

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

**Texaco Downstream Properties Inc.
6001 Bollinger Canyon Road
San Ramon, CA 94583**

AGREED ORDER

No. DE5236

RECEIVED

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TO: **Ms. Olivia Skance
Project Manager
Marketing Business Unit
Chevron Environmental Management Company
6111 Bollinger Canyon Road
San Ramon, CA 94583**

WA STATE
DEPARTMENT OF ECOLOGY
SW REGIONAL OFFICE

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INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and **Texaco Downstream Properties Inc. (TDPI)**, as successor to the former lessee of the active station under this Agreed Order (Order), is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires **TDPI** to:

1. Prepare a new Feasibility Study (FS) for the site.
2. Continue performing groundwater monitoring at the site.
3. Prepare a Draft Cleanup Action Plan (DCAP) according to the requirements of WAC 173-340-380.
4. Prepare an Interim Action Work Plan and conduct an Interim Action consisting of the removal of residual contaminated soil associated with the former diesel underground storage tank (UST) at the active station and the USTs at the former (inactive) station on the south side of Mulford Road.
5. This Agreed Order No. DE 08 TCPSR-5236 fully supersedes and replaces Agreed Orders No. DE-00TCPSR-297, -298, and -299.

Ecology believes the actions required by this Order are in the public interest.

I. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

II. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. **TDPI** agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter **TDPI's** responsibility under this Order. **TDPI** 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 complies with this Order.

III. DEFINITIONS

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

A. Site: The Site is referred to as Cowlitz BP (also known as Cowlitz Food and Fuel) and is generally located at **101 Mulford Road, Toledo, Washington**. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and **Texaco Downstream Properties Inc. (TDPI)**.

C. Potentially Liable Person (PLP): Refers to PLPs named for the site:.

1. Texaco Downstream Properties Inc. (TDPI), a Delaware Corporation (former operator).
2. Charles Vineyard (current owner).
3. Bob and Sheri Smith (former operators).
4. Frank Vineyard (former owner).

Charles Vineyard, the Smiths, and Frank Vineyard (deceased), while named PLPs, are not parties to this Agreed Order.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

IV. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by **TDPI**:

- A. The active gasoline station and mini-mart ("active station") is currently branded as "Shell" and was previously known as Texaco facility number 211556. A former gasoline service station ("inactive station") is also present on the south side of Mulford Road. Both the active and inactive stations are located on property owned by Mr. Charles Vineyard and comprise the Cowlitz BP Site. The active station and adjacent restaurant are located on Lewis County Assessor's Parcel Numbers (APNs) 012429003001 and 012429004000. The inactive station is located on Lot 1 of Vineyard Short Plat SP09-00002. All three parcels are owned by Mr. Charles Vineyard. The parcels were originally one tax lot. The original tax lot was purchased by Mr. Frank Vineyard (deceased) in 1947 who farmed it for eight years. In 1955, the property was divided into separate lots and leased. In 2009, APN 012429002001 was divided into Lot 1 (2.176 acres) and Lot 2 (23.215 acres). As mentioned above, Lot 1 includes the inactive station.
- B. The inactive station was originally leased to General Petroleum Corporation in May 1955. In 1978, the station was leased by Olson Brothers Garage, Inc., and then was occupied until 1984 by a Mobil service station and a small restaurant. After 1984, the station ceased operation and was destroyed. Currently, the lot is vacant but the foundation of the former building remains. Three USTs were removed from the inactive station in 1992 (two 6,000 gallon gasoline tanks and one 300 gallon waste oil tank). Confirmation sample results from the gasoline UST excavation showed that residual gasoline and diesel range hydrocarbons were present above the MTCA Method A Cleanup Level.
- C. The Texas Oil Company (Texaco) leased the active station from 1955 to 1980. They also constructed the building and installed the original Underground Storage Tanks (USTs) and piping.
- D. In April 1977, a leak in the product delivery line at the active station was repaired. It was estimated that this leak resulted in a loss of approximately 2,296 gallons of

gasoline. The retailer was later reimbursed by Texaco for the loss of gasoline due to the leaky pipe.

