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In The Matter of a Remedial Action)
by Atlantic Richfield Company to)
Arco Products Company, a division)
of Atlantic Richfield Company,)
1055 West Seventh Street,)
P.O. Box 2570-PAC-1293,)
Los Angeles, CA 90051-0570)

AGREED ORDER
No. DE 92 TC-N158

I. JURISDICTION

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

II. FINDINGS OF FACT

Based on the information available to it and without adjudication of any facts or legal issues, the Washington State Department of Ecology (Ecology) finds that the following facts exist for the purpose of issuance of this Order. The undersigned, Arco Products Company, a division of Atlantic Richfield Company (Arco), neither admits or denies the accuracy of any factual statement or legal conclusion contained in this Order. Furthermore, Arco believes that off-site contamination may be migrating onto the Site. In entering this agreement, Arco reserves its right to enforce any claims it may have by means of contribution or otherwise against any entity that may

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1 be responsible for the presence of any contamination on or the
2 migration of any contamination onto the Site.

3 A. Arco presently owns the following property known as
4 Arco Harbor Island Terminal--Plant 1 and Plant 2 located at 1652
5 Southwest Lander Street and at the southwest quadrant of the
6 intersection of Southwest Florida Street and Eleventh Avenue
7 Southwest, respectively, Seattle, Washington, 98134
8 (collectively referred to as the "Site").

9 B. Ecology files contain the following report: Subsurface
10 Environmental Assessment Arco Harbor Island Terminal, Seattle,
11 Washington. Engineering Enterprises, Inc., October 5, 1987 (EEI
12 Report). Based on the EEI Report, Ecology finds as follows:

13 1. Free-phase hydrocarbons are present on the Site
14 situated at the top of the water table beneath the Plant 1
15 warehouse; and

16 2. Residual hydrocarbons are present in the soil at
17 the Site beneath Plants 1 and 2.

18 C. The Arco Harbor Island Terminal, an operating
19 facility, consists of two separate bulk storage plants (Plant
20 No. 1 and Plant No. 2). Plant No. 1 consists of approximately
21 20 above-ground storage tanks and houses the main terminal
22 facility which includes a large warehouse, office building, pump
23 room, truck wash, motor transport garage, boiler house, vapor
24 recovery unit, building, loading dock and several smaller

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1 buildings and sheds. The products stored in Plant No. 1 include
2 "black oil" (Bunker "C") and light black oil diesel, unleaded
3 and leaded gasolines, stove oil, heating oil, kerosene, "flash
4 gas", aviation fuel, klenzene (paint thinner), and gasoline
5 additives. Plant No. 2 contains approximately 6 above-ground
6 storage tanks in which No. 2 diesel fuels are presently stored.
7 Plant No. 2 also houses a foam house and a salt tower.

8 III. ECOLOGY DETERMINATIONS

9 A. The Site is a "facility" as defined in RCW
10 70.105D.020(3).

11 B. Arco is an "owner or operator" of the Site as defined
12 in RCW 70.105D.020(6).

13 C. Petroleum or petroleum products are "hazardous
14 substances" as defined in RCW 70.105D.020(5).

15 D. The presence of petroleum in the soil and the
16 groundwater at the Site constitutes a "release" as defined in
17 RCW 70.105D.020(10.)

18 E. By letter of May 21, 1990, Ecology notified Arco of
19 its status as a "potentially liable person" under RCW
20 70.105D.040 after notice and opportunity for comment.

21 F. Pursuant to RCW 70.105D.030(1) and section .050,
22 Ecology may require potentially liable persons to investigate or
23 conduct remedial actions with respect to the release or
24 threatened release of hazardous substances.

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1 G. Based on the foregoing facts and in the best interests
2 of the public, Ecology has determined that Arco must take the
3 following remedial actions, as set forth below, on the Site.

4 IV. WORK TO BE PERFORMED

5 Based on the foregoing Facts and Determinations, it is
6 hereby ordered that Arco take the following remedial actions and
7 that these actions be conducted in accordance with ch. 173-340
8 WAC, unless otherwise specifically provided herein. These
9 actions are more specifically described in the Scope of Work
10 attached as Exhibit A and hereby incorporated by reference as an
11 enforceable part of this Agreed Order.

- 12 A. Task 1: Project Planning
13 B. Task 2: Field Investigation
14 C. Task 3: Data Evaluation
15 D. Task 4: Baseline Risk Assessment
16 E. Task 5: Remedial Investigation/Risk Assessment Report
17 F. Task 6: Feasibility Studies and Report
18 G. Task 7: Project Communications

19 V. TERMS AND CONDITIONS OF ORDER

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

23 B. Public Notice. RCW 70.105D.030(2)(a) requires that
24 this Order be subject to public notice. This Agreed Order is

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1 subject to a 30-day public comment period before the Order
2 becomes effective. WAC 173-340-600(10)(c). Ecology shall be
3 responsible for providing such public notice in accordance with
4 the public participation plan. Ecology reserves the right to
5 modify or withdraw any provision of this Order should public
6 comment disclose facts or considerations which indicate to
7 Ecology that the Order is inadequate or improper in any respect.
8 According to WAC 173-340-600(10), the public comment period
9 shall be at least thirty (30) days in duration. The public
10 comment period must be completed before this Agreed Order
11 becomes effective.

