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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

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STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
Plaintiff,)
v.)
TEXACO REFINING AND MARKETING)
INCORPORATED,)
Defendant.)

Case No: 93-
CONSENT DECREE

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objective of the Washington State Department of Ecology
4 (Ecology, Department of Ecology, or WDOE), and Texaco Refining
5 and Marketing Inc. (Defendant or Texaco) is to provide for
6 remedial action at a facility where there has been a release or
7 threatened release of hazardous substances. This Decree
8 requires the Defendant to undertake the following remedial
9 action(s):

- 10 (1) Continue ongoing in situ bioremediation of the Munks
11 farm west pasture and, if necessary, excavate any
12 remaining "hotspots".
- 13 (2) Bioremediate or, if necessary, excavate contaminated
14 soils in the Blackberry Ditch.
- 15 (3) Excavate, to the extent feasible, all visibly
16 contaminated soils in the vicinity of the booster
17 pumps and install one groundwater monitoring well
18 downgradient of the pump area.
- 19 (4) Delineate the extent of contamination in the catchment
20 basin through a sampling program and, if necessary,
21 conduct in situ remediation of soils which exceed the
22 cleanup standards.
- 23 (5) Treat excavated soils in the Flare Area Land Treatment
24 Facility and conduct a monitoring program of treated
25 soils.
- 26

1 These actions are more fully described in Exhibit A to this
2 Decree, the Remedial Action Plan. Ecology has determined that
3 these actions are necessary to protect public health and the
4 environment.

5 B. The Complaint in this action is being filed
6 simultaneously with this Decree. An answer has not been filed,
7 and there has not been a trial on any issue of fact or law in
8 this case. However, the parties wish to resolve the issues
9 raised by Ecology's complaint. In addition, the parties agree
10 that settlement of these matters without litigation is
11 reasonable and in the public interest and that entry of this
12 Decree is the most appropriate means of resolving these matters.

13 C. In signing this Decree, Defendant agrees to its entry
14 and agrees to be bound by its terms.

15 D. By entering into this Decree the parties do not intend
16 to discharge nonsettling parties from any liability they may
17 have with respect to any release of hazardous substances from or
18 affecting Defendant's Anacortes property. Defendant and Ecology
19 retain the right to seek reimbursement in whole or in part from
20 any responsible entities for sums expended pursuant to this
21 Decree.

22 E. This Decree shall not be construed as proof of
23 liability or responsibility for any releases of hazardous
24 substances or cost for remedial action nor an admission of any
25 facts; provided, however, that the Defendant shall not challenge
26

1 the jurisdiction of Ecology in any proceeding to enforce this
2 Decree.

3 F. The court being fully advised of the reasons for entry
4 of this Decree, and good cause having been shown, IT IS HEREBY
5 ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

6 II. JURISDICTION AND VENUE

7 A. This Court has jurisdiction over the subject matter
8 and over the parties pursuant to Chapter 70.105D RCW, the Model
9 Toxics Control Act (MTCA). Venue is properly laid in Skagit
10 County, the location of the property at issue.

11 B. Authority is conferred upon the Washington State
12 Attorney General by RCW 70.105D.040(4)(a) to agree to a
13 settlement with any potentially liable person if, after public
14 notice and hearing, Ecology finds the proposed settlement would
15 lead to a more expeditious cleanup of hazardous substances. RCW
16 70.105D.040(4)(b) requires that such a settlement be entered as
17 a consent decree issued by a court of competent jurisdiction.

18 C. Ecology has determined that a release or threatened
19 release of a hazardous substance has occurred at the Site.

20 D. Ecology has given notice to Defendant, as set forth in
21 RCW 70.105D.020(8), of Ecology's determination that the
22 Defendant is a potentially liable person for the Site and that
23 there has been a release or threatened release of hazardous
24 substances at the Site.

25 E. The actions to be taken pursuant to this Decree are
26 necessary to protect public health and the environment.

1 F. Defendant has agreed to undertake the actions
2 specified in this Decree and consents to the entry of this
3 Decree under the MTCA.

4 III. PARTIES BOUND

5 This Decree shall apply to and be binding upon the
6 signatories to this Decree (Parties), their successors and
7 assigns. The undersigned representative of each party hereby
8 certifies that he or she is fully authorized to enter into this
9 Decree and to execute and legally bind such party to comply with
10 the Decree. Defendant agrees to undertake all actions required
11 by the terms and conditions of this Decree and not to contest
12 state jurisdiction regarding this Decree. No change in
13 ownership or corporate status shall alter the responsibility of
14 the Defendant under this Decree. Defendant shall provide a copy
15 of this Decree to all agents, contractors and subcontractors
16 retained to perform work required by this Decree and shall
17 ensure that all work undertaken by such contractors and
18 subcontractors will be in compliance with this Decree.

19 IV. DEFINITIONS

20 Except as specified herein, all definitions in WAC 173-340-
21 200 apply to the terms in this Decree.

22 A. Site: The Site, also referred to as the Oil Spill
23 Site, is located on the western flank of March Point near the
24 Texaco Refining and Marketing Inc., Anacortes, Washington,
25 refinery, and is bounded by North Texas Road to the north, a
26 north-south trending Texaco pipeway and pump station to the

1 east, West March Point Road to the west, and a railroad spur
2 running northwest-southeast that crosses Fidalgo Bay to the
3 south. The Site is more particularly described in Exhibit F to
4 this Decree which includes a detailed site diagram.

5 B. Parties: Refers to the Washington State Department of
6 Ecology and Texaco Refining and Marketing Inc.

7 C. Defendant: Refers to Texaco Refining and Marketing
8 Inc.

9 D. Consent Decree Or Decree: Refers to this Consent
10 Decree and each of the exhibits to the Decree. All exhibits are
11 integral and enforceable parts of this Consent Decree. The
12 terms "Consent Decree" or "Decree" shall include all Exhibits to
13 the Consent Decree.

14 V. STATEMENT OF FACTS

15 Ecology makes the following finding of facts without any
16 express or implied admissions by Defendant.

17 A. Defendant, a Delaware corporation, owns and operates a
18 petroleum refinery at 600 South Texas Road in Anacortes,
19 Washington.

20 B. Crude oil storage facilities at the refinery are
21 supplied by means of a pipeline that runs to a docking facility
22 at March Point.

23 C. Two crude oil booster pumps are located approximately
24 half-way along the pipeline, in the northwest corner of the
25 refinery property. The booster pumps assist in transferring
26 crude oil from ships to the refinery storage tanks.

