

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Texaco Inc., Shell Oil Company, Skagit  
County, and Washington State Department  
of Natural Resources.

AGREED ORDER

**Remedial Investigation/Feasibility Study  
and Draft Cleanup Action Plan – March  
Point Landfill, aka Whitmarsh Landfill Site**

No. DE-08TCPHQ-5999

TO: Texaco Inc.  
Attention: Soniya Ziegler  
6111 Bollinger Canyon Road  
San Ramon, CA 94583

Skagit County  
Attention: Gary Stoyka  
1800 Continental Place  
Mount Vernon, WA 98273

Shell Oil Company  
Attention: William E. Platt  
P.O. Box 2463  
Houston, TX 77252-2463

Washington State Department of Natural Resources  
Attention: Rich Doenges  
1111 Washington St SE  
Olympia, WA 98504-7001

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology), Shell Oil Company (Shell), Skagit County, Texaco Inc. (Texaco), and Washington State Department of Natural Resources (DNR) 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 Shell, Skagit County, Texaco, and DNR to conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing both upland and submerged land (i.e., adjacent marine sediment) contamination for the Site. 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. Shell, Skagit County, Texaco and DNR agree to undertake all actions required by the terms and conditions of this Order. Shell, Skagit County, Texaco and DNR intend to enter into an agreement to accomplish the work required under this Order. No change in ownership or corporate status shall alter Shell's, Skagit County's, Texaco's and DNR's responsibility under this Order. Shell, Skagit County, Texaco and DNR 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site (or Facility) is referred to as March Point Landfill (the Site), aka Whitmarsh Landfill, and is generally located at 9663 South March Point Road, Anacortes, Washington (County Assessor's Parcel Numbers: P19713, P19676, P19761, P19707 and P19684). The Snow Mountain Land Company (Snow Mountain), the Charles Moon Trust, Ralph Hillestead, and the State of Washington own the Site. Snow Mountain currently operates on Parcel Numbers P19713 and P19676. 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 more particularly described in **Exhibit A** to this Order, which includes a general site location map and a detailed site diagram. The Site includes both upland and submerged lands (i.e., adjacent marine sediment) as defined below. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington Department of Ecology, Texaco, Shell, Skagit County, and DNR.

C. Potentially Liable Persons (PLPs): As used in the Agreed Order, refers to Shell, Skagit County, Texaco and DNR. Ecology has named other entities as PLPs (Snow Mountain, the Charles Moon Trust, Ralph Hillestead) for this Site, who are not signatories to this Agreed Order.

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.

E. Upland Area: Refers to areas of the Site that fall outside the Submerged Land, as generally depicted in **Exhibit A**.

F. Submerged Land: Refers to the intertidal (between the line of ordinary high tide and the line of extreme low tide) and sub-tidal (below the line of extreme low tide) areas of the

Site, generally located on the southeasterly portions of the Site as generally depicted in **Exhibit A**.

## V. FINDINGS OF FACT

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

A. The Site is located adjacent to Padilla Bay and Padilla Bay Lagoon and northeast of South March Point Road in Anacortes, Washington. The address of the Site is 9663 South March Point Road in Anacortes, Skagit County, Washington (Skagit County Parcel Numbers: P19713, P19676, P19761, P19707 and P19684). The Upland Area of the Site consists of approximately 14-acres. The Site location and approximate extent of area of potential concern is generally depicted in the diagrams attached to this Agreed Order as **Exhibit A**.

B. The Site is listed on the Department of Ecology's Hazardous Sites List as "March Point Landfill" with the Facility Site ID No. 2662, and the Site's hazard ranking is 2.

C. Snow Mountain, the Charles Moon Trust, Ralph Hillestead, and the State of Washington are the current property owners of the Site. Snow Mountain is also a current operator of a facility on the Site.

D. Skagit County is a former operator of a facility on the Site.

E. DNR is the manager of the State-owned aquatic lands under constitutional and statutory mandates. Title 79 RCW authorizes DNR to lease state-owned aquatic lands. DNR notes that any obligation it assumes under this Order, to the extent such obligation requires DNR to expend funds, will require legislative appropriation of funds to undertake the work. DNR commits to request and pursue in good faith funding by the Legislature in the 2009 legislative session and in successive legislative sessions to the extent necessary to fulfill its obligations under this Order.