12 C. Public Participation. Ecology shall maintain the
13 responsibility for public participation at the Site. Arco shall
14 assist Ecology in preparing and updating the public
15 participation plan for the Site. Arco shall help coordinate and
16 implement public participation for the Site, but reserves the
17 right to issue its own statements on this Site and the Order.

18 D. Remedial Action Costs. Arco agrees to pay to Ecology
19 those costs incurred by Ecology pursuant to this Agreed Order
20 which are in accordance with ch. 70.105D RCW and ch. 173-340
21 WAC. These costs shall include work performed by Ecology or its
22 contractors for investigations, remedial actions, order
23 preparation, negotiations, oversight and administration. Ecology
24 costs shall include costs of direct activities and agency

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1 indirect costs of direct activities; e.g., employees salary,
2 laboratory costs, contractor fees, and employment benefit
3 packages. Arco agrees to pay the required amount within 90 days
4 of receiving from Ecology an itemized statement of costs that
5 include a summary of costs incurred, an identification of
6 involved staff, and the amount of time spent by Ecology staff
7 members on the project. General description of work performed
8 shall be provided upon request to the Ecology Project
9 Coordinator. Itemized statements shall be provided quarterly.
10 Failure to pay Ecology costs within 90 days of receipt of the
11 itemized statement of costs may result in interest charges.

12 E. Designated Project Coordinators. The project
13 coordinator for Ecology is:

14 Nnamdi Madakor
15 Washington State Department of Ecology
16 Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(206) 649-7000

17 The project coordinator for Arco is:

18 Roy I. Thun
19 ARCO Products Company
1055 W. Seventh St.
20 P. O. Box 2570
Los Angeles, CA 90051-0570
21 (213) 486-1293

22 The project coordinators shall be responsible for
23 overseeing the implementation of this Order. To the maximum
24 extent possible, communications between Ecology and Arco, and

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1 all documents, including reports, approvals, and other
2 correspondence concerning the activities performed pursuant to
3 the terms and conditions of this Order, shall be directed
4 through the project coordinators. Should Ecology or Arco change
5 project coordinators, a written notification shall be provided
6 to Ecology or Arco at least ten (10) calendar days prior to the
7 change.

8 F. Performance. Unless otherwise required by WAC 173-
9 340-400(7)(b)(i), all work performed pursuant to this Order
10 shall be under the direction and supervision, as necessary, of
11 a professional engineer or hydrogeologist, or similar expert,
12 with appropriate training, experience and expertise in hazardous
13 site investigation and cleanup. Arco shall notify Ecology as to
14 the identify of such engineer(s) or hydrogeologist(s) or any
15 contractors and subcontractors to be used in carrying out the
16 terms of this Order, in advance of their involvement at the
17 Site.

18 Except when necessary to abate any spill or emergency
19 situation, Arco shall not perform any remedial actions at the
20 Site outside that required by the Order, without first giving
21 Ecology five days written notice thereof, provided, however,
22 Arco shall not undertake such remedial actions that Ecology
23 objects to in writing.

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1 G. Access. Ecology or any Ecology representative shall
2 have the authority to enter and freely move about the Site at
3 all reasonable times for the purposes of, inter alia: inspecting
4 records, operation logs, and contracts related to the work being
5 performed pursuant to this Order; reviewing the progress and
6 carrying out the terms of this Order; conducting such tests or
7 collecting samples as Ecology or the project coordinator may
8 deem necessary; using a camera, sound recording, or other
9 documentary-type equipment to record work done pursuant to this
10 Order; and verifying the work submitted to Ecology by Arco. By
11 signing this Agreed Order, Arco agrees to allow access to the
12 Site at all reasonable times for purposes of overseeing work
13 performed under this Order. Each party shall allow split or
14 replicate samples to be taken by the other and shall provide
15 seven (7) days notice before any sampling activity. Ecology
16 agrees to comply with the Health and Safety Plan developed as
17 part of Task 1 of the Scope of Work. Until such time as that
18 Health and Safety Plan has been submitted, Ecology agrees to
19 comply with the Site Access and Operating Procedures attached
20 and incorporated herein as Exhibit B.

