

Glacier Park East
86-249

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
Burlington Northern Railroad Company)
and Chevron U.S.A. Inc.)
)
)

AGREED ORDER
No. 94TC-C441

TO: Burlington Northern Railroad Company
c/o David Smith
2100 First Interstate Building
999 Third Ave
Seattle, WA 98104-1105

Daniel L. Hemker
c/o Chevron Research and Technology
1003 West Cutting Blvd.
Richmond, CA 94804

I.

Jurisdiction

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

II.

Findings of Fact

1. The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by, Chevron U.S.A. Inc. ("CUSA") and Burlington Northern Railroad Company ("BNRR") hereafter known as the "PLPs"; and by Janet Motteler ("Motteler"), Boyd Cascade Incorporated ("Boyd"), and Jack Wedeberg ("Wedeberg"); hereafter known as the "non participating PLPs".

2. This Agreed Order is addressed to two of the current and former Owners and/or Operators of the Site, the PLPs.

3. Burlington Northern Railroad Company presently owns the Glacier Park East property ("the Site") which is located east of the intersection of State Highway 2 and State Route 209, which is also known as the Chumstick Road, in Leavenworth, Washington.

4. Chevron U.S.A. Inc., Janet Motteler, Jack Wedeberg and Boyd Cascade Inc. were all owners or operators of businesses which retailed or wholesaled petroleum products at the Glacier Park East

Facility.

5. Ecology believes that there is evidence that petroleum releases have contaminated the soils, and potentially the groundwater, at the Glacier Park East facility. In 1991 Hart Crowser, an environmental consulting firm, conducted a Phase II investigation of the property. The results of the investigation are on file at the Department of Ecology in Yakima Washington, in the report titled Subsurface Exploration and Testing, Glacier Park Company Property, Property Sequence No. 99, Leavenworth, Washington, April 17, 1991, J-2923. The report discusses two parcels one located east of State Highway 209, the Site, and the other west of State Highway 209. The Site is referred to as the Boyd/Cascade Bulk Fuel Facility in the report.

6. The Hart Crowser Report concluded that petroleum hydrocarbon contaminated soil is present near where the aboveground storage tanks and the fuel truck loading rack were formally located.

7. The Site where petroleum-contaminated soils and potential groundwater contamination have come to be found is located within the SE 1/4, Section 1, Township 24 North, Range 17 East, Willamette Meridian. The property is located east of State Highway 209, north of State Highway 2 and south of the Burlington Northern Railway right of way.

8. By execution of this Agreed Order the PLPs do not admit (expressly or impliedly) any act, responsibility, fault or liability, or waive any right, claim, privilege or defense, and do not necessarily agree with Ecology's findings of fact or determinations.

III.

ECOLOGY DETERMINATIONS

1. The Glacier Park East Facility located in Leavenworth, Washington is a "facility," as defined in RCW 70.105D.020(3).

2. BNRR, Boyd, CUSA, Motteler, and Wedeberg are or were "owners" and/or operators," as defined in RCW 70.105D.020(6), of the Site.

3. The substances found in the soils and groundwater at the Glacier Park East Facility as described above are "hazardous substances," as defined in RCW 70.105D.020(5).

4. Based on the presence of these hazardous substances at the Site and all factors known to the Department, there is a release or threatened release of hazardous substances from the Facility, as defined in RCW 70.105D.020(10).

5. By letter dated September 3, 1992, Ecology notified Burlington Northern Railroad Company of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. By letter dated November 6, 1992, Ecology notified Chevron U.S.A. Inc. of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

7. By letter dated July 26, 1993, 1993, Ecology notified Janet Motteler of her status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

8. By letter dated July 26, 1993, Ecology notified Jack Wedeberg of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

9. By letter dated September 3, 1993, Ecology notified Boyd Cascade, Inc of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

10. Pursuant to RCW 70.105D.030(1) and .050, Ecology may require potentially liable parties to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances.

11. Based on the foregoing facts, and in the best interests of the public, Ecology has determined that the PLPs must take remedial actions, at the Facility, as set forth below.