F. The Site was used as an unregulated dump from 1950 to 1961. From 1961 to 1973, DNR, on behalf of the State and as provided for by the Legislature, leased a portion of the Site to Skagit County to operate a sanitary landfill. Skagit County residents and businesses used this landfill as a disposal area from 1969 to 1973. It is unknown what types and quantities of

wastes that were buried at the landfill. The waste dumped at the landfill included household and commercial solid waste from local municipalities, waste from a number of industrial entities including Shell and Texaco, and waste from others.

G. Credible evidence exists indicating that a "release or threatened release" of "hazardous substances" has occurred at the Facility defined in RCW 70.105D.020(10) and (25), which poses a threat to human health and the environment.

H. Some off-shore sediments and sediments near inner and outer Padilla Bay Lagoon contain measurable concentrations of metals, chlorinated benzenes, phthalates, phenols, petroleum related compounds, dioxins and furans. In August 2002 and October 2004, the Swinomish Water Resources Program collected a total of twelve sediment samples at twelve sampling locations as a part of their sediment monitoring project. All sediment samples were analyzed for a variety of contaminants. Results from two sampling locations exceeded the Sediment Management Standards (WAC 173-204) cleanup screening levels (CSL) and/or Sediment Quality Standards (SQS) for benzoic acid (1,790 ug/kg - 4740 ug/kg), hexachlorobenzene (10 ug/kg - 153 ug/kg), 2-methylphenol (125 ug/kg), benzyl alcohol (59 ug/kg - 148 ug/kg), 1,2-dichlorobenzene (10 ug/kg), 2,4-dimethylphenol (77 ug/kg), phenol (480 ug/kg), flouranthene (1020 ug/kg), flourene (24 ug/kg), phenanthrene (320 ug/kg). (SAIC, April and June 2007).

I. In August 2002 the Skagit County Health Department conducted a site hazard assessment of the landfill and the Site was ranked using the Washington State Ranking Method. The Site was ranked as number 2 (Ecology, 2002).

J. In 1998, Ecology conducted limited surface water (leachate) and sediment investigations.

1. As a part of its 1998 investigation, Ecology collected two surface water (leachate) and five sediment samples. The leachate samples were analyzed for approximately 400 chemicals consisting of metals, trace metals, cyanide, petroleum hydrocarbons, volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), phenols, chlorinated benzene, phthalate esters, semi volatile organic compounds

(SVOCs), polychlorobiphenyls (PCBs), organotins and pesticides. Manganese, benzo(a)anthracene and PCB aroclor 1242 were detected at concentrations greater than their respective human health surface water criteria in at least one sample. Diesel was detected at a concentration (470 ug/l – 850 ug/l) greater than MTCA Method-A groundwater cleanup level in one of the leachate sample. In addition, elevated concentrations of iron (5,660 ug/l – 16,200 ug/l) were detected exceeding the EPA Water Quality Criteria of 1000 ug/l (GeoEngineers, April and June 2007).

2. In its sediment investigation, Ecology sampled sediments at five locations near the landfill, Padilla Bay Lagoon, and just outside of the Lagoon. These samples were analyzed for all of the chemicals stated above. In addition, bioassay tests were also conducted on three of the sediment samples. Chemical results of sediment samples showed elevated levels of TPH-diesel and oil (diesel: 5300 mg/kg; oil: 4000 mg/kg); phenol, 2-methylphenol, 4-methylphenol and 2,4-dimethylphenol concentrations in one sediment sample (adjacent to the BNSF railroad tracks), which exceeded Sediment Quality Standards (SQS). Concentrations of metals were detected below Sediment Quality Standard (SQS) screening criteria. All of the sediment samples had detectable levels of dioxins/furans. All three bioassay test (amphipod, echinoderm larvae and juvenile polychaete) results showed significant toxicity at one of the stations (adjacent to the BNSF railroad tracks) with zero survival across all three bioassay tests (SAIC, April and June 2007), thus exceeding cleanup CSL.

