

Cowlitz B.P.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Interim Action by:

Bob and Sheri Smith)	
Cowlitz B.P.)	
101 Mulford Road)	AGREED ORDER
Toledo, WA 98591)	No. DE94 S368
)	
Texaco Refining & Marketing, Inc.)	
3400 188th Street S.W., Suite 630)	
Lynnwood, WA 98037)	
)	
Frank Vineyard)	
Post Office Box 696)	
Toledo, WA 98591)	

TO: Texaco Refining & Marketing, Inc.
3400 188th Street S.W.
Lynnwood, WA 98037

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

1. Texaco leased the active Cowlitz B.P. station, hereinafter referred to as the active station, from 1955 to 1980.

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, the 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 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. Texaco is a owner or operated the active facility at the time of disposal or release of the hazardous substance as provided in RCW 70.105D.040 (1)(b) 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, based on 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 October 25, 1994, Ecology notified Texaco of its 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, the Department 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.

7. Based on the foregoing facts, Ecology believes the remedial 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 remedial 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 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 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

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.

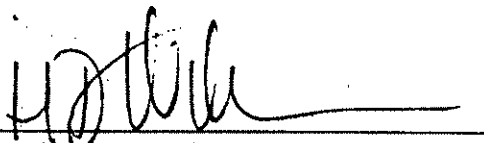
- (2) Each PLP named in this Agreed Order is individually responsible for compliance with the terms and conditions of this Order. Compliance with this Agreed Order by any PLP is not conditioned on the performance on any other PLP. Similarly, the right of Ecology to enforce this Order against any PLP is not conditioned on the performance of or enforcement against any other PLP.

Effective date of this Order: 5/15/1995

TEXACO REFINING &
MARKETING, INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By



H. D. WILLIAMS
ASSISTANT SECRETARY

By