1 D. On February 22, 1991, during the offloading of Alaskan
2 North Slope crude oil from an offshore tanker, the casing of one
3 of the crude booster pumps suffered a catastrophic failure.

4 E. The casing failure resulted in the release of
5 approximately 5,000 barrels of crude oil. Approximately 3,000
6 barrels of the oil were captured in a spill containment system
7 adjacent to the booster pumps. The remaining 2,000 barrels
8 impacted the adjacent property to the west, belonging to the
9 Leonard Munks family, and a railroad right-of-way owned by Shell
10 Oil Company. Approximately 500 barrels of surface drainage from
11 the spill area also reached the southern portion of Fidalgo Bay
12 via drainage culverts.

13 F. Emergency response measures were implemented
14 immediately following the spill to contain the spill, prevent
15 any further migration of the released oil into Fidalgo Bay, and
16 remove the spilled oil from the water and affected property.

17 G. In July, 1991, an Agreed Order was issued to Texaco by
18 Ecology, directing interim cleanup activities at the Site.
19 Under the Agreed Order, Texaco undertook an extensive remedial
20 effort to clean up the Munks family property and the Shell Oil
21 Company railroad right-of-way.

22 H. In February, 1992, Texaco submitted a "Report on the
23 Interim Action Cleanup Activities and Remedial Investigation/
24 Feasibility Studies" to Ecology, analyzing the status of cleanup
25 activities and proposing further remedial action.

26

1 I. Based on the above facts, Ecology has determined that
2 the remedial action plan attached as Exhibit A to this Decree is
3 protective of human health and the environment, and will lead to
4 the most expeditious cleanup of hazardous substances in
5 compliance with all applicable, relevant and appropriate cleanup
6 standards, as defined in RCW 70.105D.030(2)(d).

7 VI. WORK TO BE PERFORMED

8 This Decree contains a program designed to protect public
9 health, welfare and the environment from the known release, or
10 threatened release, of hazardous substances or contaminants at,
11 on, or from the Site.

12 A. Remedial action measures to be performed are set forth
13 in Exhibit A, the Remedial Action Plan. Exhibit B sets forth
14 the schedule for implementing this work. Exhibit C sets forth
15 the Soil and Groundwater Cleanup Standard. Exhibit D sets forth
16 the Compliance Monitoring Plan. Exhibit E sets forth a Health
17 and Safety Plan for the workers implementing the Remedial Action
18 Plan. Exhibit F sets forth the Report of the Interim Action
19 Cleanup Activities and Remedial Investigation/Feasibility
20 Studies. Exhibit G is the Restrictive Covenant that Texaco is
21 to file with the Skagit County Auditor. Exhibit H sets forth
22 the Cleanup Action Plan for the Site. Exhibits A through H are
23 integral and enforceable parts of this Consent Decree. Except
24 where performance by Ecology is expressly provided herein,
25 Defendant commits to implement the programs described in
26 Exhibits A through E and H.

1 B. Defendant agrees not to perform any remedial actions
2 outside the scope of this Decree unless the parties agree to
3 amend the scope of work to cover these actions. All work
4 conducted under this Decree shall be done in accordance with
5 ch. 173-340 WAC unless otherwise provided herein.

6 VII. DESIGNATED PROJECT COORDINATORS

7 The project coordinator for Ecology is Paul Skyllingstad,
8 whose address and phone number are:

9 Industrial Section
10 Department of Ecology
11 P.O. Box 47706
12 Olympia, Washington 98504-7706

13 Phone: (206) 586-0583
14 Fax: (206) 586-1469.

15 The project coordinator for Defendant is Joseph M. Haley,
16 whose address and phone number are:

17 Texaco Refining and Marketing Inc.
18 Puget Sound Plant
19 P.O. Box 622
20 Anacortes, Washington 98221-0622

21 Phone: (206) 293-1517
22 Fax: (206) 293-1584

23 Each project coordinator shall be responsible for
24 overseeing the implementation of this Decree. The Ecology
25 project coordinator will be Ecology's designated representative
26 at the Site. To the maximum extent possible, communications
between Defendant and Ecology, and all documents, including
reports, approvals, and other correspondence concerning the
activities performed pursuant to the terms and conditions of
this Decree, shall be directed through the project coordinators.
The project coordinators may designate, in writing, working

1 level staff contacts for all or portions of the implementation
2 of the remedial work required by this Decree. The project
3 coordinators may agree to minor modifications to the work to be
4 performed without formal amendments to this Decree. Minor
5 modifications will be documented in writing by Ecology.

6 Any Party may change its respective project coordinator.
7 Written notification shall be given the other Party, in writing,
8 at least ten (10) days prior to the change.

9 VIII. PERFORMANCE

10 All work performed pursuant to this Decree shall be under
11 the direction and supervision, as necessary, of a qualified
12 professional engineer or hydrogeologist, or equivalent, with
13 experience and expertise in hazardous waste site investigation
14 and cleanup. Any construction work must be under the
15 supervision of a professional engineer. Defendant shall notify
16 Ecology in writing as to the identity of such professional(s)
17 and of any contractors and subcontractors to be used in carrying
18 out the terms of this Decree, in advance of their involvement at
19 the Site.

20 IX. ACCESS

21 Ecology or any Ecology authorized representative shall have
22 the authority to enter and freely move about all property at the
23 Site at all reasonable times for the purposes of, inter alia:
24 inspecting records, operation logs, and contracts related to the
25 work being performed pursuant to this Decree; reviewing
26 Defendant's progress in carrying out the terms of this Decree;

1 conducting such tests or collecting samples as Ecology or the
2 project coordinator may deem necessary; using a camera, sound
3 recording, or other recording equipment to record work done
4 pursuant to this Decree; and verifying the data submitted to
5 Ecology by Defendant. Upon request, Ecology shall split any
6 samples taken during an inspection unless the Defendant fails to
7 make available a representative for the purpose of splitting
8 samples. All parties with access to the Site pursuant to this
9 paragraph shall comply with Texaco's Health and Safety Plan,
10 Exhibit E, with the following exception: Ecology authorized
11 representatives shall satisfy the conditions of the Health
12 Surveillance and Training Certification contained in Texaco's
13 Health and Safety Plan if the representatives have been examined
14 either by a physician or a technician trained in occupational
15 medicine. Except in an emergency, Ecology shall give Defendant
16 reasonable notice before entering the Site.

