



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

May 9, 2016

FILE COPY

Mr. William H. (Bill) Collins
Tidewater Terminal Company
P.O. Box 1210
Vancouver, WA 98666-1210

Re: Notification of Ecology's Invitation to Begin New Consent Decree Negotiations at the following Hazardous Waste Site:

- Name: Tidewater Fuel Line Leak Site
- Address: 2900 Sacajawea Park Road, Pasco, Washington
- Facility/Site No.: 39378684

Dear Mr. Collins:

The Washington State Department of Ecology (Ecology) is sending this letter to formally invite Tidewater Terminal Company to begin negotiations for a Consent Decree to implement the Cleanup Action Plan to monitor contamination at the Tidewater Fuel Line Leak located at approximately 2900 Sacajawea Park Road in Pasco, Washington. The 30-day negotiation period begins May 12, 2016. Enclosed is the Consent Decree and attached appendices for the Site. Please review and, if needed, provide comment to Ecology before June 10, 2016. Negotiations may be ended prior to June 10, 2016. If no comments are offered, please sign the Consent Decree and return the signed Decree to the Washington State Department of Ecology at 4601 North Monroe Street, Spokane, WA 99205.

If you have any questions, please contact me at (509) 329-3543.

Sincerely,

Patrick Cabbage, LHG
Site Manager
ERO Toxics Cleanup Program

By certified mail [7015 0640 0003 6619 7850]

pc:mr
Enclosures

cc by email: John Level, AAG



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STATE OF WASHINGTON
FRANKLIN COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

TIDEWATER TERMINAL COMPANY,
INC.,

Defendant.

NO. 13264

CONSENT DECREE

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1 **I. INTRODUCTION**

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Defendant Tidewater Terminal Company, Inc. (Tidewater) under this Decree is
4 to provide for remedial action at a facility where there has been a release or threatened release
5 of hazardous substances. This Decree requires Tidewater to perform the remedial actions at the
6 Tidewater Fuel Line Leak Site (Site) in Pasco, Washington in accordance with the draft Cleanup
7 Action Plan (dCAP) attached as Exhibit B to this Decree.

8 B. Ecology has determined that these actions are necessary to protect human health
9 and the environment.

10 C. The Complaint in this action is being filed simultaneously with this Decree. An
11 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
12 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
13 Parties agree that settlement of these matters without litigation is reasonable and in the public
14 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

15 D. By signing this Decree, the Parties agree to its entry and agree to be bound by its
16 terms.

17 E. By entering into this Decree, the Parties do not intend to discharge non-settling
18 parties from any liability they may have with respect to matters alleged in the Complaint. The
19 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
20 sums expended under this Decree.

21 F. This Decree shall not be construed as proof of liability or responsibility for any
22 releases of hazardous substances or cost for remedial action nor an admission of any facts;
23 provided, however, that Tidewater shall not challenge the authority of the Attorney General and
24 Ecology to enforce this Decree.

25 G. The Court is fully advised of the reasons for entry of this Decree, and good cause
26 having been shown:

1 this Decree. No change in ownership or corporate status shall alter Tidewater's responsibility
2 under this Decree. Tidewater shall provide a copy of this Decree to all agents, contractors, and
3 subcontractors retained to perform work required by this Decree, and shall ensure that all work
4 undertaken by such agents, contractors, and subcontractors complies with this Decree.

5 **IV. DEFINITIONS**

6 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
7 WAC 173-340-200 shall control the meanings of the terms in this Decree.

8 A. Site: The Site is referred to as the Tidewater Fuel Line Leak Site, and is contained
9 within an easement on the former Chevron Pipe Line Company Pasco Bulk Terminal (Pasco
10 Bulk Fuel Terminal) and is generally located at 2900 Sacajawea Park Road, Pasco, Washington
11 99301. The Pasco Bulk Fuel Terminal is owned and operated by Tesoro Logistics Operations
12 LLC, and includes approximately 3 acres. Tidewater owns and operates pipelines located on an
13 easement that crosses the Pasco Bulk Fuel Terminal site. The Site is defined by the extent of
14 contamination caused by the release of hazardous substances at the Site and is not limited by
15 property boundaries. The Site includes areas where hazardous substances have been deposited,
16 stored, disposed of, placed, or otherwise come to be located. The Site is more particularly
17 described in the Site Diagrams (Exhibit A). The Site constitutes a Facility under RCW
18 70.105D.020(8).

