



RESPONSIVENESS SUMMARY

Industrial Petroleum Distributors

May 17 – June 18, 2012 Public Comment Period

Agreed Order

**Prepared by
Washington State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
Lacey, Washington**

September 2012

Contents

Site Information	2
Site Background.....	2
Site Location.....	3
Comment #1: Kip Summers, City of Olympia, Parks, Arts, & Recreation	4
Ecology Response	4
Comment #2: Bob Jacobs	5
Ecology Response	5
Comment #3: Kevin Lyon	6
Ecology Response	14

Site Information

Address: 1117 and 1120 West Bay Drive NW, Olympia

Site Manager: Steve Teel

Public Involvement Coordinator: Diana Smith

The Department of Ecology held a public comment period on a proposed agreed order (legal agreement) with Atlantic Richfield Company (ARCO) for the Industrial Petroleum site from May 17 – June 18, 2012. Under the agreement, which replaces a 2000 agreed order, ARCO will investigate contamination and draft a cleanup plan.

Public comments and Ecology's responses for these comment periods are summarized in this document.

Site Background

In the early 1950s, ARCO developed a bulk fuel storage and distribution facility on the site. Industrial Petroleum Distributors (IPD) later used the site to store waste oil. Past activities contaminated soil, groundwater, and sediments with petroleum hydrocarbons.

Under the earlier agreed order, the trust put together a cleanup plan for the western part of the site. This is the area west of West Bay Drive (see map on page 3). In 2002, Ecology held a comment period on the cleanup plan. The trust then did the cleanup under Ecology's Voluntary Cleanup Program. The work included:

- Demolishing buildings and the concrete slabs for the above-ground storage tanks.
- Removing and disposing of petroleum-contaminated soil.
- Sampling soil and groundwater to confirm cleanup was complete.

In 2003, Ecology issued an opinion letter stating that no further cleanup was needed on the west portion of the site. However, the area east of West Bay Drive would need more cleanup.

Site Location



Legend

Location of Industrial Petroleum ★

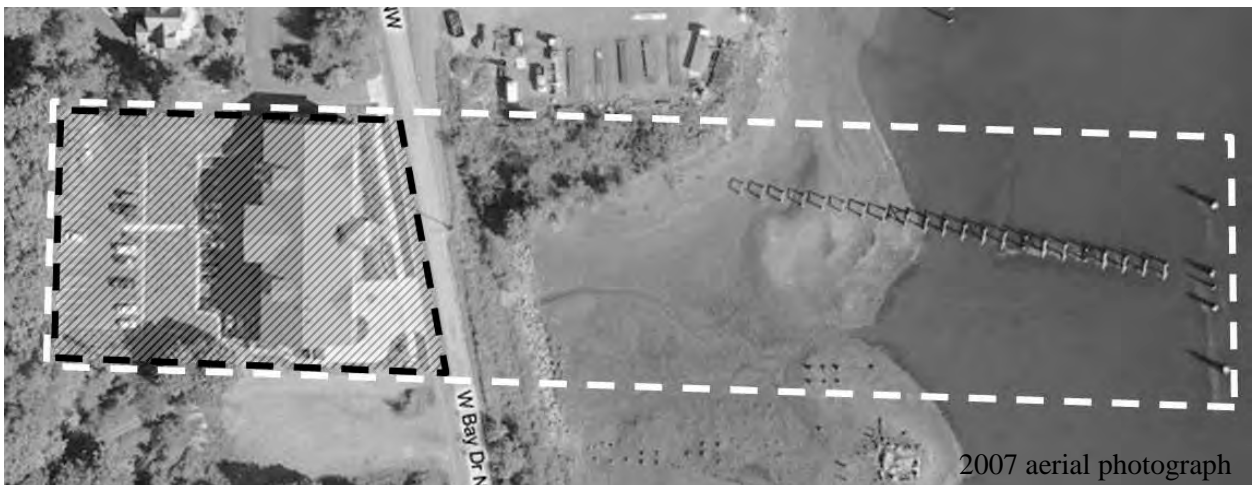
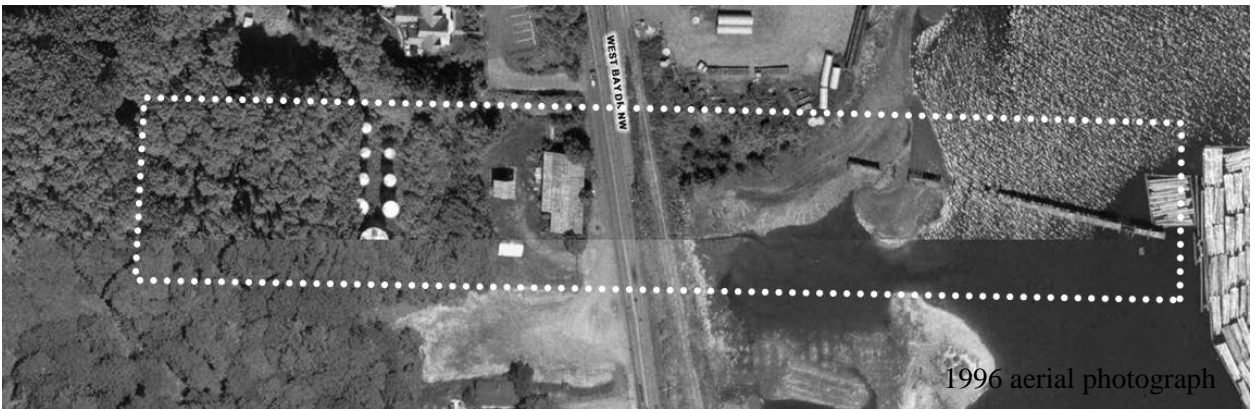
2000 Agreed Order Study Area