17 **X. SAMPLING, DATA REPORTING AND AVAILABILITY**

18 With respect to the implementation of this Decree,
19 Defendant shall make the results of all sampling, laboratory
20 reports, and/or test results generated by it, or on its behalf
21 available to Ecology and shall submit these results in
22 accordance with Section XI of this Decree.

23 In accordance with WAC 173-340-840(5), ground water
24 sampling data shall be submitted according to Exhibit D:
25 Compliance Monitoring Plan. These submittals shall be provided
26 to Ecology in accordance with Section XI of this Decree.

1 If requested by Ecology, Defendant shall allow split or
2 duplicate samples to be taken by Ecology and/or its authorized
3 representatives of any samples collected by Defendant pursuant
4 to the implementation of this Decree. Defendant shall notify
5 Ecology seven (7) days in advance of any sample collection or
6 work activity at the Site. Ecology shall, upon request, allow
7 split or duplicate samples to be taken by Defendant or its
8 authorized representatives of any samples collected by Ecology
9 pursuant to the implementation of this Decree provided it does
10 not interfere with the Department's sampling. Without
11 limitation on Ecology's rights under Section IX, Ecology shall
12 notify Defendant prior to any sample collection activity.

13 XI. PROGRESS REPORTS

14 Defendant shall submit to Ecology written quarterly
15 progress reports which describe the actions taken during the
16 previous quarter to implement the requirements of this Decree.
17 The progress reports shall include the following:

- 18 A. A list of on-site activities that have taken place
19 during the quarter;
- 20 B. Detailed description of any deviations from required
21 tasks not otherwise documented in project plans or amendment
22 requests;
- 23 C. Description of all deviations from the schedule
24 (Exhibit B) during the current quarter and any planned
25 deviations in the upcoming quarter;

26

1 D. For any deviations in schedule, a plan for recovering
2 lost time and maintaining compliance with the schedule;

3 D. All raw data (including laboratory analysis) received
4 by the Defendant during the past quarter and an identification
5 of the source of the sample;

6 F. A list of deliverables for the upcoming quarter if
7 different from the schedule; and

8 All progress reports shall be submitted by the tenth day of
9 the quarter in which they are due after the effective date of
10 this Decree. Quarters shall run from January through March,
11 April through June, July through September, and October through
12 December. Unless otherwise specified, progress reports and any
13 other documents submitted pursuant to this Decree shall be sent
14 by certified mail, return receipt requested, to Ecology's
15 project coordinator.

16 XII. RETENTION OF RECORDS

17 Defendant shall preserve, during the pendency of this
18 Decree and for ten (10) years from the date this Decree is no
19 longer in effect as provided in Section XXV, all records,
20 reports, documents, and underlying data in its possession
21 relevant to the implementation of this Decree and shall insert
22 in contracts with project contractors and subcontractors a
23 similar record retention requirement. Upon request of Ecology,
24 Defendant shall make all non-archived records available to
25 Ecology and allow access for review. All archived records shall
26 be made available to Ecology within a reasonable period of time.

1 Records may be retained on microfiche or other form of
2 reproducible facsimile.

3 **XIII. TRANSFER OF INTEREST IN PROPERTY**

4 No voluntary or involuntary conveyance or relinquishment of
5 title, easement, leasehold, or other interest in any portion of
6 the Site shall be consummated without provision for continued
7 operation and maintenance of any containment system, treatment
8 system, and monitoring system installed or implemented pursuant
9 to this Decree.

10 Prior to transfer of any legal or equitable interest in all
11 or any portion of the property, and during the effective period
12 of this Decree, Defendant shall serve a copy of this Decree upon
13 any prospective purchaser, lessee, transferee, assignee, or
14 other successor in interest of the property; and, at least
15 thirty (30) days prior to any transfer, Defendant shall notify
16 Ecology of said contemplated transfer.

17 **XIV. RESOLUTION OF DISPUTES**

18 A. In the event a dispute arises as to an approval,
19 disapproval, or other decision or action by Ecology's project
20 coordinator, the Parties shall utilize the dispute resolution
21 procedure set forth below:

22 (1) Upon receipt of the Ecology project coordinator's
23 decision, Defendant has fourteen (14) working days within which
24 to notify Ecology's Toxics Cleanup Program Manager of its
25 objection to the decision.

26

1 (2) Ecology's Program Manager shall conduct a review of
2 the dispute and shall issue a written decision regarding the
3 dispute within thirty (30) days of Defendant's request for
4 review. The Program Manager's decision shall be Ecology's final
5 decision on the disputed matter.

6 B. If Ecology's final written decision is unacceptable to
7 Defendant, Defendant has the right to submit the dispute to the
8 Court for resolution. The Parties agree that one judge should
9 retain jurisdiction over this case and shall, as necessary,
10 resolve any dispute arising under this Decree. In the event
11 Defendant presents an issue to the Court for review, the Court
12 shall review the action or decision of Ecology on the basis of
13 whether such action or decision was arbitrary and capricious and
14 render a decision based on such standard of review.

15 C. The Parties agree to utilize the dispute resolution
16 process in good faith and to expedite, to the extent possible,
17 the dispute resolution process whenever it is used. Where
18 either Party utilizes the dispute resolution process in bad
19 faith or for purposes of delay, the other Party may seek
20 sanctions.

21 Implementation of these dispute resolution procedures may
22 provide a basis for delay of any activities required in this
23 Decree. If it believes an extension of schedule is warranted,
24 Texaco may request one under Section XVI of this Decree.

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XV. AMENDMENT OF CONSENT DECREE

This Decree may be amended only by Court order or by a written stipulation among the Parties that is entered by the Court. Such amendment shall become effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by any Party to the Decree.

Defendant shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received. If the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XIV of this Decree.

XVI. EXTENSION OF SCHEDULE

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed.

An extension shall be granted only for such period as Ecology determines is reasonable under the circumstances. A requested extension shall not be effective until approved by

1 Ecology or the Court. Ecology shall act upon any written
2 request for an extension in a timely fashion. It shall not be
3 necessary to formally amend this Decree pursuant to Section XV
4 when a schedule extension is granted.

