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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:)	
)	AGREED ORDER
Texaco Refining & Marketing Inc.)	
2555 - 13th Avenue SW)	No. DE <u>92 TC-N160</u>
Seattle, WA 98134)	

I. JURISDICTION

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

II. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by Texaco Refining and Marketing Inc. (TRMI).

A. TRMI is the owner and operator of a petroleum storage and marketing terminal and lube oil bulk plant (TRMI Facility) located at 2555 13th Avenue S.W. on Harbor Island.

B. Spills of hydrocarbons such as diesel have occurred at the TRMI Facility. TRMI conducted interim actions to address the spills; however, there is still a threatened release from residual substances. The following spills have been reported to Ecology:

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1 1. Texaco letter to Ecology dated 10/14/91 reports
2 approximately 3052 gallons of diesel spilled to the ground on
3 8/31/91. Vacuumed free product and excavated approximately 40
4 cubic yards of soil.

5 2. Texaco letter to Ecology dated 3/5/91 reports
6 approximately 10 gallons of cutter oil spilled to Elliott Bay
7 on 12/29/90. Vacuum truck pumped approximately 1100 gallons
8 of oily water.

9 3. Texaco letter to Ecology dated 1/28/91 reports
10 approximately 200 gallons of diesel spilled to Elliott Bay on
11 1/11/91. Vacuum truck pumped approximately 900 gallons of
12 diesel and water and excavated approximately 10 cubic yards of
13 soil.

14 4. Ecology Inspection Report dated 6/13/89 refers
15 to release of oily substance from oil compressor to the
16 ground.

17 5. Ecology Inspection Report dated 6/10/87 refers
18 to underground diesel tank near maintenance shop that was
19 found to have leaked.

20 6. Groundwater Technology Report dated 6/4/86
21 noted product found in monitoring wells and approximately 2550
22 gallons of product recovered from the North Farm site.

23 7. Groundwater Technology letter to Texaco dated
24 8/7/86 reports approximately 20-25 gallons of product

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1 recovered during each pumping episode at the North Farm
2 Terminal.

3 8. Ecology Preliminary Assessment Summary

4 Memorandum Revised 05/07/85 reports approximately 20,000
5 gallons of Avjet fuel spilled on 5/17/78 in the North Tank
6 Farm, of which half was recovered; approximately 10,000
7 gallons #2 diesel fuel spilled in 1980; approximately 1134
8 cubic feet of leaded tank bottoms were landfilled on site in
9 1965.

10 C. Data collected as part of the United States
11 Environmental Protection Agency's Superfund investigation of
12 all Harbor Island has identified lead, cadmium, arsenic,
13 copper, zinc, PAHs and PCBs in the soil and/or groundwater.
14 The following substances were discovered in the soil and/or
15 groundwater at the TRMI facility: arsenic, chromium, lead,
16 toluene, ethylbenzene, and xylene. The source of these
17 hazardous substances is unclear, but their presence creates a
18 threat to human health or the environment.

19 III. ECOLOGY DETERMINATIONS

20 A. TRMI is an "owner or operator" as defined at RCW
21 70.105D.020(6) of a "facility" as defined in RCW
22 70.105D.020(3).

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1 and that these actions be conducted in accordance with ch.
2 173-340 WAC, unless otherwise specifically provided herein.
3 These actions are more specifically described in the Scope of
4 Work attached as Exhibit A and hereby incorporated by
5 reference as an enforceable part of this Agreed Order.

- 6 A. Task 1: Project Planning
- 7 B. Task 2: Field Investigation
- 8 C. Task 3: Sampling and Analysis Validation
- 9 D. Task 4: Data Evaluation
- 10 E. Task 5: Final report on the Remedial Investigation
- 11 F. Task 6: Feasibility Studies/Risk Assessment

12 V. **TERMS AND CONDITIONS OF ORDER**

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

16 B. Public Notices. RCW 70.105D.030(2)(a) requires
17 that, at a minimum, this Order be subject to concurrent public
18 notice. This Agreed Order is subject to a 30-day public
19 comment period before the Order becomes effective. WAC 173-
20 340-600(10)(c). Ecology shall be responsible for providing
21 such public notice and reserves the right to modify or
22 withdraw any provisions of this Order should public comment
23 disclose facts or considerations which indicate to Ecology
24 that the Order is inadequate or improper in any respect.