19 B. Parties: Refers to the State of Washington and Tidewater Terminal Company,
20 Inc.

21 C. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits
22 to this Decree. All exhibits are integral and enforceable parts of this Consent Decree. The terms
23 "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

24 **V. FINDINGS OF FACTS**

25 Ecology makes the following findings of fact without any express or implied admissions
26 of such facts by Tidewater.

1 activities included free product pumping, vapor enhanced free product pumping, vadose zone
2 vapor extraction, and air sparge/enhanced bioremediation skimming in groundwater. These
3 activities were conducted under the Voluntary Cleanup Program under the Toxics Cleanup
4 Program. The active remedial activities were discontinued after free product was no longer
5 observed, soil vapor extraction discharge levels were asymptotic, and monitoring indicated
6 plume stabilization and contraction (reduction in plume extent and concentration in
7 groundwater).

8 F. Tidewater has performed groundwater monitoring at the Pasco Terminal since
9 2000. Groundwater monitoring reports were submitted quarterly through 2003, with additional
10 monitoring conducted in 2006 and 2010. Post remediation sampling has shown removal of free
11 product and reductions in lateral extent and concentration of petroleum hydrocarbons in
12 groundwater.

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

16 H. Since the discoveries of the separate releases, there have been investigations and
17 independent interim remedial measures conducted in association with the fuel terminal and
18 pipeline leak as described in subsections C and E above.

19 I. On December 4, 2009, Ecology, CPL, and Tidewater entered into Agreed Order
20 No. 7294 that required CPL and Tidewater to conduct a site-wide remedial
21 investigation/feasibility study (RI/FS) at the Pasco Bulk Fuel Terminal.

22 J. As part of the RI/FS, CPL and Tidewater conducted further sampling of
23 monitoring wells at the Site. One sampling event took place in June 2010 using existing CPL
24 and Tidewater monitoring wells and a second site-wide sampling event took place in December
25 2010.

26

1 **VI. WORK TO BE PERFORMED**

2 This Decree contains a program designed to protect human health and the environment
3 from the known release, or threatened release, of hazardous substances or contaminants at, on,
4 or from the Site.

5 A. Tidewater shall perform all tasks set forth in the draft Cleanup Action Plan
6 (dCAP) and implement the dCAP in accordance with the dCAP's schedule, including, but not
7 limited to the following activities:

8 1. The Site groundwater will be monitored to assess the on-going natural
9 attenuation.

10 2. A compliance monitoring plan will be developed that identifies the wells,
11 parameters, and monitoring frequency.

12 3. Provide for and maintain institutional controls in the form of restrictive
13 covenants, fences, and signs.

14 B. Tidewater agrees not to perform any remedial actions to address the releases that
15 are the subject of this Decree outside the scope of this Decree unless the Parties agree or the
16 work is required by an emergency. All work conducted by Tidewater under this Decree shall be
17 done in accordance with Chapter 173-340 WAC unless otherwise provided herein.

18 C. All plans or other deliverables submitted by Tidewater for Ecology's review and
19 approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval,
20 become integral and enforceable parts of this Decree.

21 **VII. DESIGNATED PROJECT COORDINATORS**

22 The project coordinator for Ecology is:

23 Patrick Cabbage, P.G.
24 4601 North Monroe Street
25 Spokane, WA 99205-1295
26 Phone: (509) 329-3543
E-Mail: pcab461@ecy.wa.gov

The project coordinator for Tidewater is:

1 Any documents submitted containing geologic, hydrologic, or engineering work shall be
2 under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

3 Tidewater shall notify Ecology in writing of the identity of any engineer(s) and
4 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
5 of this Decree, in advance of their involvement at the Site.

6 IX. ACCESS

7 Ecology or any Ecology authorized representative shall have access to enter and freely
8 move about all property at the Site that Tidewater either owns, controls, or has access rights to
9 at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
10 contracts related to the work being performed pursuant to this Decree; reviewing Tidewater's
11 progress in carrying out the terms of this Decree; conducting such tests or collecting such
12 samples as Ecology may deem necessary; using a camera, sound recording, or other documentary
13 type equipment to record work done pursuant to this Decree; and verifying the data submitted to
14 Ecology by Tidewater. Tidewater shall make all reasonable efforts to secure access rights for
15 those properties within the Site not owned or controlled by Tidewater where remedial activities
16 or investigations will be performed pursuant to this Decree. Ecology or any Ecology authorized
17 representative shall give reasonable notice before entering any Site property owned or controlled
18 by Tidewater unless an emergency prevents such notice. All Parties who access the Site
19 pursuant to this section shall comply with any applicable health and safety plan(s). Ecology
20 employees and their representatives shall not be required to sign any liability release or waiver
21 as a condition of Site property access.