2012 Agreed Order Study Area



Portion of Site Cleaned Up Under the VCP



Comment #1: Kip Summers, City of Olympia, Parks, Arts, & Recreation

Steve,

I was looking at the 2012 Agreed Order for the Industrial Petroleum Distributors site north of West Bay Park and have two comments.

1. I noticed there is a railroad running through the site. How come no testing along tracks to the extent required at West Bay Park?
2. It looks like it is assumed contamination stops at the water line, yet there are pilings that supported a pipeline or travel way that carried petroleum products to a barge. It seems there may be a potential for contamination along the pier line due to spills along that route or creosote piling contamination. Whether they remove the pilings or not, I thought one was to investigate all potential sources and locations of contamination.

Thanks

Kip Summers P.E., LEED AP
Project Engineer II
Olympia Parks, Arts & Recreation

Ecology Response

Thank you for your comments. Individual comments and responses are broken down below.

Comment 1.1

I noticed there is a railroad running through the site. How come no testing along tracks to the extent required at West Bay Park?

Ecology Response

The Remedial Investigation sampling was sufficient to determine the extent of contamination that was associated with the IPD facility/Site. The railroad tracks were not used as part of the IPD facility and the contamination from the IPD Site does not appear to extend to the land surface along the rail alignment.

Comment 1.2

It looks like it is assumed contamination stops at the water line, yet there are pilings that supported a pipeline or travel way that carried petroleum products to a barge. It seems there may be a potential for contamination along the pier line due to spills along that route or creosote piling contamination. Whether they remove the pilings or not, I thought one was to investigate all potential sources and locations of contamination.

Ecology Response

The potential for petroleum contamination to affect sediments was part of the Remedial Investigation for the Site. The Sediment Screening Sampling Report can be found in Appendix A of the Remedial Investigation Report (<https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=4240>). Sediment samples from four locations beneath the pier were collected and analyzed for total petroleum hydrocarbons (gas, diesel, and oil ranges). None of the samples from these three ranges exceeded the 100 milligrams per kilogram (mg/kg) screening level. Therefore, it was concluded that no further sediment investigation was needed to define the extent of contamination from the IPD Site.

Comment #2: Bob Jacobs

Mr. Teel:

Please accept this email as an official comment on the IPD site on Olympia's West Bay Drive.

Your notice dated May 2012 indicates that the waterward (west) portion of this site will require additional clean-up.

I strongly support that position, and further urge that this site be cleaned up to a high level. I say this because the City of Olympia hopes to purchase this area for park use. It needs to be clean enough for all types of park activity, including young children playing on and in the ground and shoreline area.

Thank you for the opportunity to comment.

Bob Jacobs

Ecology Response

Thank you for your comments.