IV.

WORK TO BE PERFORMED

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

1. The PLPs shall furnish all personnel, materials and services necessary for, or incidental to, the planning, initiation, completion, and reporting upon a remedial investigation/feasibility study ("RI/FS") at the Site. The Work Plan and Sampling and

Analysis Plan (attached as Exhibit 1) specifically describes the work to be conducted and is hereby incorporated by reference as an integral and enforceable part of this Agreed Order.

2. The planning documents and each element of the tasks of the RI/FS shall be consistent with Chapter 173-340 WAC.

3. All planning documents, proposals, reports and other documents submitted to Ecology shall be subject to Ecology approval. Ecology shall be given up to thirty (30) days after receipt of draft deliverable documents to review, comment and approve/disapprove each document. Ecology will notify the Project Coordinator for the PLPs in writing, along with comments, of the approvals or disapprovals.

Within thirty (30) days of receiving final approval for the planning and reporting documents, the PLPs shall commence work on the next task scheduled. If the PLPs request an extension or adjustment to the schedule, in writing, because of (1) unpredictable complexities or difficulties in the hydrologic investigations or other field tasks or (2) other justifiable reasons, Ecology may grant the PLPs' request.

Progress reports shall be completed by the Project Coordinator on behalf of the PLPs on a bi-monthly basis. The progress reports shall include an estimate of percent completion for each task, progress made during the period, work in progress, deliverables submitted, field work and data generated, subcontracting and analytical services performed.

4. The RI/FS shall collect, develop, and evaluate sufficient information regarding the Site to enable the selection of a cleanup action. To collect sufficient information, the Work Plan shall consist of general facility information, including the location of utility corridors, field investigations of surface water and sediments, soils, geology and groundwater system characteristics, air quality considerations, land use, natural resources and ecology, as well as work plans. The RI/FS shall be developed according to the requirements of WAC 173-340-350 (State Remedial Investigation and Feasibility Study).

5. All work shall be accomplished in accordance with the Work Schedule for Glacier Park East attached as Exhibit 2. Exhibit 2 is hereby incorporated by reference as an integral and enforceable part of this Agreed Order.

6. Results from sampling shall be provided to Ecology's project coordinator upon receipt from the laboratory.

7. The PLPs shall immediately notify Ecology by telephone of any unexpected delays in construction.

V.

TERMS AND CONDITIONS OF AGREED 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 Agreed Order.

2. Public Notices. WAC 173-340-600(10)(c) requires a 30 day public comment period before this Agreed Order becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Agreed Order should public comment disclose facts or considerations which indicate to Ecology that the Agreed Order is inadequate or improper in any respect; provided, however, the PLPs have the right to withdraw from this Agreed Order should Ecology do so.

3. Remedial Action Costs. The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Agreed 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 PLPs 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 copy of the field logs of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of an itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Donald W. Abbott
106 South 6th Avenue
Yakima, Washington, 98902-3387
(509) 454-7834

The project coordinator for the PLPs is:

David Smith
Environmental Engineering
Burlington Northern Railroad Company
2100 First Interstate Center
999 Third Avenue
Seattle, Washington 98104
Telephone (206) 467-3400
Telecopy (206) 467-3315

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

5. Performance. All work performed pursuant to this Agreed 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 PLPs shall notify Ecology of the names of the contractor which will be conducting the remedial investigation and their onsite supervisor, and to any change in the identity of any contractors and subcontractors to be used in carrying out the terms of this Agreed Order, in advance of their involvement at the Facility.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Facility 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 Agreed Order; reviewing the progress in carrying out the terms of this Agreed 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 Agreed Order; and verifying the data submitted to Ecology by the PLPs. The PLPs agree to allow access to the Facility at all reasonable times for purposes of overseeing work performed under this Agreed Order. Ecology agrees to provide at least 24 hour notice to access the Site for the purposes of overseeing work

performed under this Agreed Order. Ecology shall provide the PLPs an opportunity to split any samples taken during an inspection unless doing so interferes with Ecology's sampling. The PLPs 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. the PLPs shall prepare a public participation plan for the Site according to the Work Schedule included as Exhibit 2. The Public Participation Plan shall be developed consistent with the outline attached to this Agreed Order as Exhibit 3. Ecology will retain final responsibility for approval of the public participation plan and implementation of public participation responsibilities at the Site. The PLPs shall help coordinate and implement public participation for the Site.