21 H. Retention of Records. Arco shall preserve in a
22 readily retrievable fashion, during the pendency of this Order
23 and for 10 (ten) years from the date of completion of compliance
24 monitoring, all records, reports, documents, and underlying data

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1 in its possession relevant to this Order. Should any portion of
2 the work performed here be undertaken through contractors or
3 agents of Arco, then Arco agrees to include in their contract
4 with such contractors or agents a record retention requirement
5 meeting the terms of this paragraph.

6 I. Dispute Resolution. Arco may request Ecology to
7 resolve disputes which may arise during the implementation of
8 this Order. Such requests shall be in writing. Ecology's
9 resolution of the dispute shall be binding and final. Arco is
10 not relieved of any requirement of this Order during the
11 pendency of this dispute and shall remain responsible for timely
12 compliance with the terms of this Order unless otherwise
13 provided by Ecology in writing.

14 J. Reservation of Rights/No Settlement. This Agreed
15 Order is not a settlement under ch. 70.105D RCW. Ecology's
16 signature on this Order in no way constitutes a covenant not to
17 sue or compromise of any Ecology rights or authority. Ecology
18 will not, however, bring an action against Arco to recover
19 remedial action costs paid to and received by Ecology under this
20 Agreed Order. In addition, Ecology will not take additional
21 enforcement actions against Arco to require those remedial
22 actions required by this Agreed Order, provided Arco complies
23 with the Agreed Order. Ecology reserves the right, however, to
24 require additional remedial actions at the Site should it deem

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1 such actions necessary. Ecology also reserves all rights
2 regarding the injury to, destruction of, or loss of natural
3 resources resulting from the releases or threatened releases of
4 hazardous substances at the Site.

5 K. Endangerment. In the event Ecology determines that
6 conditions at the Site are creating or have the potential to
7 create a danger to the health or welfare of the people on the
8 Site or in the surrounding area or to the condition of the
9 environment, Ecology may order Arco to stop further
10 implementation of this Order for such period of time as needed
11 to abate the danger.

12 Conversely, if Arco determines that conditions at the Site
13 are creating or have the potential to create danger to the
14 health and welfare of the people on the Site or in the
15 surrounding area or to the environment, Arco has the right to
16 cease implementation of this Order. If the conditions at the
17 Site do not appear to present, or have the potential to present
18 an immediate danger to life, health, and/or the environment,
19 then Arco must notify Ecology of the decision to cease
20 activities 24 hours prior to stopping work. However, if
21 conditions at the Site present, or have the potential to
22 present, an immediate danger to life, health, and/or the
23 environment, then Arco may cease activities at the Site without
24 delay. Arco must inform Ecology of this decision within 24

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1 hours from the time it was made. In either case, Ecology will
2 evaluate the situation to determine the magnitude of the danger
3 and whether or not a period of work stoppage is needed to abate
4 the danger. Ecology will notify Arco and confirm in writing
5 when implementation of the Order shall be resumed.

6 L. Compliance With Other Applicable Laws. All actions
7 carried out by Arco pursuant to this Order shall be done in
8 accordance with all applicable federal, state, and local laws,
9 regulations, or requirements.

10 M. Amendment to Agreed Order. In the event that
11 environmental conditions unknown to the parties at the time this
12 Agreed Order is executed become known and may reasonably require
13 further investigation not covered by this Agreed Order, the
14 parties will negotiate in good faith to resolve such issue.

15 Ecology and Arco may modify this Agreed Order by mutual
16 written agreement. Any requests by Arco for modification shall
17 be directed to the Ecology project manager. Ecology will
18 promptly consider any requests by Arco for such modification.

19 N. Extension of Schedule.

20 1. Extension of schedules shall not require formal
21 amendment of this Order. Public notice of schedule
22 extensions may be published in Ecology's Site Registrar.

23 2. An extension may be granted only when a request
24 for an extension is submitted by Arco in a timely fashion

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1 and good cause exists for granting the extension. All
2 extensions shall be requested in writing. The request
3 shall specify the reason(s) the extension is needed. The
4 extension shall only be granted for such period of time as
5 Ecology determines is reasonable under the circumstances.
6 A requested extension shall not be effected until approved
7 by Ecology in writing. Ecology shall act upon all written
8 requests for extension in a timely fashion and shall
9 endeavor to so act within five (5) working days.

10 3. The burden shall be on Arco to demonstrate that
11 the request for extension has been submitted in a timely
12 fashion and that good cause exists for granting the
13 extension. Consent to a request for an extension shall not
14 be unreasonably withheld. Good cause shall mean reasons
15 acceptable to a reasonably prudent person under the same or
16 similar circumstances and includes but is not limited to
17 the following:

18 (a) Circumstances beyond the reasonable control
19 and despite the due diligence of Arco, including
20 delays caused by third parties or Ecology, such as
21 (but not limited to) delays by Ecology in reviewing,
22 approving or modifying documents submitted by the
23 Respondents and inability to obtain access to property
24 not owned or controlled by Respondents;

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(b) Delays that are directly attributable to any changes in permit terms or conditions or refusal to grant a permit needed to implement the requirements of this Order, if Arco filed the timely application for the necessary permit;

(c) Acts of God, fire, flood, blizzard, extreme temperatures, or any other unavoidable casualty; and

(d) Endangerment as described in section M. However, neither increased cost or performance of the terms of the Order nor changed economic circumstances may be considered circumstances beyond the reasonable control of Arco.