5 B. The burden shall be on the Defendant to demonstrate to
6 the satisfaction of Ecology that the request for an extension
7 has been submitted in a timely fashion and that good cause
8 exists for granting an extension. Good cause includes, but is
9 not limited to, the following:

10 (1) Circumstances beyond the reasonable control and
11 despite the due diligence of Defendant including delays caused
12 by unrelated third parties or Ecology, such as (but not limited
13 to) delays by Ecology in reviewing, approving, or modifying
14 documents submitted by Defendant; or

15 (2) Acts of God, including weather, fire, flood, blizzard,
16 extreme temperatures, storm, earthquake, unusual wave or water
17 conditions, strikes or other labor disputes or other unavoidable
18 casualty;

19 (3) Endangerment as described in Section XVII; or

20 (4) Good faith implementation of the dispute resolution
21 process described in Section XIV.

22 However, neither increased cost of performance of the terms
23 of this Decree nor changed economic circumstances shall be
24 considered circumstances beyond the reasonable control of
25 Defendant.

26

1 C. Ecology may extend the schedule for a period not to
2 exceed ninety (90) days, except where an extension is needed as
3 a result of:

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

6 (2) Other circumstances deemed exceptional or
7 extraordinary by Ecology; or

8 (3) Endangerment as described in Section XVI.

9 Ecology shall give Defendant written notification in a
10 timely fashion of any extensions granted pursuant to this
11 Decree.

12 XVII. ENDANGERMENT

13 In the event Ecology determines that activities
14 implementing or in compliance with this Decree, or any other
15 circumstances, or activities, are creating or have the potential
16 to create a danger to the health or welfare of the people on the
17 Site or in the surrounding area or to the environment, Ecology
18 may order Defendant to stop further implementation of this
19 Decree for such period of time as needed to abate the danger or
20 may petition the Court for an order, as appropriate. During any
21 stoppage of work under this Section, the obligations of
22 Defendant with respect to the work under this Decree which is
23 ordered to be stopped shall be suspended and the time periods of
24 performance of that work, as well as the time period for any
25 other work dependent upon the work which is stopped, shall be
26 extended, pursuant to Section XVI of this Decree, for such

1 period of time as Ecology determines is reasonable under the
2 circumstances.

3 In the event Defendant determines that activities
4 undertaken in furtherance of this Decree or any other
5 circumstances or activities are creating an imminent and
6 substantial endangerment to the people on the Site or in the
7 surrounding area or to the environment, Defendant may stop
8 implementation of this Decree for such periods of time necessary
9 for Ecology to evaluate the situation and determine whether
10 Defendant should proceed with implementation of the Decree or
11 whether the work stoppage should be continued until the danger
12 is abated. Defendant shall notify Ecology's Project Coordinator
13 as soon as possible, but no later than twenty-four (24) hours
14 after such stoppage of work, and thereafter provide Ecology with
15 documentation of the basis for the work stoppage. If Ecology
16 disagrees with Defendant's determination, it may order Defendant
17 to resume implementation of this Decree. If Ecology concurs
18 with the work stoppage, Defendant's obligations shall be
19 suspended and the time periods for performance of that work, as
20 well as the time period for any other work dependent upon the
21 work which was stopped, shall be extended, pursuant to Section
22 XVI of this Decree, for such period of time as Ecology
23 determines is reasonable under the circumstances. Any
24 disagreements pursuant to this clause shall be resolved through
25 the dispute resolution procedures described in Section XIV.
26

1 Ecology, including the nature or quantity of
2 hazardous substances at the Site, and
3 Ecology determines that these factors
4 present a previously unknown threat to human
5 health or the environment;

6 3. If Ecology determines that action beyond the
7 terms of this Decree is necessary to abate
8 an emergency that threatens human health or
9 the environment; and

10 4. If activities conducted on the Pump Station
11 Area of the Site lead to the release of
12 hazardous substances.

13 B. Applicability: The Covenant Not to Sue set forth above
14 has no applicability whatsoever to:

- 15 1. Any Ecology action against persons not a party to this
16 Decree; or
- 17 2. Liability for injury to, destruction of, or loss
18 of natural resources.

19 **XIX. INDEMNIFICATION**

20 Defendant agrees to indemnify and save and hold the State
21 of Washington ("the State"), its employees and agents harmless
22 from any and all claims or causes of action for death or
23 injuries to persons or for loss or damage to property arising
24 from or on account of acts or omissions of Defendant, its
25 officers, employees, agents, or contractors in implementing this
26 Decree. Defendant shall not, however, indemnify the State nor

1 save nor hold its employees and agents harmless from any claims
2 or causes of action arising out of negligent acts or omissions
3 of the State, or the employees or agents of the State, in
4 implementing activities pursuant to this Decree.

5 **XX. RESERVATION OF RIGHTS**

6 By agreeing to the entry of this Decree, Defendant agrees
7 to abide by its terms. The execution and performance of the
8 Decree is not, however, an admission by Defendant of any fact or
9 liability for any purpose other than as a foundation for the
10 entry of this Decree. Performance by Defendant as required
11 under the Decree is undertaken without waiver of or prejudice to
12 any claims or defenses whatsoever that may be asserted in the
13 event of further litigation about or relating to the Site, with
14 the exception of an action by Ecology to enforce this Decree.
15 Nor is the execution or the performance of the Decree an
16 agreement by Defendant to take any action at the Site other than
17 that described in this Decree.

18 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

19 All actions carried out by Defendant pursuant to this
20 Decree shall be done in accordance with all applicable federal,
21 state, and local requirements, including requirements to obtain
22 necessary permits.

23 **XXII. REMEDIAL AND INVESTIGATIVE COSTS**

24 The Defendant agrees to pay costs incurred by Ecology
25 pursuant to this Decree. These costs shall include work
26 performed by Ecology or its contractors for investigations,

1 remedial actions, and Decree preparation, negotiations,
2 oversight and administration. Ecology costs shall include costs
3 of direct activities; e.g., employee salary, travel costs,
4 laboratory costs, contractor fees, and employee benefit
5 packages; and Ecology indirect costs of direct activities. The
6 Defendant agrees to pay the required amount within ninety (90)
7 days of receiving from Ecology an itemized statement of costs
8 that includes a summary of costs incurred, an identification of
9 involved staff, and the amount of time spent by involved staff
10 members on the project. A general statement of work performed
11 will be provided upon request. Itemized statements shall be
12 prepared quarterly. Failure to pay Ecology's costs within
13 ninety (90) days of receipt of the itemized statement will
14 result in interest charges at the rate of twelve (12) percent
15 per annum.