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1 C. Public Participation. Ecology shall maintain the
2 responsibility for public participation at the Site. TRMI
3 shall assist Ecology in preparing and updating the public
4 participation plan for the Site. TRMI shall help coordinate
5 and implement public participation for the Site, but reserves
6 the right to issue its own statements on this Site and the
7 Order.

8 D. Remedial Action Costs. TRMI agrees to pay to
9 Ecology costs incurred by Ecology pursuant to this Agreed
10 Order in accordance with ch. 70.105D RCW and ch. 173-340 WAC.

11 These costs shall include work performed by Ecology or
12 its contractors for investigations, remedial actions, and/or
13 preparation, negotiations, oversight and administration.
14 Ecology costs shall include costs of direct activities and
15 agency indirect costs of direct activities (e.g., employee
16 salary, laboratory costs, travel costs, contractor fees, and
17 employee benefit packages.) TRMI agrees to pay the required
18 amount within 90 days of receiving from Ecology an itemized
19 statement of costs that includes a summary of costs incurred,
20 an identification of involved staff, and the amount of time
21 spent by involved staff members on the project. General
22 description of work performed shall be provided upon request.
23 Itemized statements shall be provided quarterly. Failure to
24 pay Ecology's costs within 90 days of receipt of the itemized

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1 statement of costs may result in interest charges. Disputes
2 of remedial action costs shall be decided using the process
3 described in Section V.I., Dispute Resolution.

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

6 Nnamdi Madakor
7 Washington Department of Ecology
8 Toxic Cleanup Section
9 Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
(206) 649-7000

10 The project coordinator for TRMI is:

11 Glenn R. Anderson
12 Texaco Inc. EHS Division
13 10 Universal City Plaza
Suite 830 (818)505-2680
Universal City, CA 91608-1097

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

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1 F. Performance. All work performed pursuant to this
2 Order shall be under the direction and supervision, as
3 necessary, of a professional engineer or hydrogeologist, or
4 similar expert, with appropriate training, experience and
5 expertise in hazardous waste site investigation and cleanup.
6 TRMI shall notify Ecology as to the identity of such
7 engineer(s) or hydrogeologist(s), and of any contractors and
8 subcontractors to be used in carrying out the terms of this
9 Order, in advance of their involvement at the Site.

10 Except when necessary to abate an emergency situation,
11 TRMI shall not perform any remedial actions at the Site
12 outside that required by the Order, unless Ecology concurs in
13 writing with such additional remedial actions.

14 G. Access. Ecology or any Ecology authorized
15 representative shall have the authority to enter and freely
16 move about the Site at all reasonable times for the purposes
17 of: inspecting records, operation logs, and contracts related
18 to the work being performed pursuant to this Order; reviewing
19 the progress in carrying out the terms of this Order;
20 conducting such tests or collecting samples related to this
21 Order as Ecology or the project coordinator may deem
22 necessary; using a camera, sound recording, or other
23 documentary type equipment to record work done pursuant to
24 this Order; and verifying the data submitted to Ecology by

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1 TRMI. By signing this Agreed Order, TRMI agrees to allow
2 access to the Site at all reasonable times for purposes of
3 overseeing work performed under this Order. Each party shall
4 allow split or replicate samples to be taken by the other and
5 shall provide seven (7) days' notice before any sampling
6 activity.

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

13 Should any portion of the work performed hereunder be
14 undertaken through contractors or agents of TRMI, then TRMI
15 agrees to include in their contract with such contractors or
16 agents a record retention requirement meeting the terms of
17 this paragraph.

