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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial)
Action by:) AGREED ORDER
)
SHELL OIL COMPANY) No. DE 92 TC-N159

I. JURISDICTION

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

II. ECOLOGY'S FINDINGS OF FACT

Based on the information available to it, and without adjudication of any facts or legal issues, the Washington State Department of Ecology (Ecology) finds that the following facts exist for the purpose of issuance of this Order. The undersigned, Shell Oil Company, does not admit the accuracy of any factual statement or legal conclusion contained in this Order.

A. Shell presently owns property located at 2720-13th Ave., S.W., Seattle, Washington 98124 ("Site")

B. Spills of hydrocarbon such as gasoline and diesel have occurred at the Site. Shell conducted interim actions to address the spills; however, on-site monitoring and recovery

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1 wells show the presence of free product on the water table
2 which constitutes a release. The following spills were
3 documented by Ecology from Shell's letter of December 11, 1987
4 to EPA Region X Superfund Branch:

5 1. 01/18/77 Tank leaked approximately 2554
6 gallons of medium aromatic oil to the ground, unknown
7 quantity was skimmed from the ground.

8 2. 04/18/78 Line leaked unknown quantity of
9 industrial fuel oil to the ground, unknown quantity was
10 picked up.

11 3. 11/23/79 Line leaked approximately 5000
12 gallons of residual fuel to the ground, unknown quantity
13 was contained in the sump.

14 4. 04/26/79 Line leaked unknown quantity of
15 residual fuel to the ground, unknown quantity was picked
16 up.

17 5. 06/11/79 Line leaked approximately 6500
18 gallons of gasoline to the ground, unknown quantity was
19 pumped from the sump.

20 6. 03/31/80 Line leaked approximately 300 gallons
21 of industrial fuel oil to the ground, unknown quantity
22 was pumped, and unknown quantity of soil was excavated.

23 7. 03/16/81 Tank roof seam ruptured, first
24 estimate of 21,000 gallons, second estimate of 6000
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gallons of gasoline leaked to the ground, and unknown quantity of free product was pumped from the ground surface and the sump.

8. 08/23/82 Line leaked approximately 9400 gallons of gasoline to the ground, unknown quantity was pumped from the ground surface and the sump.

9. 12/06/82 Line leaked approximately 80 gallons of northwest industrial fuel to the ground, unknown quantity of product was pumped from the ground.

10. 11/22/83 Heat exchanger leaked approximately 20 gallons of lean diesel oil to the ground, unknown quantity was recovered using the sorbent pads.

11. 12/24/83 Line leaked approximately 300 gallons of diesel fuel to the ground, unknown quantity of product was pumped from the ground and the sump.

12. 03/15/85 Line leaked approximately 25 gallons of northwest industrial fuel oil to the ground, unknown quantity was recovered using the sorbent pads.

13. 12/18/85 Line leaked approximately 10 gallons of industrial fuel oil/water slop to the ground, unknown quantity was recovered using the sorbent pads.

14. Monitoring wells and Recovery wells show the present of free products on the water table. Unknown quantity of free product has been recovered to date.

1 C. Data collected as part of the United States
2 Environmental Protection Agency Superfund investigation of all
3 Harbor Island has identified lead, cadmium, arsenic, copper,
4 zinc, PAHs, and PCBs in the soil and/or groundwater. The
5 following substances were found at the Shell facility: lead
6 (1050 ppb), chromium (22 ppb), ethylbenzene (19 ppb), and
7 xylene (67 ppb). The source of these hazardous substances is
8 unclear, but the presence of these substances creates a threat
9 to human health or the environment.

10 III. ECOLOGY'S DETERMINATIONS

11 A. Shell is an "owner or operator" of the Site as
12 defined in RCW 70.105D.020(6). The Site is a "facility" as
13 defined in RCW 70.105D.020(3).

14 B. Substances found at the Site are "hazardous
15 substances" as defined at RCW 70.105D.020(5).

16 C. Based on the presence of these hazardous substances
17 at the facility and all factors known to Ecology, there is a
18 release or threatened release of hazardous substances from the
19 facility as defined in RCW 70.105D.020(10).

20 D. By letter of May 21, 1990, Ecology notified Shell of
21 its status as a "potentially liable person" under RCW
22 70.105D.040 after notice and opportunity for comment.

23 E. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050,
24 Ecology may require potentially liable parties to investigate
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1 or conduct remedial actions with respect to the release or
2 threatened release of hazardous substances, whenever it
3 believes such action to be in the public interest.

4 F. Based on the foregoing facts, Ecology believes the
5 remedial action required by this Order is in the public
6 interest.