22 X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY

23 With respect to the implementation of this Decree, Tidewater shall make the results of
24 all sampling, laboratory reports, and/or test results generated by it or on its behalf available to
25 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in
26 both printed and electronic formats in accordance with Section XI (Progress Reports), Ecology's

1 E. All raw data (including laboratory analyses) received by Tidewater during the
2 past month and an identification of the source of the sample; and

3 F. A list of deliverables for the upcoming month if different from the schedule.

4 All Progress Reports shall be submitted by the tenth (10th) day of the month in which
5 they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports
6 and any other documents submitted pursuant to this Decree shall be sent by certified mail, return
7 receipt requested, to Ecology's project coordinator.

8 XII. RETENTION OF RECORDS

9 During the pendency of this Decree, and for ten (10) years from the date this Decree is
10 no longer in effect as provided in Section XXVIII (Duration of Decree), Tidewater shall
11 preserve all records, reports, documents, and underlying data in its possession relevant to the
12 implementation of this Decree and shall insert a similar record retention requirement into all
13 contracts with project contractors and subcontractors. Upon request of Ecology, Tidewater shall
14 make all records available to Ecology and allow access for review within a reasonable time.

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

21 XIII. TRANSFER OF INTEREST IN PROPERTY

22 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest
23 in any portion of the Site shall be consummated by Tidewater without provision for continued
24 operation and maintenance of any containment system, treatment system, and/or monitoring
25 system installed or implemented pursuant to this Decree.

26

1 statement of dispute setting forth: the nature of the dispute; the disputing Party's position
2 with respect to the dispute; and the information relied upon to support its position.

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

6 5. If Tidewater finds Ecology's Regional Section Manager's decision
7 unacceptable, Tidewater may then request final management review of the decision.
8 This request ("Final Review Request") shall be submitted in writing to the Toxics
9 Cleanup Program Manager within seven (7) calendar days of Tidewater's receipt of the
10 Decision on Dispute. The Final Review Request shall include a written statement of
11 dispute setting forth: the nature of the dispute; the disputing Party's position with respect
12 to the dispute; and the information relied upon to support its position.

13 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
14 the dispute and shall issue a written decision regarding the dispute ("Final Decision on
15 Dispute") within thirty (30) calendar days of receipt of the Final Review Request. The
16 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
17 disputed matter.

18 B. If Ecology's Final Decision on Dispute is unacceptable to Tidewater, Tidewater
19 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
20 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
21 this Decree. In the event Tidewater presents an issue to the Court for review, the Court shall
22 review the action or decision of Ecology on the basis of whether such action or decision was
23 arbitrary and capricious and render a decision based on such standard of review.

24 C. The Parties agree to only utilize the dispute resolution process in good faith and
25 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

26

1 **XVI. EXTENSION OF SCHEDULE**

2 A. An extension of schedule shall be granted only when a request for an extension
3 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
4 deadline for which the extension is requested, and good cause exists for granting the extension.

5 All extensions shall be requested in writing. The request shall specify:

- 6 1. The deadline that is sought to be extended;
7 2. The length of the extension sought;
8 3. The reason(s) for the extension; and
9 4. Any related deadline or schedule that would be affected if the extension
10 were granted.

11 B. The burden shall be on Tidewater to demonstrate to the satisfaction of Ecology
12 that the request for such extension has been submitted in a timely fashion and that good cause
13 exists for granting the extension. Good cause may include, but may not be limited to:

- 14 1. Circumstances beyond the reasonable control and despite the due
15 diligence of Tidewater including delays caused by unrelated third parties or Ecology,
16 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
17 documents submitted by Tidewater;
18 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
19 or other unavoidable casualty; or
20 3. Endangerment as described in Section XVII (Endangerment).

21 However, neither increased costs of performance of the terms of this Decree nor changed
22 economic circumstances shall be considered circumstances beyond the reasonable control of
23 Tidewater.

24 C. Ecology shall act upon any written request for extension in a timely fashion.
25 Ecology shall give Tidewater written notification of any extensions granted pursuant to this
26 Decree. A requested extension shall not be effective until approved by Ecology or, if required,

1 work dependent upon such activities, shall be extended, in accordance with Section XVI
2 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
3 circumstances.

4 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
5 contractors to take or require appropriate action in the event of an emergency.

6 **XVIII. COVENANT NOT TO SUE**

7 A. Covenant Not to Sue: In consideration of Tidewater's compliance with the terms
8 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
9 against Tidewater regarding the release or threatened release of hazardous substances covered
10 by this Decree.

11 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
12 and those hazardous substances that Ecology knows are located at the Site as of the date of entry
13 of this Decree. This Decree does not cover any other hazardous substance or area. Ecology
14 retains all of its authority relative to any substance or area not covered by this Decree.

15 This Covenant Not to Sue shall have no applicability whatsoever to:

- 16 1. Criminal liability;
- 17 2. Liability for damages to natural resources; and
- 18 3. Any Ecology action, including cost recovery, against PLPs not a party to
19 this Decree.