Comment #3: Kevin Lyon

Kevin R. Lyon
Attorney At Law
7011 Cooper Point Rd N.W.
Olympia, Washington 98502

June 18, 2012

RECEIVED

JUN 18 2012

WA State Department
of Ecology (SWRO)

Steve Teel, Site Manager
Department of Ecology
SWRO Toxics Cleanup Program
P.O. Box 47775
Olympia, Washington 98504-7775

Hand Delivered

Re: Industrial Petroleum Distributors
Proposed Agreed Order

Dear Mr. Teel:

I write to provide comment on the proposed 2012 Agreed Order (No. DE 8953).

1. 1107 West Bay LLC, a Washington limited liability company, is the owner of recently developed commercial property immediately south and adjacent to the Site, as described in the Site diagram (Agreed Order No. DE 8953 Exhibit A, 2a), Parcel No. 9030006000, approximately .66 acres ("the Subject Land").
2. The Subject Land is bordered on the east by West Bay Drive N.W.; on the south and west by residential properties; and on the north by the former Industrial Petroleum Distributors (IPD) site.
3. The IPD site is located at 1117 West Bay Drive, Parcel No. 9030005000, immediately adjacent to and north of the Subject Land.
4. The IPD site was first developed in the early 1950s as a bulk fuel storage facility for the Richfield Oil Corporation. The facility consisted of eight above ground storage tanks (ASTs) that ranged in capacity from 20,000 to 150,000 gallons and two or more underground storage tanks (USTs) with a capacity of 1,000 gallons or more. (Agreed Order No. DE 8953 Exhibit A, 2a).
5. The City of Olympia granted a Building Permit for a "gas storage plant" to Arco dated October 10, 1952. In the mid-1950s, Arco built the bulk fuel storage facility. From 1953 to 1977 Arco operated the bulk fuel storage facility.

6. The IPD site included a metal frame warehouse, load rack, loading dock, ASTs, and concrete driveways, and at least two undocumented UST, one of which was removed in 1999.
7. A second undocumented UST was constructed and installed less than 10 feet south of the southern boundary of the IPD site by rcoand used and operated by Arco and IPD on the Subject Land for corresponding storage and distribution of motor vehicle fuel by Arco and IPD for its transport vehicles. It is not known when the second undocumented UST was installed but it is believed to have been in the 1950s. The use of the second undocumented UST continued through 1989.
8. The second undocumented UST was not discovered until 2008 when construction was in progress on the Subject Land. Figures 2 and 3.
9. The Subject Land was also used by Arco and IDP for ingress and egress to the adjacent IDP site through 1989. Exhibit A.
10. The Subject Land was also used by Arco and IDP for storm-water retention through 1989. Exhibit A and Figure 2.
11. Such uses were without the consent or knowledge of the 1107 West Bay LLC or its predecessors in title.
12. In September 1977, Arco sold the bulk fuel storage to Darron Cole and Chester Chaloupka, who operated Industrial Petroleum Distributors (IPD). In 1983, Cole and Chaloupka sold the tank farm to Walter and Gloria Nolley. IPD continued to operate the bulk fuel storage facility after the sale to the Nolleys under a lease. In July 1985, John O'Connell acquired Nolley's interest. In 1987 O'Connell conveyed to IPD. In February 1997, IPD reconveyed the tank farm to John and Margaret O'Connell. Thereafter, the corporation IPD was administratively dissolved. The Trust acquired John O'Connell's interest after his death in 1998. The Trust owned and operated the tank farm until 1999, when the ASTs at the site were emptied and demolished.
13. An undocumented UST located south of the loading dock was removed in 1999 by Associated Environment Group, LLC (AEG) on behalf of the Trust. No soil or groundwater samples were collected during the removal of the UST.
14. In September 2005, the Trust sold the tank farm to Fourth Street Commercial LLC. The Fourth Street Commercial LLC built a mixed-use commercial/residential development on a portion of the former IPD site.
15. In 1998, the Thurston County Health Department conducted a Site Hazard Assessment of the IPD parcel, ranked the site a "1," and Ecology placed the

IPD site on its Hazardous Sites List. The Site Hazard Assessment revealed the poor condition of the ASTs, including active leakage. As a result, the Estate of John J. O'Connell (sole owner of Industrial Petroleum Distributors at this time) was asked to remove the waste stored on the site. Ecology entered into an Agreed Order with the John J. O'Connell Trust and Arco to begin cleanup of the site in 2000 (No. DE00TCPSR-1628). The portion on the west side of West Bay Drive was entered into the Voluntary Cleanup Program (VCP) in March 2002. That portion of the site was cleaned up in 2003. The site as then characterized did not include any portion of the Subject Land. In June 2003 Ecology issued a determination that no further remedial action was necessary at the tank farm.