7 IV. WORK TO BE PERFORMED

8 Based on the foregoing Facts and Determinations, it is
9 hereby ordered that Shell take the following remedial actions
10 and that these actions be conducted in accordance with ch.
11 173-340 WAC, unless otherwise specifically provided herein.
12 These actions are more specifically described in the Scope of
13 Work attached as Exhibit A and hereby incorporated by
14 reference as an enforceable part of this Agreed Order. In
15 summary, the Scope of Work will include the following:

- 16 A. Task 1: Project Planning
17 B. Task 2: Field Investigation
18 C. Task 3: Data Evaluation and Validation
19 D. Task 4: Baseline Risk Assessment
20 E. Task 5: Final report on the Remedial Investigation
21 F. Task 6: Feasibility Studies/Risk Assessment
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V. TERMS AND CONDITIONS OF ORDER

A. Definitions. Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-303 WAC shall control the meanings of terms used in this Order.

B. Public Notices. RCW 70.105D.030(2)(a) requires that this Agreed Order be subject to concurrent public notice. This Agreed Order is subject to a 30-day public comment period before the Order becomes effective. WAC 173-340-600(10)(c). 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.

C. Public Participation. Ecology shall maintain the responsibility for public participation at the Site. Shell shall assist Ecology in preparing and updating the public participation plan for the Site. Shell shall help coordinate and implement public participation, but reserves the right to issue its own statements on this Site and the Order.

D. Remedial Action Costs. Shell agrees to pay to Ecology costs incurred by Ecology pursuant to this Agreed Order in accordance with ch. 70.105D RCW and ch. 173-340 WAC. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and/or

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1 preparation, negotiations, oversight and administration.
2 Ecology's costs shall include costs of direct activities and
3 agency indirect costs of direct activities (e.g., employee
4 salaries, laboratory costs, travel costs, contractor fees and
5 employee benefit packages). Shell agrees to pay the required
6 amount within 90 days of receiving from Ecology an itemized
7 statement of costs that includes a summary of costs incurred,
8 a description of work performed, an identification of involved
9 staff, and the amount of time spent by staff members on the
10 project. Itemized statements shall be provided quarterly.
11 Failure to pay Ecology's costs within 90 days of receipt of
12 the itemized statement of costs may result in interest
13 charges. Within 30 days of receipt of this itemized
14 statement, Shell may contest payment if it has determined that
15 Ecology has made an accounting error or the costs are
16 otherwise improper. Contested costs shall be subject to the
17 Resolution of Disputes provision set forth in Section V(I)
18 below.

19 E. Designated Project Coordinators. The project
20 coordinator for Ecology is:

21 Nnamdi Madakor
22 Washington Department of Ecology
23 Toxic Cleanup Section
24 Northwest Regional Office
25 3190 - 160th Avenue S.E.
26 Bellevue, WA 98008-5452
(206) 649-7000

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1 The project coordinator for Shell is:

2 T. V. Suhre, Engineer
3 Environmental & Technical Support
4 Shell Oil Company
5 511 N. Brookhurst
6 P. O. Box 4848
7 Anaheim, CA 92803
8 (714) 520-3352

9 The project coordinator(s) shall be responsible for overseeing
10 the implementation of this Agreed Order. To the maximum
11 extent possible, communications between Ecology and Shell, and
12 all documents, including reports, approvals, and other
13 correspondence concerning the activities performed pursuant to
14 the terms and conditions of this Agreed Order, shall be
15 directed through the project coordinator(s). Should Ecology
16 or Shell change its project coordinator, written notification
17 shall be provided to the other party at least ten (10)
18 calendar days prior to the change.

19 F. **Performance.** All work performed pursuant to this
20 Agreed Order shall, as set forth in the Work Plan, be under
21 the direction and supervision, as necessary, of a professional
22 engineer or hydrogeologist, or other expert, with appropriate
23 training, experience and expertise in hazardous substance site
24 investigation and cleanup. Shell shall notify Ecology as to
25 the identity of such engineer(s) or hydrogeologist(s), and of
26 any contractors and subcontractors to be used in carrying out

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1 the terms of this Agreed Order, in advance of their involve-
2 ment at the Site.

3 Except when necessary to abate an emergency situation,
4 Shell shall not perform any remedial actions at the Site
5 outside that required by the Order, unless Ecology concurs in
6 writing with such additional remedial actions.

7 G. Access. Ecology or any Ecology-authorized
8 representative shall have the authority to enter and freely
9 move about the Site at all reasonable times for the purposes
10 of, inter alia: inspecting records, operations logs, and
11 contracts related to the work being performed pursuant to this
12 Order; conducting such tests or collecting samples as Ecology
13 or the project coordinator may deem necessary; using a camera,
14 sound recording, or other documentary-type equipment
15 (consistent with Site safety procedures) to record work done
16 pursuant to this Agreed Order; and verifying any data
17 submitted to Ecology by Shell. Shell shall have the right to
18 accompany any Ecology employees or representatives at the
19 Site. By signing this Order, Shell agrees to allow access to
20 the Site at reasonable times for purposes of overseeing work
21 performed under this Order. Each party shall allow split or
22 replicate samples to be taken by the other and shall provide
23 seven (7) days' notice before any sampling activity. All

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1 parties with access to the Site pursuant to this paragraph
2 shall comply with approved health and safety plans.

