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**AGREED ORDER**

**CHEVRON/PORT OF SEATTLE FACILITY AT TERMINAL 30**

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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

PORT OF SEATTLE, WASHINGTON,

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AGREED ORDER

I. JURISDICTION

This Agreed Order ("Order") is issued by the Washington Department of Ecology ("Ecology"), pursuant to the authority of RCW 70.105D.050(1). The Port of Seattle ("Port"), has requested, pursuant to WAC 173-340-510(2)(b), the issuance of this Agreed Order. The Port agrees to undertake the actions required by the terms of this Order, and consents to and will not contest or challenge the jurisdiction of Ecology to issue this Order.

II. PARTIES

The parties to this Order are the Washington Department of Ecology ("Ecology") and the Port of Seattle ("Port").

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1 Environmental Response, Compensation and Liability Act  
2 ("CERCLA"), 42 U.S.C. Section 9605.

3 3. The Site was purchased on January 2, 1985, from  
4 Chevron. While the Site was owned by Chevron, it was operated  
5 by Chevron as a bulk storage and transfer facility for  
6 petroleum products, including but not limited to leaded and  
7 unleaded gasoline, diesel oil and heating oil. Chevron had so  
8 used the Site since the early 1900s.

9 4. The bulk storage and transfer facility included many  
10 large above-ground petroleum storage tanks, and associated  
11 piping and equipment. Leaks, spills and other discharges and  
12 releases of petroleum from the tanks, piping and equipment  
13 resulted in the presence of free petroleum product ("free  
14 product") which floats on the water table, petroleum product  
15 that coats soil particles, and dissolved components of  
16 petroleum product in ground water. Chevron removed the tanks  
17 and much of the piping during 1984 and 1985, under terms of a  
18 deed for sale of the Site to the Port, but left the free  
19 product in the ground and groundwater. Chevron in 1984 began  
20 the installation of monitoring wells to determine the location  
21 and amounts of free product, and the Port completed the  
22 monitoring well system.

23 5. On June 6, 1985, the Port reached an agreement with  
24 Ecology (the "original agreement," copy attached as Exhibit B)  
25 that established "completion criteria" under which the Port

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1 would be permitted to cease daily operation of the recovery  
2 well systems installed at the Site between March 1984 and  
3 January 1988. Subject to the original agreement, the Port of  
4 Seattle had undertaken and continues to operate a program of  
5 recovery and recycling, via pumping and other measures, of the  
6 free product, and monitoring of the progress of the recovery.  
7 Ecology has agreed that the recovery system will be shut down  
8 to allow the groundwater conditions to stabilize in a state  
9 undisturbed by the pumping process when the product recovery  
10 rate is equal to or less than 1.0 gallons/day/well (30 day  
11 average). Individual wells may be shut down if recovery in  
12 that well meets the 1.0 gallon/day criteria. This  
13 stabilization is necessary for a proper characterization of  
14 the groundwater and soil conditions.

15 6. The Port of Seattle has at all times been in  
16 compliance with the terms of the original agreement. The Port  
17 has regularly reported to Ecology on the progress of the  
18 cleanup actions undertaken by it under the terms of the  
19 original agreement.

20 7. The volume of free product recovered during October  
21 1990 from the soils above the groundwater underlying the Site  
22 has declined to an average of slightly more than one gallon  
23 per day per recovery well.

24 8. Conditions that exist at and on properties adjacent  
25 to the north and east boundaries of the Site may have or

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1 presently be resulting in releases of hazardous substances  
2 onto and into the soils and ground water of the Site.  
3 Additional studies will be undertaken under this Order as part  
4 of the RI/FS to determine the possibility and character of any  
5 such releases of hazardous substances from such properties to  
6 the Site.

7 9. Ecology has determined that the provisions of the  
8 Model Toxics Control Act, ch. 70.105D RCW, and regulations  
9 adopted thereunder at ch. 173-340 WAC, now require additional  
10 study and possibly cleanup work at the Site beyond that  
11 originally agreed to between Ecology and the Port. Ecology  
12 has based its determination upon the information available to  
13 the agency concerning site conditions, including reports from  
14 the Port.

15 IV. ECOLOGY DETERMINATIONS

16 1. The Site is a "facility" as defined in RCW  
17 70.105D.020(3).

18 2. The Site has been incompletely identified on the  
19 Hazardous Sites List as "Port of Seattle -- Terminal 30," and  
20 the listing will be revised to read "Chevron/Port of Seattle."

