

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Tesoro Logistics Operations LLC

AGREED ORDER

No. DE 12989

TO: Jeffrey M. Baker
Tesoro Companies, Inc.
3450 South 344th Way, Suite 201
Auburn, WA 98001-9540

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Tesoro Logistics Operations LLC (Tesoro) 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 Tesoro to conduct a supplemental remedial investigation (RI) at the former Chevron Pipe Line Company Pasco Bulk Terminal Site located at 2900 Sacajawea Park Road, Pasco, Franklin County, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. 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. Tesoro agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Tesoro's responsibility under this Order. Tesoro 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.

IV. DEFINITIONS

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

A. Site: The Site is referred to as the former Chevron Pipe Line Company Pasco Bulk Terminal Site and is generally located at 2900 Sacajawea Park Road, Pasco, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. Based upon factors currently known to Ecology, the

Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8). The Site's Facility Site ID No. is 55763995 and the Cleanup Site ID No. is 4867.

B. Parties: Refers to the State of Washington, Department of Ecology and the Tesoro Logistics Operations LLC (Tesoro).

C. Potentially Liable Person (PLP): Refers to Tesoro.

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.

V. FINDINGS OF FACT

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

A. The Pasco Bulk Fuel Terminal at 2900 Sacajawea Park Road, Pasco, Washington has operated as a bulk fuel terminal since September 1950. Chevron Pipeline Company (Chevron) reportedly purchased the Site from Chevron Marketing in 1995. The Tidewater Terminal Company operates pipelines at the Pasco Bulk Fuel Terminal.

B. In 1976, a release of 665 barrels or about 28,000 gallons of petroleum was reported at the Site. Since the 1976 release, Chevron documented 10 releases at the Site. Of these post-1976 releases, two were over 1,000 gallons.

C. Ecology's Toxics Cleanup Program conducted an initial investigation of the facility on December 12, 2000, and informed Chevron by letter dated December 12, 2000, that the facility would be listed on Ecology's hazardous sites database. Prior to the initial investigation, the facility was administered by Ecology's Water Quality Program.

D. Franklin County Health District completed a Site Hazard Assessment of the facility in August 2001. The facility received a hazard ranking of three on a scale of one to five with one being considered the greatest potential threat to human health and the environment.

E. Between 1986 and 2000 Chevron conducted various, phased remedial activities to remove petroleum hydrocarbons from the soil, groundwater and the vadose zone. These remedial activities included direct removal of soil containing petroleum hydrocarbons, skimming of phase-separated hydrocarbons in wells, bioventing, and air sparging. Since 2000, Chevron relied on monitored natural attenuation to reduce the concentration of dissolved-phase hydrocarbons in groundwater. While Chevron submitted groundwater monitoring data to Ecology, Chevron's groundwater monitoring and the other activities it performed were not done under Ecology's Voluntary Cleanup Program or under an administrative order.

F. Chevron has performed groundwater monitoring at the Site since 1983. Groundwater monitoring reports have been submitted at least annually through 2006. Phase-separated hydrocarbons have not been observed in any of the Chevron monitoring wells since 2003. In the four monitoring wells closest to the Snake River, dissolved-phase constituents related to petroleum hydrocarbons have been below Ecology Method A cleanup levels since July 2006, and have not been detected since 2007.

G. In July 2000, Tidewater reported a fuel line leak to Ecology. In September of 2000, after an initial investigation, Ecology sent a letter to Tidewater that informed Tidewater that Ecology believed that a release of hazardous substances had occurred at the Site and that Ecology intended to add the Tidewater property to its database of suspected hazardous waste sites. Franklin County Health District completed a Site Hazard Assessment of the release area in August 2001. The facility received a hazard ranking of three on a scale of one to five with one being considered the greatest potential threat to human health and the environment.

H. From 2000 to 2003, Tidewater conducted various remedial activities to remove petroleum hydrocarbons from the groundwater and vadose zone including free product pumping, vapor enhanced free product pumping, vadose zone vapor extraction, and air sparge/enhanced bioremediation skimming in groundwater. The active remedial activities were discontinued after free product removal was observed, asymptotic extraction levels were obtained, and monitoring

indicated plume stabilization and contraction (reduction in plume extent and concentration in groundwater).

I. Tidewater has performed groundwater monitoring at the Site since 2000. Post remediation sampling has shown removal of free product and reductions in lateral extent and concentration of petroleum hydrocarbons in groundwater.

J. On December 4, 2009, Ecology, Chevron, and Tidewater entered into Agreed Order No. 7294 that required Chevron and Tidewater to conduct a site-wide remedial investigation/feasibility study (RI/FS) at the former Chevron Pipe Line Company Pasco Bulk Terminal Site.

K. As part of the RI/FS, Chevron and Tidewater conducted further sampling of monitoring wells at the Site. One sampling event took place in June 2010 using existing Chevron and Tidewater monitoring wells and a second Site-wide sampling event took place in December 2010.

L. In October 2011, Chevron and Tidewater finalized the RI/FS report for the Site. The FS presented an evaluation of the chemicals identified in the RI, evaluated cleanup action alternatives, and recommended a preferred remedial alternative. The RI/FS's findings are as follows:

- Liquid phase petroleum hydrocarbons have been sufficiently removed and addressed at the Site based on analytical data from the June 2010 and December 2010 sampling events.
- Residual dissolved-phase petroleum hydrocarbons still remain on-site within localized areas. The lateral extent of the dissolved-phase plume has continued to decrease since active remedial actions were discontinued.

M. The RI/FS report was finalized in March 2012 after a 30-day public comment period. Ecology prepared a responsiveness summary to address the four comments received during the 30-day public review of the RI/FS report.