3 **H. Retention of Records.** Shell shall preserve in a
4 reasonably retrievable fashion during the pendency of this
5 Agreed Order and for ten (10) years from the date of
6 completion of the work performed pursuant to this Order, one
7 copy of all records, reports, documents, and underlying data
8 in its possession developed pursuant to this Agreed Order.
9 After this ten (10) year period, Shell shall notify Ecology at
10 least ninety (90) days before the documents are scheduled to
11 be destroyed. If Ecology requests that the documents be
12 saved, Shell shall, at no cost to Ecology, provide Ecology
13 with the documents or copies of the documents. Should any
14 portion of the work performed hereunder be undertaken through
15 contractors or agents of Shell, then Shell agrees to include
16 in their contract with such contractors or agents a record
17 retention requirement meeting the terms of this paragraph.
18 Nothing herein shall be interpreted as limiting or affecting
19 Shell's right to preserve attorney work product or attorney
20 client communications.

21 **I. Resolution of Disputes.** Shell may request Ecology
22 to resolve disputes which may arise during the implementation
23 of this Order. Such requests shall be in writing and directed
24 to the Project Coordinator. If the Project Coordinators
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1 cannot resolve the difference of opinion to any matter within
2 ten (10) days, the dispute shall be subject to the following
3 provisions of this Section.

4 If the Project Coordinators are unable to reach agreement
5 within ten (10) days of submission of a written statement of
6 dispute, Shell shall submit the dispute in writing within ten
7 (10) days after receipt of the Project Coordinator's written
8 response to the Section Supervisor. The Section Supervisor
9 shall provide to Shell Ecology's written decision and
10 explanation on the pending dispute. The Section Supervisor's
11 resolution shall be reduced to writing, executed by the
12 Parties, and incorporated into this Order.

13 Ecology's resolution of the dispute shall be binding and
14 final. Shell is not relieved of any undisputed requirement of
15 this Order during the pendency of a dispute resolution process
16 and remains responsible for timely compliance with the
17 undisputed terms of the Order unless otherwise provided by
18 Ecology in writing.

19 **J. Reservation of Rights/No Settlement.** This Agreed
20 Order is not a settlement under ch. 70.105D RCW. Ecology's
21 signature on this Order in no way constitutes a covenant not
22 to sue or a compromise of any Ecology rights or authority.
23 Ecology will not, however, bring action against Shell to
24 recover remedial action costs paid to and received by Ecology

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1 under this Agreed Order. In addition, Ecology will not take
2 additional enforcement actions against Shell to require those
3 remedial actions required by this Agreed Order, provided Shell
4 complies with this Agreed Order. Ecology reserves the right,
5 however, to require additional remedial actions at the Site by
6 separate order or by agreed modification to this Order should
7 it deem such actions necessary. Ecology also reserves all
8 rights regarding the injury to, destruction of, or loss of
9 natural resources resulting from the releases or threatened
10 releases of hazardous substances at the Site.

11 The execution and performance of this Order is not,
12 however, an admission by Shell of any fact or conclusion
13 contained in this Order, or of liability related to any issue
14 dealt with in this Order. Performance under the Order is
15 undertaken without waiver of or prejudice to (1) any claims or
16 defenses that may be asserted in the event of future
17 litigation about or related to this Site or this Order, or (2)
18 any rights of contribution or indemnity against any person.

19 K. **Amendment to Agreed Order.** In the event that
20 environmental conditions unknown to the parties at the time
21 this Agreed Order is executed become known and may reasonably
22 require further investigation not covered by this Agreed
23 Order, the parties will negotiate in good faith to resolve
24 such issue.

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1 Ecology and Shell may modify this Agreed Order by mutual
2 written agreement. Any requests by Shell for modification
3 shall be directed to the Ecology Project Manager. Ecology
4 will promptly consider any requests by Shell for such
5 modification.

6 L. **Endangerment.** In the event Ecology determines that
7 conditions at the Site are creating or have the potential to
8 create a danger to the health or welfare of the people on the
9 Site or in the surrounding area or to the environment, Ecology
10 may order Shell to stop further implementation of this Order
11 for such period of time as needed to abate the danger.