K. In October of 1996, the Skagit County Health Department and Swinomish Indian Tribal Community collected two discolored surface water and two sediment samples along the northeast side of the landfill. These samples were analyzed for VOCs, SVOCs, pesticides/PCBs and metals. Low levels of a few organic compounds and metals were detected in surface water and sediment samples. However, none of the contaminants in surface water samples exceeded their respective surface water criteria (GeoEngineers and SAIC, April and June 2007).

L. In 1994, the U.S. Fish and Wildlife Service conducted sediment investigation for trace metals, petroleum and chlorinated pesticides related contamination. Two sediment samples

were collected from the inner lagoon and northeast of the landfill. In one of the sediment samples, low levels of metals and PAHs were detected but these levels were below SQS screening criteria (SAIC, April and June 2007).

M. In 1992, Bulthuis, Shaw and Wiggins conducted sediment investigations including surface sediments (0-2 cm) in Padilla Bay Lagoon. Bioassay tests were conducted using amphipod *Rhepoxynius abronius* on sediments collected from a total of six locations (Padilla Bay lagoon and near the landfill).

N. In 1988, Ecology collected two grab leachate samples from the northeast of the landfill and two sediment samples from the Padilla Bay Lagoon. Ecology analyzed the leachate samples for priority pollutant metals and sediment samples were analyzed for phenolic compounds and PCBs. Results of leachate samples showed arsenic, cadmium, chromium, copper, lead, nickel, thalium and zinc concentrations exceeding their respective surface water criteria (GeoEngineers, April and June 2007). However, only a low concentration of 4-methylphenol (25 ug/kg) was detected in one of the sediment samples (SAIC, April and June 2007).

O. Ecology conducted an inspection of the landfill in December 1985. As a part of this inspection, Ecology collected three surface water/leachate and two sediment samples. The samples were analyzed for metals and VOCs. An analysis by the Laucks Laboratory on behalf of Ecology detected arsenic, copper, mercury and nickel in two surface water/leachate samples at concentrations greater than their respective aquatic life or human health surface water criteria. Sediment results showed low levels of arsenic, toluene and flouranthene. However, the exact source of this contamination was not determined (GeoEngineers, April and June 2007).

P. In November of 1984, Ecology and the U.S. Environmental Protection Agency (EPA) conducted a Preliminary Assessment (PA) of the March Point Landfill. The PA identified the potential risk of groundwater and surface water contamination by unknown contaminants. The PA indicated that leachate could be seen surfacing on the eastern boundary, but noted that it was unknown if the leachate contained hazardous substances. The PA also noted that Shell and Texaco refineries, Allied Chemical sulfuric acid plant, and Northwest Petrochemical Company



operated near the Site and speculated that it was highly likely that they took wastes to the Site. The PA recommended further investigation of leachate, installation of groundwater monitoring wells and collection of historical data on industrial activities and waste dumping practices (Ecology, November 1984).

## VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations by the PLPs:

A. Skagit County is an "operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). DNR is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). Texaco and Shell arranged for the disposal of hazardous substances at the "facility" as defined in RCW 70.105D.040(1)(c), and RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued PLP status letters to DNR, Shell, Skagit County, Snow Mountain and Texaco dated September 7, 2007, and Ralph Hillestead and Moon Credit Trust dated November 20, 2007, pursuant to RCW 70.105D.040, RCW 70.105D.020(21), 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 DNR, Shell, Skagit County, Snow Mountain and Texaco, and Ralph Hillestead and Moon Credit Trust are PLPs under RCW 70.105D.040 and notified the PLPs of this determination by letters dated November 20, 2007 and January 7, 2008 respectively.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs 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 the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The PLPs shall conduct the remedial actions fully described in Exhibit B to this Order. The PLPs shall conduct a remedial investigation of the Upland Area and Submerged Land as per Phase I Remedial Investigation (RI) Work Plan, attached as Exhibit B to this Order. After providing a final Phase I RI report to Ecology, the PLPs shall conduct the Phase II RI/FS for the Site. The PLPs shall then develop a draft cleanup action plan (DCAP) for the Site. The tasks under the Phase I RI and the Phase II RI/FS for the Site include:

### UPLAND AREA

#### Phase I: As detailed in Exhibit B:

1. Conduct appropriate geophysical survey(s) to identify the locations of any subsurface anomalies.
2. Excavate test pits in areas with anomalies consistent with buried drums. Coordinate with Ecology regarding the excavation of test pits at other anomaly areas, wherever necessary.
3. Install and sample upgradient monitoring wells.
4. Collect and analyze appropriate number of soil samples from test pits and monitoring wells.
5. Collect surface water and seep/leachate samples to determine impacts on sediments.