21 3. The Port of Seattle is the present "owner and  
22 operator" of the Site, within the meaning of RCW  
23 70.105D.020(6). Chevron was the "owner and operator" within  
24 the meaning of RCW 70.105D.020(6) from the early 1900s to  
25 1985.

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1           4.    The free petroleum products in affected media at the  
2 Site are "hazardous substances" within the meaning of RCW  
3 70.105D.020(5)(b) and WAC 173-340-200(19).

4           5.    The presence of free petroleum products in affected  
5 media at the Site constitutes a "release" of a "hazardous  
6 substance" within the meaning of RCW 70.105D.020(10).

7           6.    By a letter of February 1, 1991, the Port of Seattle  
8 voluntarily waived its rights to notice and comment and  
9 accepted Ecology's determination that the Port of Seattle is a  
10 "potentially liable person" under RCW 70.105D.040.

11           7.    Pursuant to RCW 70.105D.030(1) and .050, Ecology may  
12 require potentially liable persons to investigate or conduct  
13 remedial actions with respect to the release or threatened  
14 release of hazardous substances.

15           Based on the foregoing facts and in the best interests of  
16 the public, Ecology has determined that the Port must  
17 undertake additional remedial investigation actions and a  
18 feasibility study of remedial alternatives for the Site,  
19 consistent with RCW 70.105D.030(1)(a) and WAC 173-340-350, as  
20 set forth below. Ecology has determined that the Port will  
21 not be deemed to be in violation of the original agreement  
22 when it shuts the recovery system down in accordance with the  
23 schedule in the Work Plan. The Port and Ecology agree that  
24 this Agreed Order supersedes the original agreement and the  
25 original agreement is no longer effective.

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1 V. WORK TO BE PERFORMED

2 Based on the foregoing Findings of Fact and  
3 Determinations, it is hereby Ordered and Agreed that the Port  
4 of Seattle will perform the remedial action set forth below.  
5 The required remedial action is more fully described in the  
6 Work Plan and schedule attached to this Order as Exhibit C.  
7 Exhibit C is incorporated by this reference and is an integral  
8 and enforceable part of this Agreed Order.

9 1. The Port has developed and submitted to Ecology for  
10 review and approval, and Ecology has approved, the Work Plan  
11 for a state remedial investigation and feasibility study  
12 ("State RI/FS") for the Site including a risk assessment, and  
13 the Work Plan comports with the requirements of  
14 WAC 173-340-350.

15 2. The Work Plan for the State RI/FS includes  
16 provisions for the collection, development and evaluation of  
17 such information as is required, consistent with WAC 173-340-  
18 350(5), to enable Ecology to determine and select an  
19 appropriate final remedy for the Site that comports with the  
20 requirements of WAC 173-340-360.

21 3. The Work Plan includes a sampling and analysis plan  
22 and a public participation plan which have been approved by  
23 Ecology. A safety and health plan has also been submitted to  
24 Ecology and the Department of Labor and Industries. The  
25 public participation plan incorporates notices and actions

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1 required to satisfy requirements of other laws, including the  
2 Shorelines Management Act and the State Environmental Policy  
3 Act, and the parties agree in good faith to consult with each  
4 other and take all appropriate steps to combine such public  
5 notice and comment periods and opportunities with respect to  
6 the work required under this Agreed Order.

7 4. The remedial investigation ("RI") to be conducted by  
8 the Port under the approved Work Plan includes the following  
9 elements:

10 a. General facility information, including  
11 information on past and present ownership and use of  
the Site.

12 b. Information on existing Site conditions,  
13 including a map depicting the physical setting,  
boundaries and improvements of the Site.

14 c. A description of field investigations to be  
15 conducted to determine the distribution of hazardous  
16 substances and the threats they may pose to human  
health and the environment.

17 d. Characterization of contamination of surface  
18 waters, ground water, and subsurface soils and  
strata at the Site.

19 e. Information on the potential impact of hazardous  
20 substances present at the Site on adjacent or  
21 on-site human populations that might be exposed, and  
information on the potential impact of hazardous  
22 substances at the Site on natural resources and  
ecology surrounding the Site.

23 f. A description of sources of hazardous substances  
24 within the Site, and possible sources of  
25 contamination from adjacent properties.  
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1           5.    The feasibility study ("FS") to be conducted by the  
2 Port under the approved Work Plan includes the following  
3 elements:

4           a.    An evaluation of an appropriate range of  
5 remedial alternatives that are protective of human  
6 health and the environment, including actions that  
7 address pathways of exposure to hazardous substances  
emanating from the Site and which will, as deemed  
necessary, eliminate, reduce or monitor potential  
risks posed by such hazardous substances.