12 Conversely, if Shell determines that conditions at the
13 Site are creating or have the potential to create danger to
14 the health and welfare of the people on the Site or in the
15 surrounding area or to the environment, Shell has the right to
16 cease implementation of this Order. If the conditions at the
17 Site do not appear to present, or have the potential to
18 present an immediate danger to life, health, and/or the
19 environment, then Shell must notify Ecology of the decision to
20 cease activities 24 hours prior to stopping work. However, if
21 conditions at the Site present, or have the potential to
22 present, an immediate danger to life, health, and/or the
23 environment, then Shell may cease activities at the Site
24 without delay. Shell must inform Ecology of this decision
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1 within 24 hours from the time it was made. In either case,
2 Ecology will evaluate the situation to determine the magnitude
3 of the danger and whether or not a period of work stoppage is
4 needed to abate the danger. Ecology will notify Shell when
5 implementation of the Order shall be resumed.

6 **M. Extension of Schedule.**

7 1. Extension of schedules shall not require formal
8 amendment of this Order. Public notice of schedule
9 extensions may be published in Ecology's Site Registrar.

10 2. An extension may be granted only when a request
11 for an extension is submitted by Shell in a timely
12 fashion and good cause exists for granting the extension.
13 All extensions shall be requested in writing. The
14 request shall specify the reason(s) the extension is
15 needed. The extension shall only be granted for such
16 period of time as Ecology determines is reasonable under
17 the circumstances. A requested extension shall not be
18 effected until approved by Ecology in writing. Ecology
19 shall act upon all written requests for extension in a
20 timely fashion and shall endeavor to so act within five
21 (5) working days.

22 3. The burden shall be on Shell to demonstrate
23 that the request for extension has been submitted in a
24 timely fashion and that good cause exists for granting
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1 the extension. Consent to a request for an extension
2 shall not be unreasonably withheld. Good cause shall
3 mean reasons acceptable to a reasonably prudent person
4 under the same or similar circumstances and includes but
5 is not limited to the following:

6 (a) Circumstances beyond the reasonable
7 control and despite the due diligence of Shell,
8 including delays caused by third parties or Ecology,
9 such as (but not limited to) delays by Ecology in
10 reviewing, approving or modifying documents
11 submitted by the Respondents and inability to obtain
12 access to property not owned or controlled by
13 Respondents;

14 (b) Delays that are directly attributable to
15 any changes in permit terms or conditions or refusal
16 to grant a permit needed to implement the
17 requirements of this Order, if Shell filed the
18 timely application for the necessary permit;

19 (c) Acts of God, fire, flood, blizzard,
20 extreme temperatures, or any other unavoidable
21 casualty; and

22 (d) Endangerment as described in section M.
23 However, neither increased cost or performance of
24 the terms of the Order nor changed economic
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1 circumstances may be considered circumstances beyond
2 the reasonable control of Shell.

3 4. In addition, Ecology may extend the time
4 schedules contained in the Order if an extension is
5 needed as a result of:

6 (a) Delays in the issuance of a necessary
7 permit which was timely applied for; or

8 (b) Judicial review of the issuance, non-
9 issuance, or re-issuance of a necessary permit; or

10 (c) Other exceptional or extraordinary
11 circumstances.

12 Ecology shall give Shell written notice in a timely
13 fashion of any extension granted or denied pursuant to this
14 Order. Denial of a request for an extension shall be subject
15 to Section V, **Resolution of Disputes**.

16 **N. Transference of Property.** No voluntary or
17 involuntary conveyance or relinquishment of title, easement,
18 leasehold, or other interest in any portion of the Site shall
19 be consummated by Shell without provision for continued
20 implementation of all requirements of this Order and
21 implementation of any remedial actions found to be necessary
22 as a result of this Order.

23 **O. Compliance with Other Applicable Laws.** All actions
24 carried out by Shell pursuant to this Agreed Order shall be
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1 done in accordance with all applicable federal, state and
2 local government rules and regulations.

3 **VI. SATISFACTION OF THIS ORDER**

4 The provisions of this Order shall be deemed satisfied
5 upon Shell's receipt of written notification from Ecology that
6 Shell has completed the remedial activity required by this
7 Order, as amended by any agreed modifications, and that all
8 other provisions of this Agreed Order have been complied with.
9 This notice shall issue upon completion of work identified in
10 paragraph IV and payment under V(c).

11 **VII. ENFORCEMENT**

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

14 1. The Attorney General may bring an action to
15 enforce this Order in state or federal court.

16 2. The Attorney General may seek, by filing an
17 action, if necessary, to recover amounts spent by Ecology
18 for investigative and remedial actions and orders related
19 to the Site.

20 3. In the event Shell refuses, without sufficient
21 cause, to comply with any term of this Order, Shell will
22 be liable for:

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(a) Up to three 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 \$25,000 per day for each day it refuses to comply.

4. 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.

VIII. EFFECTIVE DATE

Effective date of this Order: June 18, 1992.

SHELL OIL COMPANY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: *S.M. Oates*

By: *Michael J. Gallagher*

Date: *4/16/92*

Date: *June 18, 1992*

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