18 I. Dispute Resolution. TRMI may request Ecology to
19 resolve disputes which may arise during the implementation of
20 this Order. Such request shall be in writing and directed to
21 the Project Coordinator. If the Project Coordinators cannot
22 resolve the difference of opinion to any matter within ten
23 (10) days, the dispute shall be subject to the following
24 provisions of this section.

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1 If the Project Coordinators are unable to reach agreement
2 within ten (10) days of submission of a written statement of
3 dispute, TRMI shall submit to the Ecology Section Supervisor
4 the dispute in writing within ten (10) days after receipt of
5 the Project Coordinator's response. The Section Supervisor
6 shall provide to TRMI Ecology's written decision and
7 explanation on the pending dispute.

8 Ecology resolution of the dispute shall be binding and
9 final. TRMI is not relieved of any undisputed requirement of
10 this Order during the pendency of the dispute and remains
11 responsible for timely compliance with the undisputed terms of
12 the Order unless otherwise provided by Ecology in writing.

13 J. Reservation of Rights/No Settlement. This Agreed
14 Order is not a settlement under ch. 70.105D RCW. Ecology's
15 signature on this Order is no way constitutes a covenant not
16 to sue or a compromise of any Ecology rights or authority.
17 Ecology will not, however, bring an action against TRMI to
18 recover remedial action costs paid to and received by Ecology
19 under this Agreed Order. In addition, Ecology will not take
20 additional enforcement actions against TRMI to require those
21 remedial actions required by this Agreed Order, provided TRMI
22 complies with this Agreed Order. Ecology reserves the right,
23 however, to require additional remedial actions at the Site by
24 separate Order or by agreed modification to this Order should

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1 it deem such actions necessary. Ecology also reserves all
2 rights regarding the injury to, destruction of, or loss of
3 natural resources resulting from the releases or threatened
4 releases of hazardous substances at the Site.

5 K. Amendment to Agreed Order. In the event that
6 environmental conditions unknown to the parties at the time
7 this Agreed Order is executed become known and may reasonably
8 require further investigation not covered by this Agreed
9 Order, the parties will negotiate in good faith to resolve
10 such issue.

11 Ecology and TRMI may modify this Agreed Order by mutual
12 written agreement. Any requests by TRMI for modification
13 shall be directed to the Ecology project manager. Ecology
14 will promptly consider any requests by TRMI for such
15 modification.

16 L. Endangerment. In the event Ecology determines that
17 conditions at the Site are creating or have the potential to
18 create a danger to the health or welfare of the people on the
19 Site or in the surrounding area or to the environment, Ecology
20 may order TRMI to stop further implementation of this Order
21 for such period of time as needed to abate the danger.

22 Conversely, if TRMI determines that conditions at the
23 Site are creating or have the potential to create danger to
24 the health and welfare of the people on the Site or in the

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1 surrounding area or to the environment, TRMI has the right to
2 cease implementation of this Order. If the conditions at the
3 Site do not appear to present, or have the potential to
4 present an immediate danger to life, health, and/or the
5 environment, then TRMI must notify Ecology of the decision to
6 cease activities 24 hours prior to stopping work. However, if
7 conditions at the Site present, or have the potential to
8 present, an immediate danger to life, health, and/or the
9 environment, then TRMI may cease activities at the Site
10 without delay. TRMI must inform Ecology of this decision
11 within 24 hours from the time it was made. In either case,
12 Ecology will evaluate the situation to determine the magnitude
13 of the danger and whether or not a period of work stoppage is
14 needed to abate the danger. Ecology will notify TRMI when
15 implementation of the Order shall be resumed.

16 M. Extension of Schedule.

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

20 2. An extension may be granted only when a request
21 for an extension is submitted by TRMI in a timely fashion
22 and good cause exists for granting the extension. All
23 extensions shall be requested in writing. The request
24 shall specify the reason(s) the extension is needed. The

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1 extension shall only be granted for such period of time
2 as Ecology determines is reasonable under the
3 circumstances. A requested extension shall not be
4 effected until approved by Ecology in writing. Ecology
5 shall act upon all written requests for extension in a
6 timely fashion and shall endeavor to so act within five
7 (5) working days.