16 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

17 If Ecology determines that Defendant has failed without
18 good cause to implement the remedial action, Ecology may, after
19 notice to Defendant, perform any or all portions of the remedial
20 action that remain incomplete. If Ecology performs all or
21 portions of the remedial action because of the Defendant's
22 failure to comply with its obligations under this Decree,
23 Defendant shall reimburse Ecology for the costs of doing such
24 work in accordance with Section XXI, provided that Defendant is
25 not obligated under this section to reimburse Ecology for costs
26

1 incurred for work inconsistent with or beyond the scope of this
2 Decree.

3 XXIV. PUBLIC PARTICIPATION

4 Ecology shall maintain the responsibility for public
5 participation at the Site. However, Defendant shall cooperate
6 with Ecology and, if agreed to by Ecology, shall:

7 A. Prepare drafts of public notices and fact sheets at
8 important stages of the remedial action, such as the submission
9 of work plans, Remedial Investigation/Feasibility Study reports
10 and engineering design reports. Ecology will finalize
11 (including editing if necessary) and distribute such fact sheets
12 and prepare and distribute public notices of Ecology's
13 presentations and meetings;

14 B. Notify Ecology's project coordinator prior to the
15 preparation of all press releases and fact sheets, and before
16 major meetings with the interested public and local governments.
17 Likewise, Ecology shall notify Defendant prior to the issuance
18 of all press releases and fact sheets, and before major meetings
19 with the interested public and local governments;

20 C. Participate in public presentations on the progress of
21 the remedial action at the Site. Participation may be through
22 attendance at public meetings to assist in answering questions,
23 or as a presenter;

24 D. In cooperation with Ecology, arrange and/or continue
25 information repositories to be located at the Texaco Refining
26 and Marketing Inc. refinery, 600 South Texas Road, Anacortes,

1 Washington, and Ecology's Industrial Section Office at 2404
2 Chandler Court S.W., Olympia, Washington. At a minimum, copies
3 of all public notices, fact sheets, and press releases; all
4 quality assured ground water, surface water, soil sediment, and
5 air monitoring data; remedial actions plans, supplemental
6 remedial planning documents, and all other similar documents
7 relating to performance of the remedial action required by this
8 Decree shall be promptly placed in these repositories.

9 **XXV. DURATION OF DECREE**

10 This Decree shall remain in effect and the remedial program
11 described in the Decree shall be maintained and continued until
12 the Defendant has received written notification from Ecology
13 that the requirements of this Decree have been satisfactorily
14 completed.

15 **XXVI. CLAIMS AGAINST THE STATE**

16 Defendant hereby agrees that it will not seek to recover
17 any costs accrued in implementing the remedial action required
18 by this Decree from the State of Washington or any of its
19 agencies and, further, that the Defendant will make no claim
20 against the State Toxics Control Account or any Local Toxics
21 Control Account for any costs incurred in implementing this
22 Decree. Except as provided above, however, Defendant expressly
23 reserves its right to seek to recover any costs incurred in
24 implementing this Decree from any other potentially liable
25 person.

26

1 XXVII. EFFECTIVE DATE

2 This Decree is effective upon the date it is entered by the
3 Court.

4 XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

5 This Decree has been the subject of public notice and
6 comment under RCW 70.105D.040(4)(a). As a result of this
7 process, Ecology has found that this Decree will lead to a more
8 expeditious cleanup of hazardous substances at the site.

9 If the Court withholds or withdraws its consent to this
10 Decree, it shall be null and void at the option of any party and
11 the accompanying Complaint shall be dismissed without costs and
12 without prejudice. In such an event, no party shall be bound by
13 the requirements of this Decree.

14 XXIX. SERVICE OF SUMMONS AND COMPLAINT

15 Texaco hereby agrees to accept service of the summons and
16 complaint that will be filed in this matter by mail upon the
17 following person at the following address:

18 Randall P. Beighle
19 Lane Powell Spears Lubersky
20 1420 Fifth Avenue
Suite 4100
Seattle, Washington 98101

21 By agreeing to accept service in this manner, Texaco
22 expressly waives the formal service requirements set forth in
23 Rule 4 of the Washington Rules of Civil Procedure and any
24 applicable local rules of this court.

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SIGNED by the Parties on the dates indicated below.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TEXACO REFINING AND MARKETING
INCORPORATED

By *Carol Fleskes*
CAROL FLESKES
Program Manager
Toxics Cleanup Program
Department of Ecology

By _____

Date 7-8-93

Date _____

STATE OF WASHINGTON
OFFICE OF ATTORNEY GENERAL

LANE POWELL SPEARS LUBERSKY

Tanya Barnett
TANYA BARNETT, WSBA #17491
Assistant Attorney General
Attorneys for State of
Washington

RANDALL P. BEIGHLE
WSBA #13421
Attorney for Texaco
Marketing and Refining Inc.

Date July 8, 1993

Date _____

THIS DECREE is approved and IT IS SO ORDERED this _____ day
of _____, 1993.

SUPERIOR COURT JUDGE
Skagit County Superior Court

t4:tanya\texaco\consent.dec

SIGNED by the Parties on the dates indicated below.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

TEXACO REFINING AND MARKETING
INCORPORATED

By Carol Fleskes
CAROL FLESKES
Program Manager
Toxics Cleanup Program
Department of Ecology

By Michael A. Weiss

Date 7-8-93

Date 8/10/93

STATE OF WASHINGTON
OFFICE OF ATTORNEY GENERAL

LANE POWELL SPEARS LUBERSKY

Tanya Barnett
TANYA BARNETT, WSBA #17491
Assistant Attorney General
Attorneys for State of
Washington

Randall P. Beighle
RANDALL P. BEIGHLE
WSBA #13421
Attorney for Texaco
Marketing and Refining Inc.

Date July 8, 1993

Date July 28, 1993

THIS DECREE is approved and IT IS SO ORDERED this 18 day
of August, 1993.

[Signature]
SUPERIOR COURT JUDGE
Skagit County Superior Court

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Blackberry Ditch

Task 1. Install an underdrain weir upstream of the culvert that crosses West March Point Road.

An underdrain weir shall be installed upstream of the culvert that crosses beneath West March Point road from the Blackberry Ditch. The weir shall prevent the discharge of floating immiscible fluids to Fidalgo Bay following sediment disturbances in the ditch resulting from remediation activities. The weir shall be constructed similarly to that illustrated in Figure 3; Exhibit F.

