

Superior Oil
FS 1259

EFFECTIVE DATE: August 15, 1994

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at:)
)
) AGREED ORDER
Superior Oil Co.)
250 East D Street) No. DE 93TC-S351
Tacoma, Washington 98421-1802)

TO: The Agreeing Potentially Liable Persons (Agreeing PLPs):

Phillips Petroleum Company
Attn: Mr. T. G. Erickson
13 Phillips Building
Bartlesville, Oklahoma 74004

Superior Oil Co.
Attn: Mr. Terrill L. Henderson
250 East D Street
Tacoma, Washington 98421-1802

Texaco Refining and Marketing, Inc. (TRMI)
Attn: Mr. John A. Price
Pacific Northwest Regional Manager
10 Universal City Plaza
Universal City, CA 91608

I

Jurisdiction

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

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by the
Agreeing PLPs.

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1. The Superior Oil Co., 250 East D Street, Tacoma Terminal ("the Facility"), is a bulk petroleum storage and transfer facility currently owned and operated by Superior Oil Co. Current products include leaded and unleaded gasoline, diesel, ethyl alcohol, and various fuel additives. The Facility is approximately 5.3 acres in size, and is located at the north end of East D Street in Tacoma (See Exhibit A, the Facility location map). The total storage capacity of the Facility is 350,000 barrels.

2. The Facility is located on Thea Foss Waterway in Commencement Bay in Puget Sound.

3. The Facility is located within the boundaries of the "Mouth of the Thea Foss Waterway Problem Area" of the Commencement Bay Nearshore/Tideflats (CBN/T) Superfund site.

4. The Record of Decision (ROD) for the CBN/T Superfund site lists low molecular weight polynuclear aromatic compounds (LPAH) and high molecular weight polynuclear aromatic compounds (HPAH) as problem chemicals in the "Mouth of the Thea Foss Waterway Sediment Problem Area."

5. The Facility is listed in the ROD as a potential source of LPAH and HPAH in the "Mouth of the Thea Foss Waterway Sediment Problem Area" of the CBN/T Superfund site.

6. Between 1923 and 1925, Associated Oil Company constructed of a bulk petroleum storage facility on the site of the current Facility.

7. By corporate merger, Tidewater Oil Company assumed ownership of the Facility in November 1936, and owned and operated the Facility until 1966.

8. On March 29, 1966, Tidewater Oil Company transferred ownership of the Facility to Phillips Petroleum Company pursuant to an asset purchase agreement.

9. In 1967, Tidewater Oil Company merged with Getty Oil Company.

10. On November 6, 1968, Phillips Petroleum Company transferred ownership of the Facility to Puget Sound Plywood.

11. McCarty/Northwestern Petroleum Company began operation of the Facility on February 20, 1969, under a lease from Puget Sound Plywood.

12. On April 6, 1976, Puget Sound Plywood, transferred ownership of the Facility to Superior Oil Co. McCarty/Northwestern Petroleum Company continued to lease and operate the Facility from the date Superior Oil Co. assumed ownership until January 1979.

13. Gull Industries, Inc., acquired McCarty/Northwest Petroleum Company on January 1, 1979.

14. Superior Oil Co. began operation of the Facility on April 11, 1979.

15. On October 16, 1980, Grover C. Way, a geotechnical consultant, extracted petroleum contaminated soil samples from borings in the northwest portion of the Facility.

16. A product recovery well was installed by Superior Oil Co. and subsurface petroleum removal began on October 8, 1984.

17. In 1984, Texaco, Inc., parent company of TRMI, acquired Getty Oil Company.

18. A report entitled *Superior Oil Terminal Remedial Investigation Report (RI Report)*, dated July 14, 1993, was received by Ecology. This report, which was an independent action taken by Superior Oil Co., documents the presence of free phase petroleum products (i.e., gasoline, diesel, and bunker C oil) on the groundwater beneath the Facility. Free phase petroleum was found at five of eight monitoring wells tested. The petroleum was found in an area spanning 500 feet. Bunker C (also called "Black Oil") is a product which Superior Oil Co. has stated it has never handled or stored at the Facility.

19. On February 7, 1994, a Superior Oil Co. document forwarded to Ecology by the firm Schwabe, Williamson, et al., counsel for Superior Oil Co., provided a summary of conversations with past Facility employees concerning alleged releases of petroleum products at the Facility. These alleged releases occurred during the operations of Tidewater Oil Company, Phillips Petroleum Company, and Northwestern Petroleum Company.

