

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: )  
CASCADE NATURAL GAS CORPORATION )

AGREED ORDER  
No. DE 94TC-C165

TO: Ralph E. Boyd  
Cascade Natural Gas Corporation  
222 Fairview Avenue North  
Seattle, Washington 98109

I.

Jurisdiction

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

II.

Findings of Fact

The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by Cascade Natural Gas Corporation (CNG).

2.1. CNG presently owns property located on 512 East Decatur Avenue, Sunnyside, Washington ("Site"); it leased that property from 1969 to 1979, and has owned it since 1979. The County of Yakima ("County") is one of the former owners of the Site, and the County owned the property, from at least 1928 through 1955, operating it as a public works shop and equipment yard.

2.2. Beginning at least by 1936, two to four underground storage tanks ("USTs") were located on this Site. The County originally installed and operated at least two, and perhaps three, of these USTs, one for gasoline and one or two for diesel fuel; the County's ownership and operation of these USTs continued until 1956. When it vacated the Site, the County left all of its USTs buried at the Site. It is unclear whether one, two, or three USTs were still in operation when the County left the Site.

2.3. From 1956 to 1969 two automobile sales and service operations ("Dealers") occupied the Site. It is unclear as to which, if any, of the USTs were utilized by the Dealers. One or two of the USTs may have been used to store fuel to heat the on-site buildings from the mid-1950s until the mid-1960s, when the building was then converted to gas and electric heat. In 1960, a fourth UST, for gasoline, was installed near the three older USTs. By the mid-1960s, it is certain that all other USTs had ceased to be used, but all remained at the Site. In the mid-to-late 1960s the Site was wholly covered with asphalt, leaving only the dispenser for the newest gasoline UST visible. Each Dealer ultimately left the Site, and all apparently have ceased to exist.

2.4. In 1969 CNG began leasing the Site. In 1979 CNG purchased the Site. CNG staff have submitted statements that diesel fuel was never used at the Site. CNG did use the new gasoline UST from 1969 until 1988. In 1990, to comply with Washington's new UST regulations, CNG retained a contractor to excavate the one UST of which CNG was aware. At that point CNG discovered the remaining three other USTs, and also learned, for the first time, that both soil and groundwater beneath the Site contained gasoline, diesel, volatile, and semi-volatile organic compounds at levels above those that require remedial action under Washington's applicable regulations.

2.5. On February 12, 1991, CNG, as the Site's current owner, was notified that Ecology intended to conduct a site hazard assessment to determine whether further remedial efforts were required and to rank the Site under the Washington Ranking Method as a means of prioritizing the Site for cleanup. On August 16, 1991, Ecology notified CNG that Ecology had completed its assessment and ranking process, and that on a scale of 1 (highest priority) to 5 (lowest priority) had assigned the Site a #1 based on conditions then existing at the Site. Those conditions have since changed by virtue of CNG's actions.

2.6. CNG has voluntarily undertaken activities to investigate and remediate the contamination. CNG has removed and remediated soil contaminated by petroleum hydrocarbons at the Site and CNG has begun the investigation of potential diesel, gasoline, and volatile organic compounds contaminating the groundwater at the Site through

the installation of monitoring wells and storm drain and sewer line monitoring.

2.7. Documentation of the presence of contaminated soil and groundwater in the vicinity of CNG, located at 512 East Decatur Avenue in Sunnyside, Washington, is contained in the following reports which are on file at the Department of Ecology's Central Regional Office:

a. Draft Interim Status Report, Cascade Natural Gas Corporation Sunnyside Operation, White Shield Inc., November 1990.

b. Draft Site Hazard Assessment (SHA) Report, Cascade Natural Gas Corporation, DPRA Inc. For Washington Department of Ecology, May 1991.

c. Soil Remediation Status Report, Cascade Natural Gas Facility, Sunnyside, Washington, SEACOR, February 1992.

2.8. The continued presence of contamination in soils and groundwater at the Site presents an ongoing threat to human health and the environment.

### III.

#### Ecology Determinations

3.1. CNG is an "owner or operator" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2. The facility is known as the Cascade Natural Gas Facility and is located at 512 East Decatur Avenue, Sunnyside, Washington.

3.3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(5).

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

3.5. By letter dated March 6, 1992, due to CNG's status as current owner/operator of the Site, Ecology notified CNG of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

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

3.7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest. Ecology has determined that CNG must take remedial actions at the Site, as set forth below.