8           b.    Identification of and provisions for meeting  
9 cleanup standards including applicable, relevant and  
appropriate provisions of state, federal and local  
10 law.

11           c.    Description of short- and long-term  
12 effectiveness of the proposed remedial action  
alternatives.

13           d.    Review of the degree to which each proposed  
14 alternative will involve permanent reduction in the  
15 toxicity, mobility and volume of such hazardous  
substance, and the degree to which recycling, re-use  
and waste minimization are employed in each  
alternative.

16           e.    The technical practicability, and technical  
17 feasibility, including the cost of each such  
18 alternative (both present and future direct and  
19 indirect capital, operation and maintenance costs)  
and the additional degree to which risks posed by  
the Site would be reduced by additional  
expenditures.

20           6.    The Port agrees to provide to Ecology quarterly  
21 written progress reports detailing actions taken during the  
22 previous quarter, data collected or received during the  
23 previous quarter, and dates for completion of the uncompleted  
24 elements of work required under the Work Plan.

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7. The Port agrees to undertake the State RI/FS consistent with the Work Plan and this Order. The State RI/FS to be performed by the Port under this Order shall also be consistent with the requirements of WAC 173-340-350.

8. The Port agrees to deliver to Ecology the following documents, according to the following schedule:

Deliverable	Date
Draft RI/FS to Ecology for review and comment	570 days after effective date of Agreed Order
Final RI/FS to Ecology for review and comment	60 days after receipt of Ecology comments on the Draft RI/FS

This schedule will be extended if the rate of product recovery on the site does not fall below 1.0 gallons/day/well as expected. However, the schedule will not be extended by more than six (6) months, unless both parties agree that more time will result in greater environmental protection.

9. In the event that Ecology disapproves any submission made by the Port under the schedule set forth above, Ecology agrees that the detailed basis for its disapproval, and its requirements for modification of the submission, shall be submitted to the Port in writing.

1 VI. TERMS AND CONDITIONS OF ORDER

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

5 B. Public Notices. RCW 70.105D.030(2)(a) requires that,  
6 at a minimum, this Order shall be subject to concurrent public  
7 notice. Ecology shall be responsible for providing such  
8 public notice and reserves the right to modify or withdraw any  
9 provisions of this Order should public comment disclose facts  
10 or considerations which indicate to Ecology that the order is  
11 inadequate or improper in any respect. See public  
12 participation plan in Section V.

13 C. Remedial Action Costs. The Port agrees to pay to  
14 Ecology costs incurred by Ecology pursuant to this Agreed  
15 Order. These costs shall include work performed by Ecology or  
16 its contractors for investigations, remedial actions, and  
17 Order preparation, negotiations, oversight and administration.  
18 Ecology costs shall include costs of direct activities; e.g.,  
19 employee salary, laboratory costs, contractor fees, and  
20 employee benefit packages; and agency indirect costs of direct  
21 activities. The Port agrees to pay the required amount within  
22 90 days of receiving from Ecology an itemized statement of  
23 costs that includes a summary of costs incurred, a description  
24 of work performed, an identification of involved staff, and  
25 the amount of time spent by involved staff members on the

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1 project. Failure to pay Ecology's costs within 90 days of  
2 receipt of the itemized statement of costs may result in  
3 interest charges. In the event of a dispute over the amount  
4 of such claimed costs, the dispute shall be resolved in  
5 accordance with paragraph H below. In the event that the  
6 dispute is finally resolved in favor of Ecology and that such  
7 resolution occurs more than 90 days after submission of the  
8 original itemized statement and documentation, Ecology may  
9 seek recovery of interest charges.

10 Payment shall be in the form of a certified or cashier's  
11 check payable to the State of Washington -- State Toxics  
12 Control Account, and shall be delivered to:

13 Washington Department of Ecology  
14 Post Office Box 5128  
Olympia, Washington 98504-5128

15 The Port may seek such reimbursement of its costs from  
16 other PLPs as is available under law.

17 In the event that the compensation, benefits, or other  
18 costs associated with Ecology's project coordinator's  
19 oversight of the performance of the Port under this agreed  
20 order is being paid by the Port under an interagency agreement  
21 or other agreement with Ecology, Ecology agrees that it will  
22 not include, in any request for reimbursement of costs under  
23 this order, a request for any such compensation, benefits or  
24 other costs, that will be paid by the Port under the  
25 interagency agreement or other agreement.