Task 2. Excavate soil/sediment from the north-south portion of the ditch located east of the railroad tracks. Contamination of sediments in excess of the cleanup standard appears to be limited to the north-south portion of the blackberry ditch east of the Shell railroad spur. Texaco shall conduct further excavation of the upper ditch sediment in the vicinity of sample location BD-9 (Figure 10; Exhibit F). Any other locations where hydrocarbons are observed within this segment of the ditch shall also be excavated. The extent and depth of excavation shall depend on field observations of all hydrocarbon-impacted sediment.

Task 3. Verification sampling.

Three soil samples shall be collected for TPH analysis from the north-south segment of the blackberry ditch following the completion of excavation activities. The samples shall be collected where the oil impacted sediments were previously observed. Each sample shall consist of a composite of a 0 - 6 in. ditch-bottom and 0 - 6 in. sidewall sample. If any sample exceeds the cleanup standard, additional excavation shall be undertaken in the vicinity of the sample location.

Task 4. Bioremediate as necessary.

If during the course of the excavation, it appears that *in situ* bioremediation of the ditch sediments is practical, excavation activities shall be terminated. This decision shall be based on the nature of contamination and the physical properties of the ditch sediment. The bioremediation activities shall consist of tilling the sediments using a hand-operated power tiller. The necessity for nutrient application shall be assessed following the analysis of a composite soil sample for soil fertility parameters and trace metals (total organic carbon, total and available phosphorus, total and available potassium, total Kjeldahl nitrogen, total boron, total copper, total manganese, total zinc, and total iron). If deemed necessary, nutrients shall be applied.

To assess the effectiveness of the remedial operation, a composite sample consisting of five randomly-selected locations within the north-south trending section of the blackberry ditch, shall be collected quarterly and analyzed for TPH. Additionally, a "worst case" sample shall be collected quarterly from the vicinity of sample location BD-9, and analyzed for TPH.

The bioremediation program shall be terminated when TPH concentrations in both samples are below the cleanup standard given in Exhibit C. No additional verification samples shall be collected following this demonstration:

Task 5. Remove underdrain weir.

Due to concerns regarding the effect of ponded water on the stability of the West March Point Road and railroad beds, the underdrain weir shall be removed from the blackberry ditch following the demonstration of compliance with the cleanup standard for soils.

Pump Area

Task 1. Excavate soil from the area between the booster pumps and service road.

Oily soil shall be excavated from the area between the booster pumps and service road. Due to the high density of buried piping in the vicinity, it will not be feasible to remove soils below approximately 3 ft in depth. The visible soil contamination in this area appears to be limited to the immediate vicinity of sample location BP-1. (Figure 15; Exhibit F) All visibly-oiled soils that can feasibly be removed shall be excavated from this area.

Task 2. Verification sampling.

Three soil samples shall be collected from 0 - .1 ft in depth from the excavated area and analyzed for TPH. Soil sampling locations shall be randomly-selected based on a grid. If any sample exceeds the cleanup standard (Exhibit C) for TPH, a health based risk assessment can be conducted to determine an alternative cleanup standard. The protocol for determining what analytes constitute the potentially hazardous substances associated with petroleum is currently being developed by the Department of Ecology. When the protocol for the demonstration as outlined in WAC 173-340-740(3) is developed, a "worst case" sample shall be collected from the location exhibiting the highest TPH concentrations. The sample shall be analyzed for the hazardous substances associated with petroleum using Methods outlined in the protocol. A health-based risk assessment shall be conducted based on detections of any of these analytes as outlined in WAC 173-340-740(3). If the area is found to be below the risk based standard (Exhibit C) for each of the hazardous substances associated with petroleum, then the area will be considered clean.

Task 3. Installation of a groundwater monitoring well and maintenance of the pump station shallow drain.

If soil with concentrations of TPH exceeding 200 ppm is left in place after the excavation and Ecology's protocol for determining the potentially hazardous substances associated with petroleum has not yet been developed, or if Ecology's protocol has been developed and a "worst case" sample collected in accordance with Task 2 contains concentrations of petroleum constituents that exceed Method B levels of such substances, then a groundwater monitoring well shall be installed.

hydraulically downgradient (west) of the pump area on the Texaco property (Figures A-1 and A-2). The well shall be installed in the uppermost zone of saturation with the well screen positioned across the water table if possible. The well shall not be installed until Ecology has approved its location. Groundwater shall be monitored according to methods described in Exhibit D.

The shallow drain system located west of the pump station shall be inspected periodically and maintained to insure proper operation. The drainage water shall be removed and treated in the Texaco effluent treatment plant.

Task 4. File restrictive covenant.

If Texaco determines that any soil sample exceeds the cleanup standard of 200 ppm TPH, and Ecology's protocol for determining the potentially hazardous substances associated with petroleum has not been developed, or if Ecology's protocol has been developed and a "worst case" sample collected in accordance with Task 2 contains concentrations of petroleum constituents that exceed Method B levels for such substances, then Texaco shall within 30 days of receipt of laboratory analysis results file with the office of the Skagit County Auditor the restrictive covenant set forth in Exhibit G. Texaco may thereafter seek Ecology's permission to record an instrument providing that this restrictive covenant no longer limit uses of the site or is of any further force or effect. Ecology may grant this permission only in accordance with the terms of the restrictive covenant, and only if Texaco demonstrates that soils in the Pump Area meet the cleanup standard established in this Decree.

Catchment Basin

Task 1. Delineation sampling.

The extent of TPH contamination in the catchment basin shall be further delineated through additional soil sampling of the 0 - 6 in. interval of the basin bottom and sidewalls. Five soil samples shall be collected from this interval. The sample distribution shall consist of one sample collected from each of three of the four basin sidewalls. Each sidewall sample shall be collected from a randomly-selected location within the stain line resulting from impounded oil following the spill. Two samples shall additionally be collected from randomly-selected locations within the basin floor.

If the TPH concentration in any sample exceeds the cleanup standard, an additional sample shall be collected from the 6 - 12 in. interval at that location. This procedure shall be repeated in 6 in. increments until the depth and areal extent of TPH contamination in excess of the cleanup standard has been delineated.

If all samples comply with the TPH cleanup standard, the remedial activities at the catchment basin will be considered completed.

Task 2. In situ bioremediation of soils.

If the TPH concentration in any sample exceeds the cleanup standard, a bioremediation program shall be undertaken. Soils shall be tilled within the basin bottom and sidewalls using typical agricultural equipment. Nutrients shall be added as necessary under the criteria listed in Blackberry Ditch, Task 4, to facilitate the degradation of hydrocarbons in the soils. One discrete sample and one composite sample of five randomly-selected locations shall be collected quarterly to assess the effectiveness of the remedial program.