- E. The ownership interests in the improvements of the active station passed to Olson Brothers in 1980 and then to West Coast Oil Company in 1985.
- F. Ron and Sherri Smith purchased the active station site improvements from West Coast Oil in 1986. During the removal of the Underground Storage Tanks (USTs) in March 1990 at the active station, petroleum contaminated soil in excess of MTCA Method A Cleanup standards was discovered. New fiberglass tanks and associated piping were installed to replace the original tanks.
- G. In April 1991, Ecology issued Enforcement Order No. DE 91-S123 to Mr. Frank Vineyard to conduct a Remedial Investigation/Feasibility Study (RI/FS) at the active station. During this investigation, analyses results from groundwater samples confirmed contamination in excess of MTCA Method A cleanup standards for total petroleum hydrocarbons – gasoline range (TPH-G), and benzene, toluene, ethylbenzene, and total xylenes (BTEX). In the process of completing the Order, petroleum contamination of groundwater was discovered at the inactive station. The Order specified that if contamination was discovered at this location, it would be included as part of the Cowlitz BP site. These groundwater data were collected in January 1992.
- H. The Remedial Investigation Feasibility Study (RI) for the site was completed in 1993.
- I. In May 1994, Ecology solicited a thirty (30)-day public comment and review on a draft Cleanup Action Plan (CAP) for the site.
- J. In September, 1994, during a site visit conducted by Ecology, current site activities at the inactive station were investigated. It was discovered that the ground surface had been graded, a septic tank and underground utility lines had been installed, and “model” single family homes had been erected in the area where the approved CAP had outlined a groundwater pump-and-treat system to be located. Monitoring wells

installed in this area as part of the RI/FS could not be located. Because Ecology had no prior knowledge of these activities, there was concern that the integrity of the monitoring wells had been compromised by this activity. In addition, since no recent groundwater monitoring data existed, there was also concern that the remedy chosen in the CAP may no longer be appropriate for the site.

- K. In May 1995, Ecology Issued Agreed Order Nos. DE94 S361, S362, and S368 to the PLPs. This Order required the PLPs to conduct quarterly groundwater monitoring and allowed them to re-evaluate the cleanup option chosen for the site.
- L. A Supplemental RI was prepared by SECOR International Incorporated, dated October 23, 1995. The FS was not updated.
- M. The PLPs recommendations for a cleanup alternative for the site were described in a Cleanup Action Plan prepared by SECOR International Incorporated, dated August 12, 1999.
- N. In May 2001, Ecology Issued Agreed Order Nos. DE00 TCPSR-297, -298, and -299 to the PLPs. This Order required the PLPs to implement a new Cleanup Action Plan (CAP). The remedy chosen in the CAP was enhanced sin-situ biodegradation for soil and groundwater cleanup. This remedy was not part of the original 1993 FS.
- O. A Cleanup Work Plan was prepared by SECOR International Incorporated, dated June 7, 2001. The scope of work included introducing oxygen to groundwater by installing Oxygen Release Compound (ORC) in soil borings, conducting groundwater monitoring, and installing a product recovery canister in monitoring well MW-111.
- P. On May 27, 2004, the consultant (SAIC) issued a letter which evaluated the effectiveness of the ORC application; preparation of this letter was in partial fulfillment of the requirements of Agreed Order DE00 TCPSR-297. This letter concluded that ORC application does not appear to be effective, that a further round of ORC application does not seem to be justified, and that other remedial strategies were being considered.

- Q. On December 20, 2004, the consultant issued a letter suggesting that excavation followed by natural attenuation may be the best remedial option; however, further evaluation of remedial options should be performed.
- R. In 2004, the active station improvements were sold to the current operator, Tri-Tex Oil Company.
- S. In July 2006, at the request of Ecology, a draft CAP was prepared and submitted to Ecology for review. Comments on the draft CAP were provided in an Ecology letter dated November 2, 2006.
- T. On December 29, 2006 Ecology notified the consultant (SAIC) and PLPs that preparation of the CAP should be delayed until a new Agreed Order is prepared.