16. Evidence of petroleum contamination was found on a waterfront parcel (owned by the Port of Olympia) adjacent from the upland tank farm. Pipelines used to transfer petroleum product once extended from a pier through the waterfront parcel and up to the upland tank farm (as part of plant operations). Investigations revealed petroleum products above state cleanup levels in soil and arsenic and lead were found above cleanup levels in groundwater. Ecology determined that further investigation was necessary to fully determine the nature, extent and possible source of contamination and on this parcel. The investigation and remedial actions for the Site, with its current focus on the eastern portion, are the subject of the proposed 2012 Agreed Order.
17. On June 25, 2003, Ecology issued a VCP opinion letter stating that no further remedial action was needed for the western portion of the site. Ecology was unaware of a second undocumented UST less than 10 feet south of the southern Site boundary.
18. The proposed Agreed Order No. DE 8953 includes two renderings "more particularly describing" the Site. The first rendering (Agreed Order No. DE 8953 Exhibit A, Figure 2) describes only the property east of West Bay Drive. The second rendering (Agreed Order No. DE 8953 Exhibit A, Figure 2a) describes the property west of West Bay Drive. Figure 2a does not include that portion of the Subject Land (approximately 2 feet south of the southern border near the "Construction Entrance"). However, the Remedial Investigation Report dated January 30, 2012, limits the Site to the east side of West Bay Drive (§ 1.1 and Figures 2-14).
19. The Subject Land was and is not included within the exterior boundary of the Ecology designated Site.
20. Prior to acquiring ownership of the Subject Land, 1107 West Bay LLC made all appropriate inquiry, consistent with the customary practice at that time, into the previous ownership and uses thereof. There is no history of residential, commercial or industrial development on the Subject Land.

21. At the time 1107 West Bay LLC purchased the Subject Land, it was unaware that the UST had been installed or that releases or threatened releases of hazardous substances associated with the former bulk fuel storage farm (from the UST on the Subject Land) had occurred on the Subject Land.
22. At the time 1107 West Bay LLC purchased the Subject Property, it was unaware of the existence of an UST or that releases of hazardous substances associated with UST had occurred on the Subject Land.
23. 1107 West Bay LLC engaged a consulting firm to perform a subsurface investigation of the Subject Land. On June 20, 2007, 1107 West Bay LLC's consulting firm received analytical results showing that soils and groundwater on the Subject Land had not been adversely impacted by constituents consistent with the former gas station operations; the conclusions were shared with Ecology.
24. However, during construction in July 2008, an undocumented UST was discovered by a construction crew on the Subject Land. The UST was a 1,000-gallon, single walled steel tank measuring 10 feet long by 3 feet in diameter. There was no piping connected to the tank. The tank appeared to the 1107 West Bay LLC's consultant to have contained gasoline based on olfactory indication. Additionally, soil adjacent to the UST appeared to contain petroleum hydrocarbons at concentrations exceeding MTCA Method A clean up levels.
25. On December 8, 2008, and March 10, 2009, 1107 West Bay LLC notified Defendant Arco of those property owners' potential claims and of Defendant's liability under MTCA. That notice letter advised them of the need for further site investigation of the Subject Land and made a demand for any past and future remedial action costs that might be incurred by 1107 West Bay LLC if Arco failed to do so. On April 27, 2009, Arco refused 1107 West Bay LLC's demand for remediation and cost recovery, based on the reports prepared by Delta.
26. Thereafter, the 1107 West Bay LLC sought the assistance of Ecology in extending the site so as to include the UST with the exterior boundary of the MTCA facility. Ecology declined to modify the exterior boundary of the IDP site so as to include the second undocumented UST for lack of direct evidence that it had been associated with the operation of the tank farm.
27. On November 21, 2008, the 1107 West Bay LLC's Consultant reported the completion of the its remediation efforts, including removal of the storage tank and approximately 100 cubic yards of petroleum contaminated soil in the area of the tank pit.