4. In addition, Ecology may extend the time schedules contained in the Order if an extension is needed as a result of:

(a) Delays in the issuance of a necessary permit which was timely applied for; or

(b) Judicial review of the issuance, non-issuance, or re-issuance of a necessary permit; or

(c) Other exceptional or extraordinary circumstances.

Ecology shall give Arco written notice in a timely fashion of any extension granted or denied pursuant to this Order.

1 Denial of a request for an extension shall be subject to Section
2 V, **Resolution of Disputes.**

3 O. Transference of Property. No voluntary conveyance or
4 relinquishment of title, easement, leasehold, or other interest
5 in any portion of the Site shall be consummated by Arco without
6 provision for continued implementation of all requirements of
7 this Order and implementation of any remedial actions found to
8 be necessary as a result of this Order. With respect to any
9 involuntary conveyance or relinquishment of title, easement,
10 leasehold or other interest in any portion of the Site, Arco
11 shall exercise its best efforts to provide for continued
12 implementation of all requirements of this Order. Prior to
13 transfer of any legal or equitable interest Arco may have in the
14 Site or any portions thereof, Arco shall serve a copy of this
15 Order upon any prospective purchaser, lessee, transferee,
16 assignee, or other successor in such interest. At least thirty
17 (30) days prior to finalization of any transfer, Arco shall
18 notify Ecology of the contemplated transfer.

19 VI. SATISFACTION OF THIS ORDER

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

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VII. ENFORCEMENT

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2 A. Pursuant to RCW 70.105D.050 and subject to the
3 provisions of Section V, paragraph J, this Order may be enforced
4 as follows:

5 1. The Attorney General may bring an action to
6 enforce this Order in state or federal court.

7 2. The Attorney General may seek, by filing an
8 action, if necessary, to recover amounts spent by Ecology
9 for investigative and remedial actions and orders related
10 to the Site.

11 3. In the event Arco refuses, without sufficient
12 cause, to comply with any term of this Order, Arco will be
13 liable for:

14 (a) Up to three times the amount of any costs
15 incurred by the state of Washington as a result of its
16 refusal to comply; and

17 (b) Civil penalties of up to \$25,000 per day for
18 each day it refuses to comply.

19 4. This Order is not appealable to the Washington
20 Pollution Control Hearings Board. This Order may be
21 reviewed only as provided under RCW 70.105D.060.
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VIII. EFFECTIVE DATE

This Agreed Order shall become effective after execution by both parties and upon completion of the public comment period.

ARCO PRODUCTS COMPANY, A Division
of Atlantic Richfield Company

By: *[Signature]*

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

By: *Joseph M. Buckley* 7-8-92
(for Mike Gallagher)

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**AGREED ORDER
ACCESS AND OPERATING PROCEDURES
FOR ARCO TERMINAL**

1. All personnel who enter the Site pursuant to the Agreed Order (hereinafter "personnel") shall notify the Terminal Superintendent prior to entering the Site and upon leaving the Site.
2. Automobiles of all personnel shall be operated and parked in areas designated by the Terminal Superintendent. Driveways and plant roads shall be kept clear to eliminate interference with normal operations and provide access for emergency equipment.
3. Smoking by personnel is absolutely prohibited on ARCO property, except in certain designated locations that have been approved for this purpose. Temporary smoking areas for use during major construction may be approved by the Terminal Superintendent and/or Safety Section. Personnel entering the site shall not bring upon ARCO property "strike anywhere" matches and cigarette lighters having exposed flint-operating mechanisms.
4. The possession, sale, and consumption of alcoholic beverages and/or drugs on ARCO property by personnel is strictly prohibited.
5. Personnel shall immediately advise the Terminal Superintendent of all accidents involving personnel occurring on ARCO property.
6. Personnel shall comply with all instructions from the Terminal Superintendent pertaining to safety apparel, such as hard hats, goggles, masks and gloves and safety equipment such as a breathing apparatus.
7. Personnel shall comply with all instructions by the Terminal Superintendent regarding health and safety risks or conditions.
8. In lieu of requiring personnel to provide home telephone numbers to ARCO, the Washington Department of Ecology shall maintain a list of such telephone numbers and shall notify the next of kin of such personnel in the event of any incident requiring such notification.