If the preliminary soil sampling exercise indicates that the TPH concentrations exceed the cleanup standards below 1 ft in depth, "treat and strip" methodology shall be used. Once the upper foot of material has been successfully remediated, the layer shall be stripped and piled in a portion of the basin where further remediation shall not be necessary. The next foot of material shall then undergo treatment as outlined above. This process shall be repeated until the TPH concentrations meet the cleanup standard of 200 ppm.

Task 3. Verification sampling.

When sampling completed in Task 2 indicates that the TPH levels are below the cleanup standards, a confirmational soil sampling exercise shall be conducted. Five discrete soil samples shall be collected from randomly-selected locations within the treated area of the basin and analyzed for TPH. The samples shall be collected over the depth interval of the treated soil layer(s). If the TPH concentration in any sample exceeds the cleanup standard, additional remediation shall be conducted in the vicinity of the sample. The location shall be resampled quarterly until the TPH levels comply with the cleanup standard.

Flare Area Land Treatment Facility

The remediation of soils excavated from the spill site shall be continued at the temporary Flare Area Land Treatment Facility (FLTF) until all spill-related soils comply with the cleanup standard. The plots shall be tilled at a minimum of once a week throughout the field season. Nutrients shall be applied as needed based on the results of periodic soil fertility analyses. The plots shall be irrigated, if necessary, to facilitate the hydrocarbon degradation process.

The degradation of hydrocarbons in the plots shall be tracked through the collection of soil samples for TPH analysis at least semi-annually. One discrete "hot spot" sample and one composite sample shall be collected from each of the two plots. The composite sample shall consist of a minimum of 10 individual samples collected randomly throughout each plot after tilling. Soils shall be applied in six inch lifts when TPH concentrations are below 200 mg/kg in both samples at an individual plot. The compliance monitoring program for the FLTFs is outlined in Exhibit D.

EXHIBIT B

SCHEDULE OF REMEDIAL ACTIVITIES

PROJECT/TASK	JUL	AUG	SEP	OCT	NOV	DEC
BLACKBERRY DITCH						
TASK 1: Install Underdrain Weir	■					
TASK 2: Excavate Soil		■				
TASK 3: Verification Sampling *		■	■	■	■	
TASK 4: Bioremediate Ditch **		■	■	■	■	
TASK 5: Remove Underdrain Weir						■
PUMP AREA						
TASK 1: Excavate Soil from the Pump Area	■					
TASK 2: Verification Sampling	■					
TASK 3: Installation of Groundwater Monitoring Well ***			■			
CATCHMENT BASIN						
TASK 1: Delineation Sampling		■				
TASK 2: Bioremediation of Soils ****		■	■	■	■	
TASK 3: Verification Sampling *****						■

- * Timing may be dependent on implementation of Task 4
- ** Implementation dependent on field observations during Task 2
- *** Installation dependent upon results of Tasks 1 & 2
- **** Necessity dependent upon results on Task 1
- ***** Timing dependent on results of Task 2



prepared for:



TEXACO

Schedule of remedial activities.

PROJECT: 701092005-237 (ACTSCH)

LOCATION: ANACORTES, WASHINGTON

APPR: DATE: 04/07/93

DRAWN BY: RMO SCALE: NONE

DATE: 01/13/93 FIGURE: B-1

EXHIBIT C

SOIL AND GROUNDWATER CLEANUP STANDARD

EXHIBIT C

SOIL AND GROUNDWATER CLEANUP STANDARD

1.0 Soil Cleanup Standard

1.1 MTCA Methodology and Standard

The Method A (WAC 173-340-740 (2)(a)(i)) soil cleanup standard of 200 mg/kg TPH shall apply to the Munks' west pasture, blackberry ditch along the Shell Oil spur, and the catchment basin and pump area on the Texaco property. WDOE Method WTPH 418.1 modified shall be used exclusively for the TPH analyses.

Due to the sporadic distribution of hydrocarbon contamination noted in 1991 field activities, no statistical analysis will be conducted on the results of the soils analyses at the site. Therefore, all samples collected for verification of cleanup standard compliance for each area shall contain less than 200 mg/kg TPH before the remediation of the area is considered complete.

If the TPH criterion cannot be met at the pump area Texaco shall apply a deed restriction (Exhibit G) to the area and begin groundwater compliance monitoring (Exhibit D). Then a health-based assessment of individual hazardous petroleum constituents can be conducted based on a "worst case" TPH sample. Soil cleanup levels shall be determined using the Method B equations outlined in WAC 173-340-740(3)(iii). The protocol for determining individual hazardous petroleum constituents is being developed by the Department of Ecology. The protocol shall be used to determine individual hazardous substances associated with petroleum.

The semi-annual soil cores collected during the compliance monitoring (Exhibit D) from the Flare Area Land Treatment Facility shall be analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX), in addition to TPH. EPA method 8020 shall be used for the determination of BTEX. The cleanup standard for benzene shall be 0.5 mg/kg, for toluene shall be 40.0 mg/kg, for ethylbenzene shall be 20.0 mg/kg, and for xylenes shall be 20.0 mg/kg (Table 3; WAC 173-340-740(2)(a)(i)).

1.2 Soil Sampling Protocol

Soil samples shall be collected using either a stainless-steel auger or hand trowel. Composite samples shall be thoroughly mixed in a stainless-steel or glass container before being placed into sample containers. Sample containers shall consist of sterilized glass jars with Teflon lids. All sampling equipment shall be decontaminated between the collection of each sample.

Sample locations and descriptions shall be recorded in the field by a qualified geologist or soil scientist. Chain-of-custody forms shall accompany each batch of samples from the time of sample collection to delivery to the contracted analytical laboratory. A minimum of one duplicate sample shall be collected for each 10 samples collected.

2.0 Groundwater Cleanup Standard

2.1 MTCA Methodology and Standard

The Method A (WAC 173-340-720 (2)(a)(i)) groundwater standard of 1.0 mg/liter TPH and BETX standards of 5.0 ug/liter benzene, 30.0 ug/liter ethylbenzene, 40.0 ug/liter toluene, and 20.0 ug/liter xylenes shall apply to the monitoring well located at the pump area on Texaco property.