#### Phase II:

6. Install appropriate number of additional test pits to characterize surface (landfill cap material) and subsurface conditions, including the presence of strata within and beneath the waste material.
7. Develop and implement a plan to remove and dispose of buried drums and their contents as per applicable regulations and as an Interim Remedial Action, based on (a) the number of potential drums present, (b) the physical condition of the drums, and (c) the likely contents of the drums.
8. Install groundwater monitoring wells and performing slug tests.

9. Collect and analyze soil and groundwater samples to determine the nature and extent of contamination.
10. Conduct a tidal study to determine the extent of tidal influence and its impact on the landfill.
11. Delineate impacted areas that may require remedial action.
12. Evaluate remedial alternatives.
13. Identify a preferred remedial alternative for the site.

### **SUBMERGED LAND**

#### **Phase I: As detailed in Exhibit B:**

14. Collection of sufficient number of sediment samples to characterize the overall nature and extent of sediment contamination and determined potential biological effects in Padilla Bay Lagoon and portions of Padilla Bay adjacent to the Site.
15. Conduct a suite of sediment toxicity tests on synoptic sediment samples.
16. Identify specific station locations and chemical and bioassay analysis in detail in an approved Sampling and Analysis Plan.
17. Provide a description of the physical characteristics of the site including potentially impacted portions.

#### **Phase II:**

18. Identify whether subsequent investigations are needed to further characterize the nature and extent of contamination.
19. Perform any previously identified subsequent investigations necessary to complete the sediment Site characterization and the overall nature and extent of sediment contamination and determination of the potential biological effects in Padilla Bay Lagoon and portions of Padilla Bay adjacent to the Site.
20. Delineate impacted areas that may require remedial action, identify remedial alternatives, and assess the feasibility of implementing any remedial action.

### **HABITAT RESTORATION**

#### **Phase II:**

21. Identify habitat restoration opportunities for both the uplands and sediments.

The remedial investigation field work shall be conducted in two Phases. The Phase I investigation work shall include task numbers A 1 through 5 and A 14 through 17 presented under Section VII (Work to be Performed) above. A draft Phase I remedial

investigation work plan, sampling analysis plan and other documents must be submitted for Ecology's review and approval as per the schedule presented in Exhibit C.

Following the Phase I remedial investigation, a Phase II remedial investigation shall be initiated during 2009 as detailed above. A draft remedial investigation/feasibility study work plan, sampling analysis plan and other appropriate documents must be submitted to Ecology's review and approval as per the schedule presented in Exhibit C.

B. The PLPs shall perform remedial actions required by this Order according to the schedule included in Exhibit C, or as modified by agreement pursuant to Section VIII K (Extension of Schedule) of this Order.

C. The PLPs shall submit to Ecology a progress report the first week of each month regarding the progress of RI/FS work until such time as the PLPs have completed the work required in the RI/FS Work Plan and the development of a DCAP. The monthly progress report shall include work completed to date, problems encountered and how they were resolved, and work scheduled for the subsequent month. Electronic submittals are acceptable.

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.

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. 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 this Order is inadequate or improper in any respect.

#### **B. Remedial Action Costs**

The PLPs 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 Chapter 70.105D RCW, including remedial actions and

Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior (retroactive to January 1, 2007) 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). The PLPs shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly, and will be sent to the designated PLP Project Coordinator, who is authorized to receive them on behalf of the PLP Group. 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

**C. Implementation of Remedial Action**

If Ecology determines that the PLPs have failed without good cause to implement the remedial actions required pursuant to this Order, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial actions that remain incomplete. If Ecology performs all or portions of the remedial actions because of the PLPs' failure to comply with their obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII B (Remedial Action Costs), provided that the PLPs are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLPs 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.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Sandra Caldwell  
Toxics Cleanup Program  
PO Box 47600  
Olympia, WA 98504  
Phone: 360-407-7209  
E-Mail: [saca461@ecy.wa.gov](mailto:saca461@ecy.wa.gov)

The project coordinator for the PLPs is:

Gary Stoyka, L.Hg.  
Skagit County  
1800 Continental Place  
Mount Vernon, WA 98273  
Phone: (360) 419-3428  
E-mail: [gstoyka@co.skagit.wa.us](mailto:gstoyka@co.skagit.wa.us)

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 the PLPs, 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 Agreed 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.