28. The UST was within 10' of the southern boundary of the IPD site, and situated for use by Arco and IDP to the north. Further, the Subject Land had no prior history of development. See Exhibit A and Figure 2.
29. In May 2010, it was discovered that the RI performed by SECOR for Arco in October 2000 included reference to another previously undocumented UST, this associated with the IPD site of similar size and installation on the IDP site.
30. In August 2010, 1107 West Bay LLC obtained historic photographic evidence, which after analysis, revealed the use and occupancy of the Subject Land by the adjacent northern property owner or operator, providing for the first time, definitive evidence that Arco and IDP were the operators of the UST facility. See Exhibits A 1, 2 and 2 attached hereto.
31. For the following reasons, the 1107 West Bay LLCs reasonably believe that the UST on the Subject Land was installed by and used by the Arco and IDP: the Subject Land has no prior history of residential, commercial or industrial development; Arco and IDP used (trespassed on) the Subject Land for a variety of purposes, including ingress and egress, storm-water retention and use of the motor vehicle fuel depot, all without authorization; ARCO built a concrete driveway on the IDP site adjacent to the location of the UST on the Subject Land to access the fuel depot; the UST on the Subject land was situated for use from the IDP site; Arco and IDP fueled its transport trucks from one or more USTs, including the one situated on the Subject Land; and the second undocumented UST from the IDP was of similar size and installation as the UST from the Subject Land.
32. West Bay LLC seeks reimbursement for its costs, including direct remedial costs of \$ 68,907.65, management and overhead expenses during the project delay period of \$25,000, attorneys fees and costs to date of approximately \$10,000, and costs of delay and related damages for construction delay.
33. At this time, 1107 West Bay LLC seeks to include the Subject Land in the investigation under proposed 2012 Agreed Order No. DE 8953, and to include reimbursement of remedial action costs to 1107 West Bay LLC under VIII B of the proposed order.

Specific comments to proposed 2012 Agreed Order:

IV. Definitions. A. Site: Correct the definition of the Site to include those portions of 1107 West Bay Drive that encompass the UST and its related facilities, including specifically revising the Site Diagrams (Exhibit A) 2a. See proposed revision in Exhibit A and Figure 2 to this letter.

Make clear that descriptors of the Site, for example, RI ¶1.1 and Figures 2-14, on one hand, are consistent with AO § IV A and Figures 2 and 2a, on the other hand.

V. Findings of Fact. Amend Findings to include no less than paragraphs 4, 6-10, 13, 17, 27 – 30 and 32 above.

VIII B. Remedial Action Costs. To include costs incurred by 1107 West Bay Drive LLC related to the investigation, identification, and removal of the UST on the Subject land, including administrative costs, delay costs, and attorney fees and costs.

Thank you for the opportunity to comment. If you have any questions please direct them to either F. Sandy Desner (360.352.4861) or myself (360.584.9028 or 360.870.2777).

Respectfully,


Kevin R. Lyon

enc.: Exhibit A-1 (1977 overlay)
Figure 2

cc: F. Sandy Desner
Project Coordinator for 1107 West Bay LLC
Deskoba, Inc.
Suite 200
112 E. Fourth Ave
Olympia, Washington 98501

Via electronic mail

Mr. Alexander Lopez III
Project Coordinator
Project Geologist
ARCADIS
111 SW Columbia Street, Suite 725
Portland, OR 97201

Via First Class Mail

Ms. Janet J. Wager
Atlantic Richfield Company
Company Representative
201 Helios Way, Sixth Floor
Houston, TX 77079

Via First Class Mail

Ecology Response

Thank you for your comments. Individual comments and responses are broken down below.