8 3. The burden shall be on TRMI to demonstrate that
9 the request for extension has been submitted in a timely
10 fashion and that good cause exists for granting the
11 extension. Consent to a request for an extension shall
12 not be unreasonably withheld. Good cause shall mean
13 reasons acceptable to a reasonably prudent person under
14 the same or similar circumstances and includes but is not
15 limited to the following:

16 (a) Circumstances beyond the reasonable
17 control and despite the due diligence of TRMI,
18 including delays caused by third parties or Ecology,
19 such as (but not limited to) delays by Ecology in
20 reviewing, approving or modifying documents
21 submitted by the Respondents and inability to obtain
22 access to property not owned or controlled by
23 Respondents;

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1 (b) Delays that are directly attributable to
2 any changes in permit terms or conditions or refusal
3 to grant a permit needed to implement the
4 requirements of this Order, if TRMI filed the timely
5 application for the necessary permit;

6 (c) Acts of God, fire, flood, blizzard,
7 extreme temperatures, or any other unavoidable
8 casualty; and

9 (d) Endangerment as described in section M.
10 However, neither increased cost or performance of
11 the terms of the Order nor changed economic
12 circumstances may be considered circumstances beyond
13 the reasonable control of TRMI.

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

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

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

21 (c) Other exceptional or extraordinary
22 circumstances.

23 Ecology shall give TRMI written notice in a timely
24 fashion of any extension granted or denied pursuant to this

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1 Order. Denial of a request for an extension shall be subject
2 to Section V, **Resolution of Disputes**.

3 N. Transference of Property. No voluntary or
4 involuntary conveyance or relinquishment of title, easement,
5 leasehold, or other interest in any portion of the Site shall
6 be consummated by TRMI without provision for continued
7 implementation of all requirements of this Order and
8 implementation of any remedial actions found to be necessary
9 as a result of this Order.

10 Prior to transfer of any legal or equitable interest TRMI
11 may have in the Site or any portions thereof, TRMI shall serve
12 a copy of this Order upon any prospective purchaser, lessee,
13 transferee, assignee, or other successor in such interest.
14 least thirty (30) days prior to finalization of any transfer,
15 TRMI shall notify Ecology of the contemplated transfer.

16 O. Compliance with Other Applicable Laws. All actions
17 carried out by TRMI pursuant to this Order shall be done in
18 accordance with all applicable federal, state and local
19 governments' rules and regulations.

20 VI. **SATISFACTION OF THIS ORDER**

21 The provisions of this Order shall be deemed satisfied
22 upon TRMI's receipt of written notification from Ecology that
23 TRMI has completed the remedial activity required by this
24 Order, as amended by any agreed modifications, and that all

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1 other provisions of this Agreed Order have been complied with.
2 This notice shall issue upon completion of work identified in
3 Paragraph IV and payment under V(3).

4 **VII. ENFORCEMENT**

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

7 1. The Attorney General may bring an action to
8 enforce this Order in a state or federal court.

9 2. The Attorney General may seek, by filing an
10 action, if necessary, to recover amounts spent by Ecology
11 for investigative and remedial actions and orders related
12 to the Site.

13 3. In the event TRMI refuses, without sufficient
14 cause, to comply with any term of this Order, TRMI will
15 be liable for:

16 (a) up to three times the amount of any costs
17 incurred by the state of Washington as a result of
18 its refusal to comply; and

19 (b) civil penalties of up to \$25,000 per day
20 for each day it refuses to comply.

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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.

Effective date of this Order: July 15, 1992

TEXACO REFINING AND
MARKETING INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Law

By: C.T. Walz
C. T. WALZ

T4:texaco ao

By: Michael J. Gallagher

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