20. This Agreed Order is being entered into by the Washington State Department of Ecology ("Ecology"), and by the Agreeing PLPs; Phillips Petroleum Company ("Phillips"), Superior Oil Co. ("Superior"), and Texaco Refining and Marketing, Inc. ("TRMI"), a wholly owned subsidiary of Texaco, Inc.

21. As of the effective date of this Agreed Order, Ecology has also notified McCarty/Northwestern Petroleum Company and Puget Sound Plywood that they are "potentially liable persons" for the Superior Oil Facility ("the Facility") at 250 East D Street in Tacoma, Washington, and has issued a preliminary notice of PLP liability to Gull Industries. Ecology enforcement decisions with regard to these nonsigning "potentially liable persons" are pending.

III.

Ecology Determinations

1. The Agreeing PLPs are "owners or operators" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

2. The facility is known as the Superior Oil Co., Tacoma Terminal ("the Facility") and is located at 250 East D Street, Tacoma, Washington.

3. The substances found at the Facility 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 the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

5. By letters dated February 11, 1994; March 9, 1994; and March 14, 1994; Ecology notified Superior Oil Co., Phillips Petroleum Company, and Texaco Refining and Marketing, Inc., respectively, of their status as "potentially liable persons" 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 Agreed Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that the Agreeing 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. Please make note of the due dates of the deliverables and tasks because they are not necessarily in chronological order.

Tasks/Deliverables

Due Date

Task 1. The Agreeing PLPs shall conduct an interim action at the Facility designed to: 1) Extract light non-aqueous

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phase liquid (LNAPL) from the groundwater surface at the Facility, and 2) Determine whether an ongoing release of PAH to Thea Foss Waterway is occurring via groundwater. If so, this release shall be contained/controlled to the extent possible as an interim action. The interim action shall be performed in accordance with WAC 173-340-430, and shall consist of the following elements:

- a. A draft conceptual design report for the interim action shall be submitted for Ecology review and approval. The report will contain:
 - i. An Engineering Evaluation of source controls which reduce potential or actual discharges of problem chemicals to the Thea Foss Waterway.
 - ii. Determination of problem chemicals being released.
 - iii. Identification of additional data to be collected.
 - iv. Interim action objectives.
 - v. A list of feasible interim action alternatives.
- 60 days after effective date of Agreed Order.

vi. A scope of work and schedule for
completion of the interim action.

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| b. | The final conceptual design report submittal shall be submitted for Ecology review and approval. Permit applications, as required, will be submitted to issuing agencies. | Two (2) weeks after receipt of written Ecology approval of the draft conceptual design report. |
| | | |
| c. | Draft interim action design plans and specifications shall be submitted to Ecology for review and approval. The plan shall include a worker Safety and Health Plan prepared in accordance with WAC 173-340-810. | Four (4) weeks after receipt of written Ecology approval of the final conceptual design report. |
| | | |
| d. | Final interim action design plans and specifications shall be submitted to Ecology for review and approval. | Two (2) weeks after receipt of written Ecology approval of the draft interim action plans and specifications |

e. Interim action shall be constructed per the Ecology approved final interim action design plans and specifications. Construction to be completed in accordance with Ecology-approved schedule.

Construction to be started within four (4) weeks of receipt of Ecology approval of the final interim action plans and specifications.

Task 2. The Agreeing PLPs shall submit a draft work plan for the completion of a state Remedial Investigation (RI) and state Feasibility Study (FS) per WAC 173-340-350 for Ecology approval. The draft work plan will contain a schedule, draft scope of work, modifications to the current monitoring requirements, outlines of documents to be prepared, and an outline of tasks for the performance of the RI/FS. The draft state RI/FS shall include, as a minimum:

120 days after effective date of Agreed Order.

- a. Performance of a supplemental (Phase II) RI.
- b. Development of remedial action objectives.
- c. A listing of applicable or relevant and appropriate requirements (ARARs) for the Facility.

