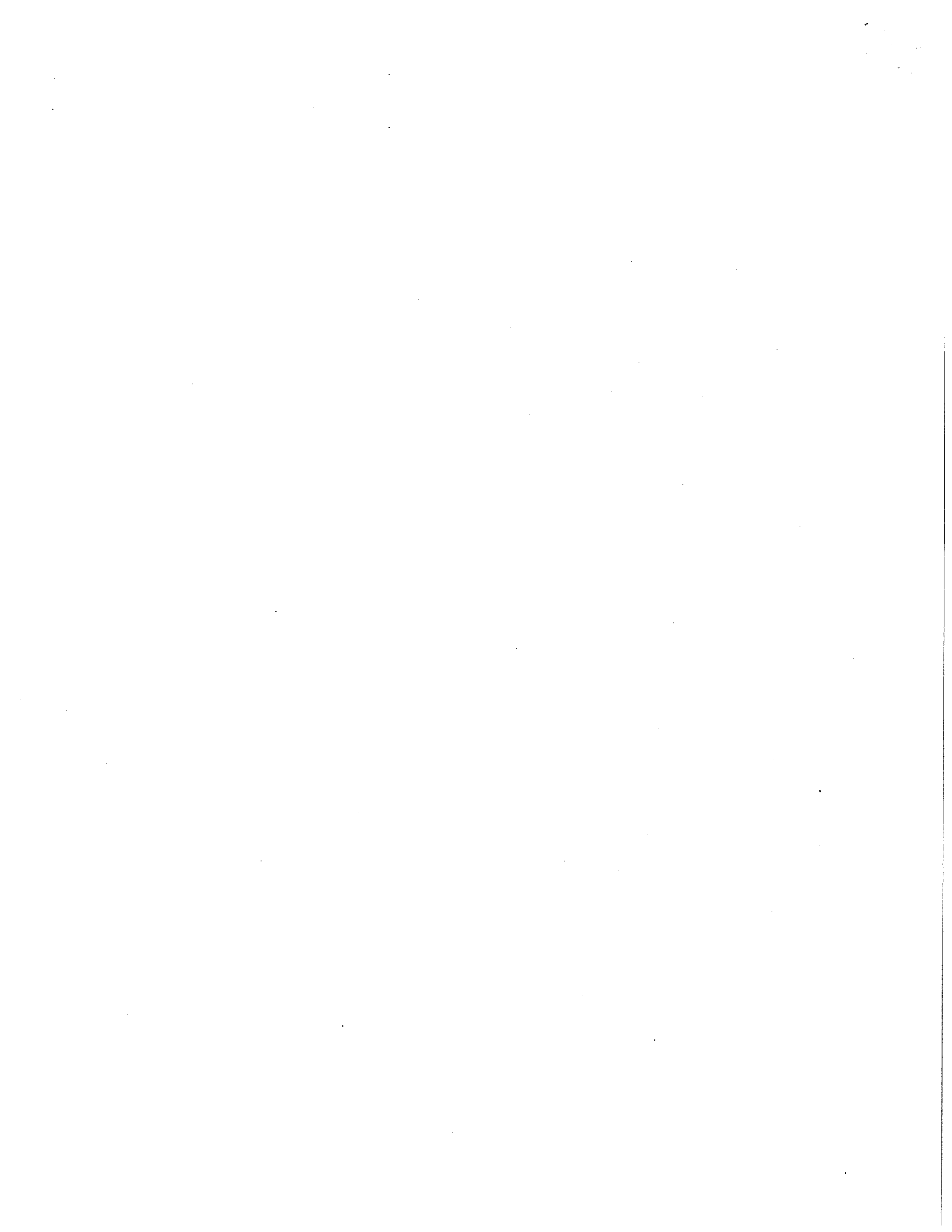
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