V. ECOLOGY DETERMINATIONS

A. **TDPI** is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Texaco dated **September 16, 1994** pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that **Texaco** is a PLP under RCW 70.105D.040 and notified **Texaco** of this determination by letter dated **October 25, 1994**. Based upon credible evidence, Ecology issued a PLP status letter to **Chevron/Texaco, doing business as Texaco Downstream Properties Incorporated (TDPI)** dated **April 18, 2008** pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated **May 20, 2008**, **TDPI** voluntarily waived its rights to notice and comment and accepted Ecology's determination that **TDPI** is a PLP under RCW 70.105D.040.

Therefore, Ecology issued a determination that **TDPI** is a PLP under RCW 70.105D.040 and notified **TDPI** of this determination by letter dated **June 17, 2008**.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any 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 remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. Residual petroleum contaminated soil is present at the active station (located at 101 Mulford Road) and at the inactive service station located on the south side of Mulford Road. Excavation and offsite disposal of these contaminated soils would reduce the threat to human health and the environment and therefore would warrant an interim action consistent with WAC 173-340-430.

VI. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that **TDPI** take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

- A. Prepare a draft Feasibility Study (FS) report in accordance with WAC 173-340-350. The report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented.
- B. Continue to conduct groundwater monitoring as previously directed by Ecology.

C. Prepare an Interim Action Work Plan and conduct an Interim Action consisting of the removal of residual contaminated soil associated with the former diesel underground storage tank (UST) at the active station and the USTs at the inactive service station on the south side of Mulford Road. The Interim Action Work Plan shall be prepared and submitted to Ecology for review and approval in accordance with the Schedule of Deliverables, and prior to interim action work beginning at the Site. The Interim Action Work Plan shall include a sampling and analysis plan (SAP) and a site specific health and safety plan (HASP). The SAP and HASP shall meet the requirements of WAC 173-340-820 and WAC 173-340-810, respectively.

D. Upon Ecology approval of the final FS report, the PLP shall prepare a Draft Cleanup Action Plan (DCAP) in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. The DCAP shall include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action.

E. Schedule of Deliverables

Each deliverable, once approved by Ecology, becomes incorporated by reference and shall be an integral and enforceable part of the Order.

SCHEDULE OF DELIVERABLES	
Deliverable	Schedule
Draft Interim Action Work Plan, including Sampling and Analysis Plan (SAP) and Health	21 days after this Agreed Order is signed.

and Safety Plan (HASP).	
Final Interim Action Work Plan	30 days after Ecology's written comments on the draft Interim Action Work Plan are received
Complete Interim Action Field Activities	9 months after the final Interim Action Work Plan is approved by Ecology.
Draft Interim Action Report Draft FS Report	60 days after the completion of field work or when all laboratory data are received.
Final Interim Action Report Final FS Report	30 days after Ecology's written comments on the draft reports are received
DCAP	30 days after the Final FS Report is issued
Groundwater Monitoring Reports	30 days after the analytical data are received for the sampling event.

F. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

G. The PLP shall provide a written bi-monthly [every two (2) months] progress report, which will include the following:

- activities that happened in the past two (2) months;
- activities planned for the next two (2) months;
- a written summary of all lab data required by this order; and
- all lab data required by this order or requested by Ecology shall be provided in an Ecology-approved electronic format.

This progress report frequency may be revised by Ecology if adequate justification is provided by the PLP or if Ecology provides justification for a change.

VII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

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 this Order is inadequate or improper in any respect.