- d. Establish cleanup action levels and determine "hotspot" criteria as appropriate.
- e. Identification and screening of possible remedial action technologies.
- f. Combining the appropriate technologies into a list of remedial alternatives per WAC 173-340-350 and -360.
- g. Completing a detailed evaluation of the feasible remedial alternatives. The remedial alternatives shall, at a minimum, be evaluated for compliance with WAC 173-340-360, including:
 - i. Overall protectiveness of human health and the environment.
 - ii. Compliance with cleanup standards.
 - iii. Compliance with ARARs.
 - iv. Short-term effectiveness.
 - v. Long-term effectiveness.
 - vi. Permanent reduction of the toxicity, mobility, or volume of the Facility contaminants.
 - vii. Implementability/technical feasibility.
 - viii. Cost.

h. A proposed remedial alternative shall be selected.

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| Task 3. | A final work plan for RI/FS shall be submitted which addresses all Ecology written comments regarding the draft RI/FS work plan. | Four (4) weeks from receipt of written Ecology comments regarding the draft RI/FS work plan. |
| Task 4 | A draft RI/FS shall be submitted which addresses any Ecology written comments regarding the RI/FS work plan. | In accordance with the schedule in the Ecology-approved final RI/FS work plan. |
| Task 5. | A final RI/FS shall be submitted which addresses any Ecology written comments regarding the draft RI/FS. | Four (4) weeks from receipt of written Ecology draft RI/FS comments. |
| Task 6. | A draft cleanup action plan shall be submitted for Ecology finalization. | Four (4) weeks after receipt of Ecology's written approval of the final RI/FS. |

V.

Terms and Conditions of Agreed 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 Agreed Order.
2. Public Notices. WAC 173-340-600(10)(c) requires a thirty (30) day public comment period before this Agreed Order becomes effective. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Agreed Order should public comment disclose facts or considerations which indicate to Ecology that the Agreed Order is inadequate or improper in any respect. In the event that Ecology modifies or withdraws any provisions of this Agreed Order pursuant to this paragraph, and the Agreeing PLPs do not concur with such modification or withdrawals, the Agreeing PLPs reserve the right to withdraw their consent to this Agreed Order.
3. Remedial Action Costs. The Agreeing PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Agreed 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 Agreeing 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. The Agreeing PLPs will receive quarterly invoices from Ecology. If the total amount of payment(s) received by Ecology from

any of the Agreeing PLPs is more than 100 percent of the amount billed, the overpayment will be reflected on future invoices.

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

Dom Reale
Washington State Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, Washington 98504-7775

The project coordinator for the Agreeing PLPs is:

Kevin Murphy
Superior Oil Co.
2737 West Commodore Way
Seattle, Washington 98199-1233

The alternate project coordinator for the Agreeing PLPs is:

Glenn Anderson
Texaco Refining and Marketing, Inc.
10 Universal City Plaza
Universal City, CA 91608

The project coordinator(s) shall be responsible for overseeing the implementation of this Agreed Order. To the maximum extent possible, communications between Ecology and the Agreeing PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Agreed Order, shall be directed through the project coordinator(s). Should Ecology or the Agreeing PLPs change project coordinator(s), written notification shall be provided to Ecology or the Agreeing PLPs at least ten (10) calendar days prior to the change. The alternate project coordinator shall act as project coordinator in the absence or unavailability of the lead coordinator. The alternate project coordinator shall receive copies of all written correspondence and documents generated by Ecology's project coordinator and the lead project coordinator.

5. Performance. All work performed pursuant to this Agreed 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 Agreeing 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 Agreed Order, in advance of their involvement at the Facility. The Agreeing PLPs shall provide a copy of this Agreed Order to all agents, contractors and subcontractors retained to perform work required by this Agreed Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Agreed Order.

Except where necessary to abate an emergency situation, the Agreeing PLPs shall not perform any remedial actions at the Facility outside that required by this Agreed 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 Facility 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 Agreed Order; reviewing the progress in carrying out the terms of this Agreed 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 Agreed Order; and verifying the data submitted to Ecology by the Agreeing PLPs. By signing this Agreed Order, the Agreeing PLPs agree that this Agreed Order constitutes reasonable notice of access, and agree to allow access to the Facility at all reasonable times for purposes of overseeing work performed under this Agreed Order. Ecology shall allow split or replicate samples to be taken by the Agreeing PLPs during an inspection unless doing so interferes with Ecology's sampling. The

Agreeing PLPs shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity. As Phillips and TRMI do not presently own or control the Facility, Ecology agrees that communications and correspondence concerning access under this paragraph shall be directed to Superior. If the Agreeing PLPs or their agents require access to adjacent properties for purposes of investigation, design, monitoring, or other activities necessary to meet the requirements of this Agreed Order, Ecology will endeavor to assist the Agreeing PLPs in gaining such access.