20 If factors not known at the time of entry of this Decree are discovered and present a
21 previously unknown threat to human health or the environment, the Court shall amend this
22 Covenant Not to Sue.

23 B. Reopeners: Ecology specifically reserves the right to institute legal or
24 administrative action against Tidewater to require it to perform additional remedial actions at
25 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
26 following circumstances:

1 and Tidewater. Tidewater shall provide Ecology with the original recorded Environmental
2 (Restrictive) Covenant within thirty (30) days of the recording date.

3 **XXI. INDEMNIFICATION**

4 Tidewater agrees to indemnify and save and hold the State of Washington, its employees,
5 and agents harmless from any and all claims or causes of action (1) for death or injuries to
6 persons, or (2) for loss or damage to property to the extent arising from or on account of acts or
7 omissions of Tidewater, its officers, employees, agents, or contractors in entering into and
8 implementing this Decree. However, Tidewater shall not indemnify the State of Washington
9 nor save nor hold its employees and agents harmless from any claims or causes of action to the
10 extent arising out of the negligent acts or omissions of the State of Washington, or the employees
11 or agents of the State, in entering into or implementing this Decree.

12 **XXII. COMPLIANCE WITH APPLICABLE LAWS**

13 A. All actions carried out by Tidewater pursuant to this Decree shall be done in
14 accordance with all applicable federal, state, and local requirements, including requirements to
15 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
16 federal, state, or local requirements that the agency has determined are applicable and that are
17 known at the time of entry of this Decree have been identified in the dCAP (Exhibit B).

18 B. Pursuant to RCW 70.105D.090(1), Tidewater is exempt from the procedural
19 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
20 or authorizing local government permits or approvals. However, Tidewater shall comply with
21 the substantive requirements of such permits or approvals. The exempt permits or approvals and
22 the applicable substantive requirements of those permits or approvals, as they are known at the
23 time of entry of this Decree, have been identified in the dCAP (Exhibit B).

24 Tidewater has a continuing obligation to determine whether additional permits or
25 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
26 action under this Decree. In the event either Ecology or Tidewater determines that additional

1 itemized statement of costs that includes a summary of costs incurred, an identification of
2 involved staff, and the amount of time spent by involved staff members on the project. A general
3 statement of work performed will be provided upon request. Itemized statements shall be
4 prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within
5 ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the
6 rate of twelve percent (12%) per annum, compounded monthly.

7 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
8 authority to recover unreimbursed remedial action costs by filing a lien against real property
9 subject to the remedial actions.

10 **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

11 If Ecology determines that the Tidewater has failed to make sufficient progress or failed
12 to implement the remedial action, in whole or in part, Ecology may, after notice to Tidewater,
13 perform any or all portions of the remedial action or at Ecology's discretion allow Tidewater
14 opportunity to correct. Tidewater shall reimburse Ecology for the costs of doing such work in
15 accordance with Section XXIV Remedial Action Costs.

16 Except where necessary to abate an emergency situation, Tidewater shall not perform
17 any remedial actions at the Site outside those remedial actions required by this Decree, unless
18 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
19 (Amendment of Decree).

20 **XXV. PERIODIC REVIEW**

21 As remedial action, including groundwater monitoring, continues at the Site, the Parties
22 agree to review the progress of remedial action at the Site, and to review the data accumulated
23 as a result of monitoring the Site as often as is necessary and appropriate under the
24 circumstances. At least every five (5) years after the initiation of cleanup action at the Site the
25 Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action
26 at the Site. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require

- 1
2 1. Mid-Columbia Library
3 1320 West Hopkins Street
4 Pasco, WA 99301
- 5 2. Ecology's Eastern Regional Office
6 4601 North Monroe Street
7 Spokane, WA 99205-1295

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

12 **XXVII. DURATION OF DECREE**

13 The remedial program required pursuant to this Decree shall be maintained and continued
14 until Tidewater has received written notification from Ecology that the requirements of this
15 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed
16 by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section XIX
17 (Contribution Protection) shall survive.

18 **XXVIII. CLAIMS AGAINST THE STATE**

19 Tidewater hereby agrees that it will not seek to recover any costs accrued in
20 implementing the remedial action required by this Decree from the State of Washington or any
21 of its agencies; and further, that Tidewater will make no claim against the State Toxics Control
22 Account or any local Toxics Control Account for any costs incurred in implementing this Decree.
23 Except as provided above, however, Tidewater expressly reserves its right to seek to recover
24 any costs incurred in implementing this Decree from any other PLP. This section does not limit
25 or address funding that may be provided under WAC 173-322.

26 **XXIX. EFFECTIVE DATE**

This Decree is effective upon the date it is entered by the Court.

EXHIBIT A

Tidewater Fuel Line Leak Site