N. Tesoro purchased the Pasco Bulk Fuel Terminal from Chevron on June 19, 2013.

O. Sampling results from exploratory borings drilled in June 2015 and from routine groundwater monitoring which continued after the RI/FS report was finalized, demonstrated that historic releases and associated groundwater contamination plumes from the Tidewater portion of the site were separate, distinct, and not comingled with those releases and contamination associated with the portions of the Site owned by Tesoro (formerly Chevron).

P. In order to facilitate site cleanup and additional investigation, in July 2015 Ecology separated the Site into two distinct and unique sites. The Tesoro site, the former Chevron Pipe Line Company Pasco Bulk Terminal Site is the area associated with the former Chevron releases and related groundwater plumes. The other site, the Tidewater Fuel Line Leak Site, is the area associated with the Tidewater fuel line release and related groundwater plume (Exhibit A).

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Tesoro.

A. Tesoro is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology sent a preliminary PLP status letter to Tesoro dated October 17, 2013 pursuant to RCW 70.105D.040, .020(26), 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 Tesoro is a PLP under RCW 70.105D.040 and notified Tesoro of this determination by letter dated November 21, 2013

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require Tesoro 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.

VII. WORK TO BE PERFORMED

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

A. Tesoro will plan, implement, and report on the conduct of a supplemental Remedial Investigation (RI) for the former Chevron Pipe Line Company Pasco Bulk Terminal Site. Attached hereto as Exhibit B is a Scope of Work for the completion of a supplemental RI. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.

B. Tesoro will submit all necessary plans to implement the Scope of Work (Exhibit B) to Ecology for review and approval according to the Schedule of Deliverables included in Exhibit B. Within 30 days of the effective date of the Order, Tesoro shall submit a project plan consisting of a RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed for review and approval. In an effort to streamline the process, previously approved plans may be used to satisfy the requirements of this Order. Upon approval by Ecology, Tesoro will proceed with field implementation of the plans in accordance with an agreed upon schedule.

C. Plans shall include a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following tasks:

- a. **TASK I.** Project Plan including RI Work Plan, Sampling and Analysis Plan, and Health and Safety Plan.
- b. **TASK II.** Conduct RI Field Investigations.
- c. **TASK III.** Remedial Investigation/Feasibility Study Report.

These tasks and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing

regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

D. 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. Ecology will provide advance written notice of any decision to complete a deliverable.

E. If the Parties agree on an interim action under Section VI.E, Tesoro shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Tesoro shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Tesoro is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. Except where necessary to abate an emergency situation, Tesoro 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.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

Tesoro 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 RCW 70.105D, 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. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred, Tesoro 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.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Patrick Cabbage
4601 N Monroe St
Spokane, WA 99205-1295
(509) 329-3543

The project coordinator for Tesoro is:

Jeffrey M. Baker, P.E.
3450 South 344th Way, Suite 201
Auburn, WA 98001-9450
(253) 896-8708

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 Tesoro, 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.

C. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by 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 by 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 RCW 18.43 and 18.220.

Tesoro 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.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Tesoro 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 Tesoro'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 Tesoro. Tesoro shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Tesoro 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 Tesoro 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) and briefing(s), including reviewing and signing acknowledgement forms regarding compliance with such plan(s) and briefing(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Tesoro 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, Tesoro shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Tesoro pursuant to implementation of this Order. Tesoro shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Tesoro 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.E (Access), Ecology shall notify Tesoro 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

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

1. If agreed to by Ecology, develop appropriate mailing lists and 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 Tesoro 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 Tesoro that do not receive prior Ecology approval, Tesoro 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. Mid Columbia Library
1320 West Hopkins Street
Pasco, WA 99301-5097
- b. Ecology's Eastern Regional Office
4601 N Monroe St
Spokane, WA 99205-1295

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Eastern Regional Office in Spokane, Washington.

G. 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, Tesoro 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, Tesoro shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Tesoro may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Tesoro withholds any requested records based on an assertion of privilege, Tesoro shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that Tesoro elects to invoke dispute resolution Tesoro must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Tesoro has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve

the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; Tesoro's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. Tesoro may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. 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 Tesoro 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 Tesoro 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 Tesoro;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (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 Tesoro.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Tesoro 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.K (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.K (Endangerment).

J. 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.L (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 Tesoro. Tesoro 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.H(Resolution of Disputes).

K. Endangerment

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

In the event Tesoro determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, Tesoro may cease such activities. Tesoro 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, Tesoro shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Tesoro's cessation of activities, it may direct Tesoro to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Tesoro'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.I (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.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. 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 Tesoro to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Tesoro regarding remedial actions required by this Order, provided Tesoro complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, 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.

By entering into this Order, Tesoro does not admit to any liability for the Site. Although Tesoro is committing to conducting the work required by this Order under the terms of this Order, Tesoro expressly reserves all rights available under law, including but not limited to the right to

seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. 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 Tesoro 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 Tesoro's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Tesoro 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, Tesoro shall notify Ecology of said transfer. Upon transfer of any interest, Tesoro shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. All actions carried out by Tesoro 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), Tesoro is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Tesoro 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.

Tesoro 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 Tesoro 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 Tesoro shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Tesoro 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 Tesoro and on how Tesoro must meet those requirements. Ecology shall inform Tesoro in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Tesoro 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 Tesoro 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.

O. Land Use Restrictions

In consultation with Tesoro, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology, Tesoro shall record the Environmental (Restrictive) Covenant with the office of the Franklin County Auditor within ten (10) days of the completion of performance monitoring. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology and Tesoro. Tesoro shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

P. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as

a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

Q. Indemnification

Tesoro 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Tesoro, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Tesoro 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.

IX. SATISFACTION OF ORDER

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

X. 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. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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

2. 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: _____

Tesoro Logistics Operations LLC

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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