8. Retention of Records. The PLPs shall preserve in a readily retrievable fashion, during the pendency of this Agreed Order and for ten (10) years from the date of completion of the work performed pursuant to this Agreed Order, all records, reports, documents, and underlying data in their possession relevant to this Agreed Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLPs, then the PLPs agree to include in their contract(s) with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Agreed 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 PLPs 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 PLPs to require those remedial actions required by this Agreed Order, provided the PLPs comply with this Agreed Order.

Ecology reserves the right, however, to order 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 Glacier Park East.

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 PLPs to stop further

implementation of this Agreed Order for such period of time as needed to abate the danger.

10. Modification. Ecology and the PLPs may modify this Agreed Order by mutual written agreement.

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

Prior to transfer of any legal or equitable interest the PLPs may have in the Site or any portions thereof, the PLPs shall serve a copy of this Agreed 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 PLPs shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws. All actions carried out by the PLPs pursuant to this Agreed Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

SATISFACTION OF THIS AGREED ORDER

1. The provisions of this Agreed Order shall be deemed satisfied upon the PLPs receipt of written notice from Ecology that they have completed the remedial activity required by this Agreed Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with; such notice shall not be unreasonably delayed.

VII.

ENFORCEMENT

In the event the PLPs refuse, without sufficient cause, to comply with any term of this Agreed Order, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Agreed Order in state court.

Burlington Northern Railroad Co.
Chevron U.S.A. Inc.
Agreed Order No. 94-TC-C441
Page 9

2. In any such action, the PLPs may be liable for up to three times the amount of any costs incurred by the State of Washington as a result of the refusal to comply.

3. Additionally, in any such action, the PLPs may be liable for civil penalties of up to \$25,000 per day for each day they refuse to comply.

4. Should Ecology conduct or provide for conducting the remedial action, the Attorney General will bring an action to recover all costs incurred by the state for such action.

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

Effective date of this Agreed Order: JAN 1 1995

for
CHEVRON U.S.A. INC
1003 West Cutting Blvd.
Richmond, CA 94804

By: *D. Hemker*
Daniel L. Hemker

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: *A. W. Grover*
Anthony W. Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

BURLINGTON NORTHERN RAILROAD COMPANY
2100 First Interstate Building
900 Third Avenue
Seattle, WA 98104-1105

By: _____
David Smith

AWG:DWA:dk
g:\don\gpe4.ord

Burlington Northern Railroad Co.
Chevron U.S.A. Inc.
Agreed Order No. 94-TC-C441
Page 9

2. In any such action, the PLPs may be liable for up to three times the amount of any costs incurred by the State of Washington as a result of the refusal to comply.

3. Additionally, in any such action, the PLPs may be liable for civil penalties of up to \$25,000 per day for each day they refuse to comply.

4. Should Ecology conduct or provide for conducting the remedial action, the Attorney General will bring an action to recover all costs incurred by the state for such action.

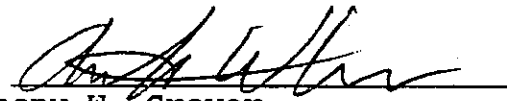
5. This Agreed Order is not appealable to the Pollution Control Hearings Board. This Agreed Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW

Effective date of this Agreed Order: JAN 1 1995


CHEVRON U.S.A. INC
1003 West Cutting Blvd.
Richmond, CA 94804

By: _____
Daniel L. Hemker

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: 
Anthony W. Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

BURLINGTON NORTHERN RAILROAD COMPANY
2100 First Interstate Building
900 Third Avenue
Seattle, WA 98104-1105

By: 
David Smith

AWG:DWA:dk
g:\don\gpe4.ord