Comment 3.1

1. 1107 West Bay LLC, a Washington limited liability company, is the owner of recently developed commercial property immediately south and adjacent to the Site, as described in the Site diagram (Agreed Order No. DE 8953 Exhibit A, 2a), Parcel No. 9030006000, approximately .66 acres ("the Subject Land").
2. The Subject Land is bordered on the east by West Bay Drive N.W.; on the south and west by residential properties; and on the north by the former Industrial Petroleum Distributors (IPD) site.
3. The IPD site is located at 1117 West Bay Drive, Parcel No. 9030005000, immediately adjacent to and north of the Subject Land.
4. The IPD site was first developed in the early 1950s as a bulk fuel storage facility for the Richfield Oil Corporation. The facility consisted of eight above ground storage tanks (ASTs) that ranged in capacity from 20,000 to 150,000 gallons and two or more underground storage tanks (USTs) with a capacity of 1,000 gallons or more. (Agreed Order No. DE 8953 Exhibit A, 2a).
5. The City of Olympia granted a Building Permit for a "gas storage plane" to Arco dated October 10, 1952. In the mid-1950s, Arco built the bulk fuel storage facility. From 1953 to 1977 Arco operated the bulk fuel storage facility.

Ecology Response

Comments noted.

Comment 3.2

6. The IPD site included a metal frame warehouse, load rack, loading dock, ASTs, and concrete driveways, and at least two undocumented UST, one of which was removed in 1999.

Ecology Response

According to the *Final Remedial Investigation and Feasibility Study* report prepared by SECOR dated October 30, 2001, only one undocumented storage tank is associated with the facility.

Comment 3.3

7. A second undocumented UST was constructed and installed less than 10 feet south of the southern boundary of the IPD site by rcoand used and operated by Arco and IPD on the Subject Land for corresponding storage and distribution of motor vehicle fuel by Arco and IPD for its transport vehicles. It is not known when the second undocumented UST was installed but it is believed to have been in the 1950s. The use of the second undocumented UST continued through 1989.

Ecology Response

Ecology is not aware of any direct evidence that ARCO and/or IPD were the users of the undocumented UST on the 1107 West Bay Drive parcel.

Comment 3.4

8. The second undocumented UST was not discovered until 2008 when construction was in progress on the Subject Land. Figures 2 and 3.
9. The Subject Land was also used by Arco and IDP for ingress and egress to the adjacent IDP site through 1989. Exhibit A
10. The Subject Land was also used by Arco and IDP for storm-water retention through 1989. Exhibit A and Figure 2.
11. Such uses were without the consent or knowledge of the 1107 West Bay LLC or its predecessors in title.
12. In September 1977, Arco sold the bulk fuel storage to Darron Cole and Chester Chaloupka, who operated Industrial Petroleum Distributors (IPD). In 1983, Cole and Chaloupka sold the tank farm to Walter and Gloria Nolley. IPD continued to operate the bulk fuel storage facility after the sale to the Nolleys under a lease. In July 1985, John O'Connell acquired Nolley's interest. In 1987 O'Connell conveyed to IPD. In February 1997, IPD reconveyed the tank farm to John and Margaret O'Connell. Thereafter, the corporation IPD was administratively dissolved. The Trust acquired John O'Connell's interest after his death in 1998. The Trust owned and operated the tank farm until 1999, when the ASTs at the site were emptied and demolished.

13. An undocumented UST located south of the loading dock was removed in 1999 by Associated Environment Group, LLC (AEG) on behalf of the Trust. No soil or groundwater samples were collected during the removal of the UST.
14. In September 2005, the Trust sold the tank farm to Fourth Street Commercial LLC. The Fourth Street Commercial LLC built a mixed-use commercial/residential development on a portion of the former IPD site.
15. In 1998, the Thurston County Health Department conducted a Site Hazard Assessment of the IPD parcel, ranked the site a "1," and Ecology placed the IPD site on its Hazardous Sites List. The Site Hazard Assessment revealed the poor condition of the ASTs, including active leakage. As a result, the Estate of John J. O'Connell (sole owner of Industrial Petroleum Distributors at this time) was asked to remove the waste stored on the site. Ecology entered into an Agreed Order with the John J. O'Connell Trust and Arco to begin cleanup of the site in 2000 (No. DEOOTCPSR-1628). The portion on the west side of West Bay Drive was entered into the Voluntary Cleanup Program (VCP) in March 2002. That portion of the site was cleaned up in 2003. The site as then characterized did not include any portion of the Subject Land. In June 2003 Ecology issued a determination that no further remedial action was necessary at the tank farm.
16. Evidence of petroleum contamination was found on a waterfront parcel (owned by the Port of Olympia) adjacent from the upland tank farm. Pipelines used to transfer petroleum product once extended from a pier through the waterfront parcel and up to the upland tank farm (as part of plant operations). Investigations revealed petroleum products above state cleanup levels in soil and arsenic and lead were found above cleanup levels in groundwater. Ecology determined that further investigation was necessary to fully determine the nature, extent and possible source of contamination and on this parcel. The investigation and remedial actions for the Site, with its current focus on the eastern portion, are the subject of the proposed 2012 Agreed Order.
17. On June 25, 2003, Ecology issued a VCP opinion letter stating that no further remedial action was needed for the western portion of the site. Ecology was unaware of a second undocumented UST less than 10 feet south of the southern Site boundary.
18. The proposed Agreed Order No. DE 8953 includes two renderings "more particularly describing" the Site. The first rendering (Agreed Order No. DE 8953 Exhibit A, Figure 2) describes only the property east of West Bay Drive. The second rendering (Agreed Order No. DE 8953 Exhibit A, Figure 2a) describes the property west of West Bay Drive. Figure 2a does not include that portion of the Subject Land (approximately 2 feet south of the southern border near the "Construction Entrance"). However, the Remedial Investigation Report dated January 30, 2012, limits the Site to the east side of