#### IV.

##### Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that CNG take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

4.1. CNG will perform those Remedial Investigation/Feasibility Study ("RI/FS") actions, set forth and described in the attached Work Plan, Schedule, and Addendum (the "Work Plan"); those documents are attached to this Order as Exhibit A. Exhibit A is incorporated by this reference and is an integral and enforceable part of this Order.

a. The RI/FS will collect, develop, and evaluate sufficient information regarding the Site to enable the selection of any remaining cleanup actions. To collect sufficient information, the Work Plan's product will consist of general facility information, field

investigations of surface water and sediments, soils, geology and groundwater system characteristics, air issues, if any, land use, natural resources and ecology, as well as work plans. The RI/FS will be implemented to meet the requirements of WAC 173-340-350 (State Remedial Investigation and Feasibility Study).

b. According to the attached Schedule of Work, CNG will develop and submit to Ecology for approval a Quality Assurance/Quality Control ("QA/QC") Plan in accordance with the Ecology Guidelines and Specifications for Preparing Quality Assurance Project Plans (May 1991). No sampling may be conducted prior to Ecology approval of the QA/QC Plan.

c. Ecology recognizes that considerable work has been completed toward characterizing the Site. Data collected from previous investigations should be incorporated into the RI/FS to prevent the duplication of any tasks required in the Work Plan.

4.2. Results from sampling shall be provided to Ecology's project coordinator upon receipt from the laboratory.

4.3. Written progress reports shall be submitted to Ecology on behalf of CNG on a timely basis during the RI phase of the investigation. If Ecology determines that the reports are not being submitted on a timely basis, Ecology will verbally notify the PLP's project coordinator. Thereafter, if the timeliness of subsequent reporting does not satisfy Ecology, Ecology may in writing direct a specific frequency for reporting.

4.4. CNG shall immediately notify Ecology by telephone of any unexpected delays in construction.

4.5. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Exhibit B: SITE DESCRIPTION AND SAMPLE DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology as required under the schedule established in Exhibit A. Exhibit B is incorporated by this reference and is an integral and enforceable part of this Order.

V.

Terms and Conditions of Order

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

5.2. Public Notices. 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 the Order is inadequate or improper in any respect.

5.3. Remedial Action Costs. CNG shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). CNG 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 description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

Cascade Natural Gas Corp.  
Agreed Order No. DE 94TC-C165  
Page 7

5.4. Designated Project Coordinators. The Project Coordinator for Ecology is:

Name: Donald W. Abbott  
Address: 106 South 6th. Avenue  
Yakima Washington, 98902-3387  
Phone: (509) 454-7834

The Project Coordinator for CNG is:

Name: Ralph Boyd  
Address: Cascade Natural Gas Corporation  
222 Fairview Avenue  
Seattle, Washington 98109  
Phone: (206) 624-3900

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and CNG, 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. Should Ecology or CNG change project coordinators, written notification shall be provided to Ecology or CNG at least ten (10) calendar days prior to the change.

5.5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup. This person, as of the date of this Order, is:

Name: Del Christensen  
Address: SEACOR  
11040 Main Street, Suite 240  
Bellevue, Washington 98004  
Phone: (206) 646-0280

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

5.6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site 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 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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 CNG. By signing this Agreed Order, CNG agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. All parties with access to the Site pursuant to this paragraph shall comply with approved health and safety plans. Ecology shall allow split or replicate samples to be taken by CNG during an inspection unless doing so interferes with Ecology's sampling. CNG shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

5.7. Public Participation. CNG shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the Site. CNG shall help coordinate and implement public participation for the Site.

5.8. Retention of Records. CNG shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of CNG, then CNG agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.



5.9. Dispute Resolution. CNG may request Ecology to resolve disputes which may arise during the implementation of this Order. Such requests shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. CNG is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

5.10. Reservation of Rights/No Settlement. This Agreed 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 Ecology rights or authority. Ecology will not, however, bring an action against CNG to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against CNG to require those remedial actions required by this Agreed Order, provided CNG complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Cascade Natural Gas Corporation Site.

By entering into this Order, CNG agrees not to petition Ecology for reimbursement of costs incurred in complying with this Order. This agreement does not constitute a waiver of any right of action that CNG may have against any party other than Ecology. This agreement is not intended to affect or prejudice any such rights of action. CNG expressly reserves its rights to seek to recover any costs previously incurred in investigating or remediating the Site, or specifically incurred in implementing this Order, from any other potentially liable party, including the County.

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

Ecology and CNG may modify this Order by mutual written agreement.

5.11. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by CNG 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 transfer of any legal or equitable interest CNG may have in the Site or any portions thereof, CNG shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, CNG shall notify Ecology of the contemplated transfer.

5.12. Compliance with Other Applicable Laws. All actions carried out by CNG pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

## VI.

### Satisfaction of this Order

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

VII.

Enforcement

7.1. 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 CNG refuses, without sufficient cause, to comply with any term of this Order, CNG will be liable for:
  - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
  - (2) civil penalties of up to \$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 Section 6 of Chapter 70.105D RCW.

Effective date of this Order: \_\_\_\_\_

<sup>15</sup>  
APR 06 1994


CASCADE NATURAL GAS CORPORATION

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By

  
Ralph E. Boyd  
Vice President

By

  
Anthony W. Grover  
Section Manager  
Toxics Cleanup Program  
Central Regional Office