B. Remedial Action Costs

TDPI shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order (including work performed under Agreed Orders DE-00TCPSR-297, -298, and -299). Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated an unpaid balance of \$197.14 in remedial action costs related to this facility as of **June 30, 2009**. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to June 30, 2009, TDPI shall pay the required amount within thirty (30) 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 statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

C. Implementation of Remedial Action

If Ecology determines that TDPI has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to TDPI, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of TDPI's failure to comply with its obligations under this Order, TDPI shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that TDPI is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, TDPI shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Steve Teel, LHG
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6247

The project coordinator for TDPI is:

Ms. Olivia Skance
Project Manager
Marketing Business Unit
Chevron Environmental Management Company
6111 Bollinger Canyon Road
San Ramon, CA 94583
(925) 543-2366

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and TDPI, 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. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

TDPI shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that TDPI either owns, controls, or has access rights to 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 TDPI's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology 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 TDPI. TDPI shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by TDPI where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by TDPI unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, TDPI shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, TDPI shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by TDPI pursuant to implementation of this Order. TDPI shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow TDPI and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify TDPI prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with TDPI.

Ecology shall maintain the responsibility for public participation at the Site. However, TDPI shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify TDPI prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by TDPI that do not receive prior Ecology approval, TDPI shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Winlock Timberland Library
322 First St.
Winlock, WA 98596-0428
(360) 785-3461
- b. Ecology's Southwest Regional Office

**300 Desmond Drive
Lacey, WA 98503
(360) 407-6365**

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, TDPI shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, TDPI shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, TDPI has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. TDPI may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section

Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of TDPI's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on TDPI to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of TDPI including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by TDPI;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of **TDPI**.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give **TDPI** written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and **TDPI**. **TDPI** shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide

public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct TDPI to cease such activities for such period of time as it deems necessary to abate the danger. TDPI shall immediately comply with such direction.

In the event TDPI determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, TDPI may cease such activities. TDPI shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction TDPI shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with TDPI's cessation of activities, it may direct TDPI to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), TDPI's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against TDPI to recover remedial action

costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against TDPI regarding remedial actions required by this Order, provided TDPI complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by TDPI 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 TDPI's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, TDPI shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, TDPI shall notify Ecology of said transfer. Upon transfer of any interest, TDPI shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by TDPI pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), TDPI is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws

requiring or authorizing local government permits or approvals. However, **TDPI** shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

TDPI has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or **TDPI** determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or **TDPI** shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, **TDPI** shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by **TDPI** and on how **TDPI** must meet those requirements. Ecology shall inform **TDPI** in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. **TDPI** shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 that is necessary for the State to administer any federal law, the exemption shall not apply and **TDPI** 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.

Q. Indemnification

TDPI agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for

loss or damage to property to the extent arising from or on account of acts or omissions of TDPI, its officers, employees, agents, or contractors in entering into and implementing this Order. However, TDPI shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

VIII. SATISFACTION OF ORDER

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

IX. 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 TDPI refuses, without sufficient cause, to comply with any term of this Order, TDPI will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

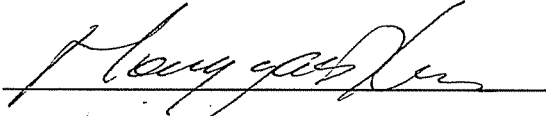
D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 3/1/10

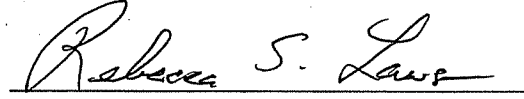
**TEXACO DOWNSTREAM
PROPERTIES INC.**

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Hongyan Xun (print name)

Assistant Secretary
Texaco Downstream Properties Inc.
6001 Bollinger Canyon Road
San Ramon, CA 94583