West Bay Drive elf 1.1 and Figures 2-14).

19. The Subject Land was and is not included within the exterior boundary of the Ecology designated Site.

Ecology Response

Comments noted.

Comment 3.5

20. Prior to acquiring ownership of the Subject Land, 1107 West Bay LLC made all appropriate inquiry, consistent with the customary practice at that time, into the previous ownership and uses thereof. There is no history of residential, commercial or industrial development on the Subject Land.

Ecology Response

The below oblique aerial photograph from June 1, 1977 shows that the 1107 West Bay Drive parcel contained two cars, two trucks, and a backhoe. It is not known who the vehicles and backhoe belonged to. The presence of vehicles suggests that the parcel was being used for some purpose. The adjacent ARCO facility appears to be separated from this parcel by chain link fencing and closed gates.



The above image is copyrighted by WSDOT and no reproduction of it may be made without the express permission of the WSDOT photography branch GeoMetrix, photo@wsdot.wa.gov 360-596-8950.

Comment 3.6

21. At the time 1107 West Bay LLC purchased the Subject Land, it was unaware that the UST had been installed or that releases or threatened releases of hazardous substances associated with the former bulk fuel storage farm (from the UST on the Subject Land) had occurred on the Subject Land.
22. At the time 1107 West Bay LLC purchased the Subject Property, it was unaware of the existence of an UST or that releases of hazardous substances associated with UST had occurred on the Subject Land.
23. 1107 West Bay LLC engaged a consulting firm to perform a subsurface investigation of the Subject Land. On June 20, 2007, 1107 West Bay LLC's consulting firm received analytical results showing that soils and groundwater on the Subject Land had not been adversely impacted by constituents consistent with the former gas station operations; the conclusions were shared with Ecology.
24. However, during construction in July 2008, an undocumented UST was discovered by a construction crew on the Subject Land. The UST was a 1,000-gallon, single walled steel tank measuring 10 feet long by 3 feet in diameter. There was no piping connected to the tank. The tank appeared to the 1107 West Bay LLC's consultant to have contained gasoline based on olfactory indication. Additionally, soil adjacent to the UST appeared to contain petroleum hydrocarbons at concentrations exceeding MTCA Method A clean up levels.
25. On December 8, 2008, and March 10, 2009, 1107 West Bay LLC notified Defendant Arco of those property owners' potential claims and of Defendant's liability under MTCA. That notice letter advised them of the need for further site investigation of the Subject Land and made a demand for any past and future remedial action costs that might be incurred by 1107 West Bay LLC if Arco failed to do so. On April 27, 2009, Arco refused 1107 West Bay LLC's demand for remediation and cost recovery, based on the reports prepared by Delta.

26. Thereafter, the 1107 West Bay LLC sought the assistance of Ecology in extending the site so as to include the UST with the exterior boundary of the MTCA facility. Ecology declined to modify the exterior boundary of the IOP site so as to include the second undocumented UST for lack of direct evidence that it had been associated with the operation of the tank farm.
27. On November 21, 2008, the 1107 West Bay LLC's Consultant reported the completion of the its remediation efforts, including removal of the storage tank and approximately 100 cubic yards of petroleum contaminated soil in the area of the tank pit.
28. The UST was within 10' of the southern boundary of the IPD site, and situated for use by Arco and IDP to the north. Further, the Subject Land had no prior history of development. See Exhibit A and Figure 2.