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1           D. Project Coordinators and Communications. The project  
2 coordinator for Ecology is:

3           Name:       Glynis Carrosino  
4           Address: 3190 - 160th Avenue S.E.  
5                        Bellevue, WA 98008-5452

6           Telephone number: (206) 649-7263

7           The project coordinator for the Port is:

8           Name:       David Aggerholm  
9           Address:    Port of Seattle  
                      2201 Alaskan Way  
                      Seattle, WA 98111

10          Telephone number: (206) 728-3000

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

21          E. Performance. All work performed pursuant to this  
22          Order shall be under the direction and supervision, as  
23          necessary, of a professional engineer or hydrogeologist, or  
24          similar expert, with appropriate training, experience and  
25          expertise in hazardous waste Site investigation and cleanup.

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1 The Port shall notify Ecology as to the identity of such  
2 engineer(s) or hydrogeologist(s), and of any contractors and  
3 subcontractors to be used in carrying out the terms of this  
4 Order, in advance of their involvement at the Site.

5 F. Access. Ecology or any Ecology authorized  
6 representatives shall have the authority, subject to WAC 173-  
7 340-800, to enter and freely move about the site at all  
8 reasonable times for the purposes of, inter alia: inspecting  
9 records, operation logs, and contracts related to the work  
10 being performed pursuant to this Order; reviewing the progress  
11 of the Port in carrying out the terms of this Order;  
12 conducting such tests or collecting such samples as Ecology or  
13 Ecology's project coordinator may deem necessary; using a  
14 camera, sound recording, or other similar equipment to record  
15 work done pursuant to this Order; and verifying the data  
16 submitted by the Port to Ecology. The Port agrees, by signing  
17 this Order, to waive the requirements of WAC 173-340-800(1)  
18 regarding notice prior to access by Ecology, and acknowledges  
19 the authority of Ecology to have access to the Site at all  
20 reasonable times for purposes of overseeing the work to be  
21 performed under this Order and verify the investigations and  
22 other remedial actions being performed by the Port. The  
23 parties recognize, however, that the Site is part of an active  
24 operating marine terminal on which heavy loads of shipping  
25 containers are being moved and stored. Operations at the

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1 terminal are being carried out by lessees of the Port and not  
2 by the Port itself. Access to various areas of the Site may  
3 be inhibited for brief periods due to the storage of container  
4 stacks or other aspects of the lessee's operations. Ecology  
5 agrees, consistent with WAC 173-340-800(4), to take reasonable  
6 precautions to avoid disrupting the ongoing operations at the  
7 Site and to abide by all state and federal health and safety  
8 requirements which Ecology determines to be applicable.

9 Ecology also agrees that, except in the event of an emergency,  
10 it will check in with the Port either by phone or in person at  
11 the Port's offices at Pier 66 and, if the Port requests,  
12 accept an escort to accompany the Ecology personnel or Ecology  
13 authorized representative on Site. Ecology shall allow the  
14 Port to take split or replicate samples of any Ecology samples  
15 taken during an inspection unless so doing would interfere  
16 with Ecology's sampling. The Port shall give Ecology seven  
17 (7) days' notice before any Port sampling activity and shall  
18 allow Ecology to collect split or replicate samples.

19 G. Retention of Records. The Port shall preserve in a  
20 readily retrievable fashion, during the pendency of this  
21 Agreed Order and for a period of ten (10) years from the date  
22 of completion of the work performed pursuant to this Order,  
23 all records, reports, documents, and underlying data in its  
24 possession relevant to this Order. Should any portion of the  
25 work performed hereunder be undertaken through contractors or

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1 agents of the Port, then the Port agrees to include in their  
2 contract with such contractors or agents a record retention  
3 requirement meeting the terms of this paragraph.

4 H. Dispute Resolution. In the event that disputes arise  
5 between the Port and Ecology during the implementation of this  
6 Order with respect to any matter within the scope of this  
7 Order, the parties agree in good faith to attempt to achieve  
8 informal resolution of such disputes. Either party may  
9 initiate the informal dispute resolution process. In the  
10 event that informal discussions between the parties do not  
11 result in agreement, either party may invoke a formal dispute  
12 resolution process by making a written request to the other  
13 party. Ecology agrees to maintain a Site File which shall  
14 contain such materials as each party identifies as appropriate  
15 for consideration by Ecology in resolution of the dispute.  
16 The Port shall have a period of ten (10) calendar days from  
17 the invocation of formal dispute resolution to submit  
18 materials for inclusion in the Site File to be considered by  
19 Ecology. Ecology agrees to make a prompt determination with  
20 respect to any dispute under this formal process, and to  
21 document its determination in writing, stating the reasons for  
22 its determination. Ecology's Program Manager for the Toxics  
23 Cleanup Program shall make this final determination. The Port  
24 is not relieved of any requirement of this order during the  
25 pendency of the dispute and remains responsible for timely

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1 compliance with the terms of the Order unless otherwise agreed  
2 in writing by Ecology.