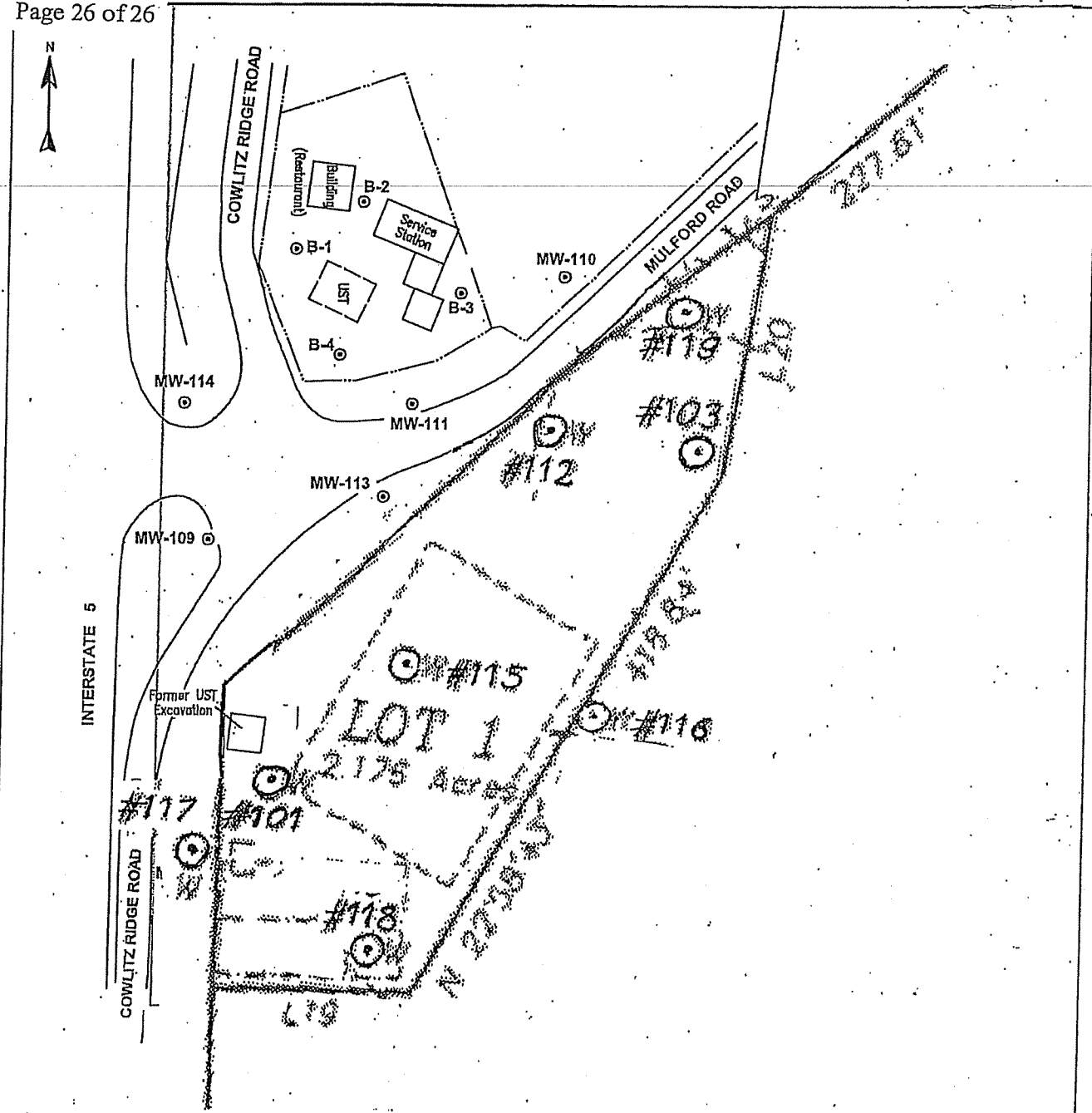


Rebecca S. Lawson, P.E., L.G., L. HG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

Exhibit A

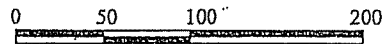
SITE DIAGRAM

**(Adapted from SAIC Site Map, Figure 1, 6/15/07 and Vineyard Short Plat
Map, 2009)**



LEGEND

MW-114 Monitoring Well Location and ID



1" = 100'

Approximate Scale

Adapted from SAIC (2007) and Vineyard Short Plat Map (2009)

	Site Map	FIGURE 1
	Former Texaco Station 211556 101 Mulford Road Toledo, Washington	
	Date: 06/15/2007 Drawn By: GER	