

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Interim Action by:

Bob and Sheri Smith)
Cowlitz B.P.)
101 Mulford Road)
Toledo, WA 98591)
Texaco Refining & Marketing, Inc.)
3400 188th Street S.W., Suite 630)
Lynnwood, WA 98037)
Frank Vineyard)
Post Office Box 696)
Toledo, WA 98591)

AGREED ORDER
No. DE94 S362

TO: Bob and Sheri Smith
Cowlitz B.P.
101 Mulford Road
Toledo, WA 98591

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of 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 Frank Vineyard (Vineyard) the property owner, Bob and Sheri Smith

(Smiths) the owners of the improvements at the active station and lessees of the property at the active station, or Texaco Refining & Marketing, Inc. (Texaco) former lessees of the active station, hereinafter collectively referred to as the Potentially Liable Parties (PLPs).

1. The active Cowlitz B.P. gasoline station, hereinafter referred to as the active station, is leased by the Smiths, and is defined as a portion of the Cowlitz B.P. Site (Site).

2. In April 1977, a leak in the product delivery line at the active station (currently leased by the Smiths) was repaired. It was estimated that this leak resulted in a loss of approximately 2,296 gallons of gasoline. The retailer was later reimbursed by Texaco for the loss of gasoline due to the leaky pipe.

3. During removal of Underground Storage Tanks (USTs) in March 1990 at the active station, petroleum contaminated soil in excess of MTCA Method A cleanup standards was discovered.

4. In April 1991, Ecology issued Enforcement Order No. DE 91-S123 to Mr. Frank Vineyard to conduct a Remedial

Investigation/Feasibility Study (RI/FS) at the active station. During this investigation, ground water samples collected confirmed contamination in excess of MTCA Method A cleanup standards for total petroleum hydrocarbons as gasoline (TPH-G), and benzene, ethylbenzene, toluene, and xylene (BTEX). In the process of completing the Order, petroleum contamination of ground water and soil was also discovered at a former gasoline station, hereinafter referred to as the former station, located across Mulford Road from the active station, on property also owned by Mr. Vineyard. The Order specified that if contamination was discovered at this location, it would be included as part of the Cowlitz B.P. Site. These ground water data were collected in January 1992.

5. In May 1994, Ecology solicited 30-day public comment and review on a draft Cleanup Action Plan (CAP) for the Site.

6. In September 1994, during a Site visit conducted by Ecology, current Site activities at the former station were investigated. It was discovered that the ground surface had been graded, a septic tank and underground utility lines had been installed, and "model" single family

homes on concrete foundations had been erected in the area where the approved CAP had outlined a ground water pump and treat system to be located. In addition, the monitoring wells installed in this area as part of the RI/FS could not be located. Because Ecology had no prior knowledge of these activities, Ecology has concern that these activities may have compromised the integrity of the monitoring wells. Finally, since the most recent ground water data was collected over two years ago, Ecology has concern that the CAP may no longer be appropriate for cleanup of the Site due to potentially changing ground water conditions.

III.

Ecology Determinations

1. The Smiths are an "owner or operator" of the active facility as defined in RCW 70.105D.020(6) of a "facility(ies)" as defined in RCW 70.105D.020(3).
2. The active station and a former station are identified as the Cowlitz B.P. Site (Site) which is located at 101 Mulford Road, Toledo, Washington. The Site extends both vertically and laterally to any area where hazardous substances have come to be located as a result of the

activities at the active station. If, during the course of this investigation, Ecology determines that two separate plumes from each of the gasoline stations can be identified, the former station will be defined as a separate site for purposes of any future remedial actions.

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

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 at RCW 70.105D.020(10).

5. By letter dated September 16, 1994, Ecology notified the Smiths of their status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial or interim actions with respect to the release or threatened release of

hazardous substances, whenever it believes such action to be in the public interest.

7. Based on the foregoing facts, Ecology believes the interim action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that the PLPs take the following interim actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. Each party is responsible to perform those tasks specifically assigned in the Order.

1. Determine location of all monitoring wells and construct Site map. Vineyard shall locate all monitoring wells and evaluate for well integrity. If it is determined that any wells have been damaged to the extent that they cannot be repaired and/or any ground water samples retrieved from the wells cannot be considered representative of the aquifer, then the well shall be replaced. All monitoring wells shall be located and evaluated for integrity within **two (2) weeks** from the effective date of this Order. Any

damaged or destroyed wells shall be replaced or repaired within **four (4) weeks** from the effective date of this Order.