3 I. Reservation of Rights/No Settlement. This Agreed  
4 Order is not a settlement under ch. 70.105D RCW. Ecology's  
5 signature on this Order in no way constitutes a covenant not  
6 to sue or a compromise of any Ecology rights or authority with  
7 respect to the Site. Ecology will not, however, bring an  
8 action against the Port to recover remedial action costs paid  
9 to and received by Ecology under this Agreed Order. In  
10 addition, Ecology will not take additional enforcement actions  
11 against the Port to require those remedial actions required by  
12 this Agreed Order, provided that the Port complies with this  
13 Agreed Order. Ecology reserves the right, however, to require  
14 additional remedial actions at the Site should it deem such  
15 actions necessary.

16 In the event that Ecology determines that conditions at  
17 the Site are creating or have the potential to create a danger  
18 to the health or welfare of the people on the Site or in the  
19 surrounding area or to the condition of the environment,  
20 Ecology may order the Port to stop further implementation of  
21 this Order for such period of time as is needed to abate the  
22 danger. Any halting of activities required of the Port under  
23 this Order in response to an order of Ecology shall not  
24 constitute a violation of the requirements of this Order.

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1           J. Transfer of Property. No voluntary or involuntary  
2 conveyance or relinquishment of title, easement, leasehold or  
3 other interest in any portion of the Site shall be consummated  
4 by the Port without provision for continued implementation of  
5 all requirements of this Order and implementation of any  
6 remedial actions found to be necessary under this Agreed  
7 Order. Prior to transfer of any legal or equitable interest  
8 that the Port may have in the Site, or any portion thereof,  
9 the Port shall serve a copy of this Agreed Order upon any  
10 prospective purchaser, lessee, transferee, assignee or other  
11 successor in such interest. At least thirty (30) days prior  
12 to closure of any such transfer, the Port shall notify Ecology  
13 of such contemplated transfer.

14           K. Compliance with Other Applicable Laws. All actions  
15 carried out by the Port pursuant to this Order shall be done  
16 in accordance with all applicable federal, state and local  
17 requirements.

18           L. Modification. Ecology and the Port may modify this  
19 Order by mutual written agreement.

20                           VII. SATISFACTION OF THIS ORDER

21           The provisions of this Order shall be deemed satisfied  
22 upon the Port's receipt of written notice from Ecology that  
23 the Port has completed the remedial activity required by this  
24 Order, as amended by any modifications, and that all other  
25 provisions of this Agreed Order have been complied with.

26           AGREED ORDER - 18

1 Ecology agrees to promptly review all submissions made by the  
2 Port under this Order. The Port may make a written request  
3 that Ecology provide written notice of satisfaction, and  
4 Ecology agrees promptly to address any such request from the  
5 Port. Ecology further agrees that its written notice of  
6 satisfaction will not be unreasonably withheld.

7 VIII. ENFORCEMENT

8 1. Pursuant to RCW 70.105D.050, this Order may be  
9 enforced as follows:

10 A. The Attorney General may bring an action to enforce  
11 this Order in a court of competent jurisdiction.

12 B. The Attorney General may seek, by filing an action,  
13 if necessary, to recover amounts spent by Ecology for  
14 investigative and remedial actions and orders related to the  
15 Site.

16 C. In the event the Port refuses, without sufficient  
17 cause, to comply with any term of this Order, the Port will be  
18 liable for:

- 19 (1) up to three times the amount of any costs  
20 incurred by the state of Washington as a result  
21 of its refusal to comply; and  
22 (2) civil penalties of up to \$25,000 per day for  
23 each day it refuses to comply.

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1 D. This Order is not appealable to the Washington  
2 Pollution Control Hearings Board. This Agreed Order may be  
3 reviewed only as provided under RCW 70.105D.060.

4  
5 Effective date of this Order:

6  
7 Dated this 30th day of August 1991.

8  
9 Each person signing this Order affirms that he or she has the  
10 power to bind the party he or she represents to the terms of  
11 this order.

12  
13 PORT OF SEATTLE

STATE OF WASHINGTON DEPARTMENT  
OF ECOLOGY

14  
15 By 

By 

16 ~~Zeger L. van Ach von Wijk~~  
17 ~~Chief Executive Officer~~  
~~Port of Seattle~~

Michael Gallagher  
Toxics Cleanup Program  
Northwest Regional Office  
Department of Ecology

18 M. R. DINSMORE  
19 CHIEF OPERATING OFFICER  
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