Ecology Response

Comments noted.

Comment 3.7

29. In May 2010, it was discovered that the RI performed by SECOR for Arco in October 2000 included reference to another previously undocumented UST, this associated with the IPD site of similar size and installation on the IDP site.

Ecology Response

See above response to Comment 3.2.

Comment 3.8

30. In August 2010, 1107 West Bay LLC obtained historic photographic evidence, which after analysis, revealed the use and occupancy of the Subject Land by the adjacent northern property owner or operator, providing for the first time, definitive evidence that Arco and IDP were the operators of the UST facility. See Exhibits A 1, 2 and 2 attached hereto.
31. For the following reasons, the 1107 West Bay LLCs reasonably believe that the UST on the Subject Land was installed by and used by the Arco and IDP: the Subject Land has no prior history of residential, commercial or industrial development; Arco and IDP used (trespassed on) the Subject Land for a variety of purposes, including ingress and egress, storm-water retention and use of the motor vehicle fuel depot, all without authorization; ARCO built a

concrete driveway on the IDP site adjacent to the location of the UST on the Subject Land to access the fuel depot; the UST on the Subject land was situated for use from the IDP site; Arco and IDP fueled its transport trucks from one or more USTs, including the one situated on the Subject Land; and the second undocumented UST from the IDP was of similar size and installation as the UST from the Subject Land.

Ecology Response

Comments noted. See above responses to Comments 3.3 and 3.5.

Comment 3.9

32. West Bay LLC seeks reimbursement for its costs, including direct remedial costs of \$68,907.65, management and overhead expenses during the project delay period of \$25,000, attorneys fees and costs to date of approximately \$10,000, and costs of delay and related damages for construction delay.

Ecology Response

See below response to Comment 3.12.

Comment 3.10

33. At this time, 1107 West Bay LLC seeks to include the Subject Land in the investigation under proposed 2012 Agreed Order No. DE 8953, and to include reimbursement of remedial action costs to 1107 West Bay LLC under VIII B of the proposed order.

Ecology Response

See responses to Comments 3.11 and 3.12.

Comment 3.11

Specific comments to proposed 2012 Agreed Order:

IV. Definitions. A. Site: Correct the definition of the Site to include those portions of 1107 West Bay Drive that encompass the UST and its related facilities, including specifically revising the Site Diagrams (Exhibit A) 2a. See proposed revision in Exhibit A and Figure 2 to this letter.

Make clear that descriptors of the Site, for example RI ¶1.1 and Figures 2-14, on one hand, are consistent with AO § IV A and Figures 2 and 2a, on the other hand.

V. Findings of Fact. Amend Findings to include no less than paragraphs 4, 6-10, 13, 17, 27- 30 and 32 above.

Ecology Response

Ecology does not agree that there is sufficient evidence to include the 1107 West Bay Drive Parcel as part of the IPD Site. There is no direct evidence that ARCO was responsible for the installation and use of the UST or the resulting contamination. Also, the contamination on the IPD Site was not comingled with the contamination from the UST.

Comment 3.12

VIII B. Remedial Action Costs. To include costs incurred by 1107 West Bay Drive LLC related to the investigation, identification, and removal of the UST on the Subject land, including administrative costs, delay costs, and attorney fees and costs.

Ecology Response

Regarding the request for the Agreed Order, Section VIII.B. Remedial Action Costs, to include costs incurred by 1107 West Bay Drive LLC related to the investigation, identification and removal of the UST on 1107 West Bay Drive LLC's property. This request is denied for several reasons. First, Ecology has determined that there is insufficient evidence that the UST on 1107 West Bay Drive LLC's property is part of the Industrial Petroleum Distributors Site. Second, even if the UST release were part of the Site, the Agreed Order Section VIII.B. details recovery of amounts spent by the Department for investigation and remedial action and orders. It is not a mechanism for a private party to become reimbursed for their remedial action costs. Third, if 1107 West Bay Drive LLC has a legal claim under RCW 70.105D.080 against ARCO, recovery of costs of their remedial action are dealt with as a private rights of action. *See* WAC 173-340-545. Therefore it would be inappropriate for the Agreed Order to be modified as per the request.