**E. Performance**

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

The PLPs 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.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs 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 the PLPs' 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 the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs 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 the PLPs 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). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their 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. Attached as Exhibit D, is a copy of Ecology's Policy 840, Data Submittal Requirements.

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

#### **H. Public Participation**

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

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

1. If agreed to by Ecology, develop appropriate mailing list, 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 the PLPs 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 the PLPs that do not receive prior Ecology approval, the PLPs 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. Anacortes Public Library  
1200 9<sup>th</sup> Street  
Anacortes, WA 98221
- b. Department of Ecology  
Toxics Cleanup Program  
Headquarters Office  
300 Desmond Drive SE  
Olympia, Washington 98504-7600

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

#### **I. 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, the PLPs 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, the PLPs shall make all records available to Ecology

and allow access for review within a reasonable time. PLPs do not waive any right they might have under applicable law to limit disclosure of documents protected by the attorney work-product and/or attorney-client privilege. If PLPs withhold any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Order shall be considered privileged.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs have thirty (30) days within which to notify Ecology's project coordinator in writing of their objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Headquarters Land and Aquatic Lands Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision 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.

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

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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 L (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 M (Endangerment).

**L. 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 N (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 the PLPs. The PLPs 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 J (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the

Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII M (Endangerment), the PLPs' 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 K (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.

**N. Reservation of Rights**

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

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, 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.

**O. 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 the PLPs 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 the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs 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, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by the PLPs 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. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit E.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit E.

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

**Q. Indemnification**

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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 reckless, willful, or 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 the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have 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. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, PLPs will be liable for:
  - a. Up to three (3) 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 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: March 4, 2009

TEXACO Inc.



Name: Frank G. Soler  
Title: Vice President  
Location: San Ramon, CA  
Telephone: 925-842-2814

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY



Tim L. Nord  
Section Manager  
Toxics Cleanup Program  
Land & Aquatic Lands Cleanup Section  
(360) 407-7226



**SHELL OIL COMPANY**



William E. Platt  
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**WASHINGTON STATE DEPARTMENT OF  
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Aquatics Division Manager  
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**SKAGIT COUNTY**

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
DON MUNKS, Chairman

\_\_\_\_\_  
KENNETH A. DAHLSTEDT, Commissioner

\_\_\_\_\_  
SHARON D. DILLON, Commissioner

Recommended:

By: \_\_\_\_\_  
Department Head

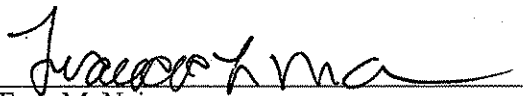
By: \_\_\_\_\_  
Budget & Finance Director

**SHELL OIL COMPANY**

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**WASHINGTON STATE DEPARTMENT OF  
NATURAL RESOURCES**



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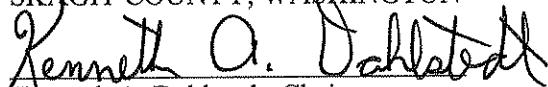
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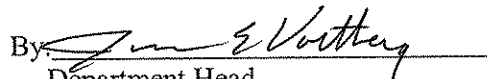
BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

  
Kenneth A. Dahlstedt, Chairman

  
Sharon D. Dillon, Commissioner

  
Ron Wesen, Commissioner

Recommended:

By:   
Department Head

By:   
Budget & Finance Director

Approved as to Indemnification:

By: Belle Kadman  
Risk Manager

Approved as to Form:

By: [Signature]  
Deputy Prosecuting Attorney

Attest:

By: [Signature]  
Clerk of the Board