7. Public Participation. The Agreeing PLPs shall prepare and/or update a public participation plan for the Facility. Ecology shall maintain the responsibility for public participation at the Facility. The Agreeing PLPs shall help coordinate and implement public participation for the Facility.

8. Retention of Records. The Agreeing PLPs shall preserve in a readily retrievable fashion, during the pendency of this Agreed Order and for ten (10) years from the date of completion of the work performed pursuant to this Agreed Order, all records, reports, documents, and underlying data in its possession relevant to this Agreed Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Agreeing PLPs, then the Agreeing 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 Agreeing PLPs may request Ecology to resolve disputes which may arise during the implementation of this Agreed Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Agreed Order. Ecology resolution of the dispute shall be binding and final. The Agreeing PLPs are not relieved of any requirement of this Agreed Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Agreed 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 Agreed 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 Agreeing 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 Agreeing PLPs to require those remedial actions required by this Agreed Order, provided the Agreeing PLPs comply with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Facility should it deem such actions necessary. This reservation by Ecology does not constitute an agreement by the Agreeing PLPs to perform such additional actions.

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 Facility.

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

By entering into this Agreed Order, the Agreeing PLPs do not admit or deny the accuracy of any factual statement or legal conclusion contained in this Agreed Order. The Agreeing PLPs believe that any contamination at the Facility was caused in whole or in part by persons not parties to this Agreed Order. By entering into this Agreed Order, the Agreeing PLPs: (a) each reserves its respective rights to enforce any claims it may have by means of a cost recovery action, a contribution action, or otherwise against any entity that may be responsible for the presence of any contamination

at the Facility, and (b) do not admit any liability, and this Agreed Order shall not be construed as an admission of liability.

11. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by Superior Oil Co. without provision for continued implementation of all requirements of this Agreed Order and implementation of any remedial actions found to be necessary as a result of this Agreed Order.

Prior to transfer of any legal or equitable interest Superior Oil Co. may have in the Facility or any portions thereof, Superior Oil Co. shall serve a copy of this Agreed 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, Superior Oil Co. shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws. All actions carried out by the Agreeing PLPs pursuant to this Agreed Order shall be done in accordance with all applicable federal, state, and local requirements. In implementing this Agreed Order for purposes such as sampling, it is contemplated that the Agreeing PLPs may remove limited quantities of soil, groundwater, and other materials (collectively "Materials") from real property within or adjacent to the Facility. Any removal shall be done with prior Ecology approval and in compliance with all applicable laws as required by this paragraph 12. It is agreed that any disposition of the Material by the Agreeing PLPs, including documents generated pursuant to such disposition, shall not be deemed to be an admission by such parties of liability for purposes of the Model Toxics Control Act.

VI.

Satisfaction of this Agreed Order

The provisions of this Agreed Order shall be deemed satisfied upon the Agreeing PLPs' receipt of written notification from Ecology that the Agreeing PLPs have completed the remedial activity required by this Agreed 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 Agreed Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Agreed 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 Facility.
 - C. In the event the Agreeing PLPs refuse, without sufficient cause, to comply with any term of this Agreed Order, the Agreeing 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. This Agreed Order is not appealable to the Washington Pollution Control Hearings Board. This Agreed Order may be reviewed only as provided under RCW

70.105D.060.

Effective date of this Agreed Order: 6/22/94

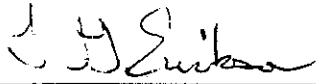
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 

David B. Jansen, P.E.

SIGNATURE PAGE FOR
PHILLIPS PETROLEUM COMPANY
FOR AGREED ORDER NO. DE 93TC-S351

PHILLIPS PETROLEUM COMPANY

By 
T. G. Erickson

Date: June 9, 1994

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SIGNATURE PAGE FOR
TEXACO REFINING AND MARKETING, INC.
FOR AGREED ORDER NO. DE 93TC-S351

TEXACO REFINING AND MARKETING, INC.

By John A. Price
John A. Price

Date: 6-15-94

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SIGNATURE PAGE FOR
SUPERIOR OIL CO.
FOR AGREED ORDER NO. DE 93TC-S351

SUPERIOR OIL CO.

By


Terrill L. Henderson

Date:

6-17-94

June 2, 1994

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