A Site map shall be constructed showing locations of all present Site features. These features shall include locations for all monitoring wells, "model" homes, utility conduits, the septic tank, and an outline of the fenced area. This map shall be provided to Ecology within **four (4) weeks** from the effective date of this Order.

2. Additional wells. The PLPs shall investigate and install additional monitoring wells. The locations of these wells shall be presented to Ecology in a draft work plan which shall be submitted for Ecology comment and approval. This work plan shall include a map showing locations of the proposed wells and well construction details including well construction diagrams and other pertinent information. All wells installed shall have compatible construction with existing wells at the Site. The draft work plan shall be submitted to Ecology within **six (6) weeks** from the effective date of this Order. A revised work plan shall be submitted to Ecology for approval within **two (2) weeks** following receipt of Ecology's comments on the draft work plan.

3. Collect ground water data. The PLPs shall collect ground water samples from all monitoring wells (including the additional wells referred to in paragraph 3) and analyze the samples for TPH-G, BTEX, and lead using Ecology approved methods. MW-101 shall also be sampled for diesel (TPH-D). Water level measurements shall also be collected. This information is due to Ecology within **four (4) weeks** following Ecology's approval of the draft work plan described above.

4. Re-evaluate the Cleanup Action Plan (CAP). The PLPs shall re-evaluate the CAP to determine if the previously recommended Site remedy is appropriate. Recommendations shall be made for appropriate remedial actions. These written recommendations are due to Ecology within **eight (8) weeks** following Ecology's approval of the draft work plan. The written recommendations shall include any maps or drawing showing locations of all major components of the proposed remedial system.

5. Conduct quarterly ground water monitoring of the Site. The PLPs shall prepare a ground water monitoring program for sampling on a quarterly basis. All monitoring wells shall be sampled for TPH-G and BTEX on a quarterly

basis (October, January, April, and July) for a one year period beginning the first quarter after the collection of ground water monitoring data referred in paragraph 4 above. MW-101 shall be sampled for TPH-D. Ground water levels shall also be collected. All ground water information, including laboratory analytical data sheets, shall be due to Ecology within 45-days following the first day of the month.

V.

Terms and Conditions of Order

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

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.

3. Remedial Action Costs. The PLPs 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). The PLPs shall pay the required amount within 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 an itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Tammy Hall

Department of Ecology, Southwest Regional Office

Post Office Box 47775

Olympia, WA 98501-7775

The PLPs shall designate a project coordinator. The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent

possible, communications between Ecology and the Smiths, 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 coordinator(s). Should Ecology or the PLPs change project coordinator(s), written notification shall be provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

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. The PLPs 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. The PLPs 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 will be in compliance with this Order.

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Cowlitz B.P. Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

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 the PLPs. By signing this Agreed Order, the PLPs agree 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. Ecology shall allow split or replicate samples to be taken by the PLPs during an inspection unless doing so interferes with

Ecology's sampling. The PLPs shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation The PLPs shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

The PLPs shall help coordinate and implement public participation for the Site.

8. Retention of Records. The PLPs 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 the PLPs, then the PLPs agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. The PLPs may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request 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. The PLPs are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 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 the PLPs 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 the PLPs to require those remedial actions required by this Agreed Order, provided the PLPs comply 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 Cowlitz B.P. Site.

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 the PLPs to stop further implementation of this Order for such period of time as needed to abate the danger.

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 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 transfer of any legal or equitable interest the PLPs may have in the Site or any portions thereof, the PLPs 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, the PLPs shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws

A. 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 paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV, the Work to be Performed and are binding and enforceable requirements of the Order.

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 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 Ecology of this 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.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. 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 which 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.

VI.

Satisfaction of this 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 interim 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

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 the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs 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. (1) This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.
- (2) Each PLP named in this Agreed Order is individually responsible for compliance with the terms and conditions of this Order. Compliance with this Agreed Order by any PLP is not conditioned on the performance on any other PLP. Similarly, the right of Ecology

to enforce this Order against any PLP is not
conditioned on the performance of or
enforcement against any other PLP.

Effective date of this Order: _____

5/15/95

BOB & SHERI SMITH

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

By

Robert W. Smith

By

Carol E. Jones

By

Sheri Smith