2.2 Groundwater sampling Protocol

Groundwater samples shall be collected using a dedicated disposable bailer or dedicated sampling pump. The elevation of the groundwater in monitoring wells shall be measured and recorded in a field notebook prior to sampling and purging. Three well volumes of water shall be evacuated or the well shall be bailed dry, before sampling the well. The pH and electrical conductivity of groundwater shall be tested within two hours of sampling the well and the results placed in the field notebook.

EXHIBIT D

COMPLIANCE MONITORING PLAN

EXHIBIT D

COMPLIANCE MONITORING PLAN

Compliance monitoring shall consist of groundwater monitoring at the pump station area of the spill site, if oily soils are left in place, and at the Flare Area Land Treatment Facility (FLTF); and soil-pore water and soil sampling at the FLTF.

1.0 PUMP STATION AREA GROUNDWATER MONITORING

1.1 Groundwater Monitoring

Texaco shall perform groundwater monitoring at the site for five years. Texaco's obligation to perform groundwater monitoring shall commence when it determines that any soil sample taken from the Pump Area, as required under Pump Area, Task 2 of Exhibit A, exceeds the 200 ppm TPH cleanup standard, or when it determines that a "worst case" soil sample collected in accordance with Pump Area, Task 2 of Exhibit A, contains petroleum constituents that are identified in Ecology's protocol and that exceed in concentration the Method B levels for such substances, whichever comes first. A monitoring well shall be installed downgradient of the pump area on the Texaco property at a location approved by Ecology (Figure A-2). Groundwater samples shall be collected quarterly for the first two years and analyzed for BTEX and TPH. After the initial two years of sampling, groundwater samples shall be collected and analyzed for these same constituents annually for an additional three years. At the end of this period Texaco and Ecology shall exchange proposals to amend this Exhibit (pursuant to Section XV AMENDMENT OF CONSENT DECREE) with regard to whether continued groundwater monitoring is necessary to protect human health or the environment, and if so what would constitute an appropriate monitoring regime. Ecology and Texaco shall exchange proposals to amend, in the manner just described, at five year intervals thereafter until levels of TPH, or individual hazardous substances associated with petroleum, as listed in Ecology's protocol, in soil on the site drop below the cleanup standard(s). Texaco may terminate this groundwater monitoring program at any time after receipt of results showing, and concurrence by Ecology, that soils in the Pump Area no longer contain petroleum or petroleum constituents in concentrations that exceed the cleanup standards established in this Decree. For purposes of determining whether Pump Area soils meet these standards, Texaco may use either the 200 TPH standard or the Method B standards for each of the hazardous substances to be identified in Ecology's protocol.

1.2 Groundwater Sampling Protocol

The elevation of groundwater in the well shall be measured and recorded in the field notebook prior to sampling. Three well volumes of water shall be evacuated, or the well shall be bailed dry, before sampling the well. Each well shall be sampled using a dedicated disposable bailer.

The Ph and electrical conductivity of groundwater shall be tested within two hours of sampling the well and the results recorded in the field notebook.

If any petroleum constituent is detected above the Method A cleanup standards for groundwater listed in Table 1 WAC 173-340-720(2)(a)(i), the well shall be resampled and the sample split for concurrent analyses at independent laboratories for verification. Texaco shall report the results of the verification sample to the WDOE within 30 days of receipt. Within 60 days of the notification, Texaco shall submit a plan for addressing the contamination. This plan shall ensure that the groundwater cleanup standard is met. Texaco and Ecology shall then enter into negotiations to amend this Decree to require remediation of the groundwater contamination.

2.0 FLARE AREA LAND TREATMENT FACILITY

2.1.1 Groundwater Monitoring

The groundwater monitoring wells installed east of the FLTF plots (W-112 and W-113; Figure D-1) shall be monitored semi-annually for BTEX and TPH. Groundwater monitoring shall continue for two years following the final demonstration that treated oil spill soils comply with the cleanup standard for soil.

2.1.2 Groundwater Sampling Protocol

The elevation of groundwater in the well shall be measured and recorded in the field notebook prior to sampling. Three well volumes of water shall be evacuated, or the well shall be bailed dry, before sampling the well. Each well shall be sampled using a dedicated disposable bailer. The pH and electrical conductivity of groundwater shall be tested within two hours of sampling the well and the results recorded in the field notebook.

If any petroleum constituent is detected above the Method A cleanup standards for groundwater listed in Table 1 WAC 173-340-720(2)(a)(i), the well shall be resampled and the sample split for concurrent analyses at independent laboratories for verification.

If the results of the analyses of the split samples confirm the presence of one or more constituents above the Method A cleanup levels, Texaco shall notify WDOE within 30 days of the confirmation. Within 60 days of the notification, Texaco shall submit a plan for groundwater quality assessment.

The groundwater quality assessment plan shall be implemented in such a manner as to determine, at a minimum, the following:

- The rate and extent of migration of the hazardous constituents in the groundwater; and
- The concentrations of hazardous constituents in the groundwater

At the conclusion of the groundwater quality assessment exercise, Texaco shall submit to WDOE a written report containing an assessment of the groundwater quality. If Texaco finds that no hazardous constituents have entered the groundwater from the FLTF, and Ecology concurs in this finding, the confirmatory groundwater monitoring program shall be reinstated. The groundwater quality assessment report shall contain a statement that indicates Texaco's intention to resume normal monitoring.

If the groundwater quality assessment confirms contaminated subsurface waters, Texaco shall continue the groundwater investigation and consult with WDOE on the most appropriate method of addressing the contamination.

2.2 Lysimeter Sampling

The lysimeters installed at the FLTF plots shall be sampled semi-annually for BTEX and TPH. Soil-pore water monitoring shall continue for two years following the demonstration that treated oil spill soils comply with the cleanup standard. If BTEX or TPH is detected above the Method A cleanup standards for groundwater listed in Table 1 WAC 173-340-720(2)(a)(i), the lysimeter shall be resampled and the sample split for concurrent analyses at independent laboratories for verification.

If the results of the analyses of the split samples indicates the presence of one or more of the TPH or BTEX constituents above the Method A cleanup levels, Texaco shall notify WDOE within 30 days of the confirmation. No additional soils shall be applied to the affected plot until an assessment of contaminant mobility is undertaken and approved by Ecology.

3.1 Soil Core Sampling

Soil cores shall be collected within one foot below the treatment zone at the FLTFs following the final demonstration that treated oil spill soils comply with the cleanup standard. Four soil cores shall be collected from each of the two plots and analyzed for BTEX and TPH. The sample locations shall be randomly-selected based on a grid. Samples shall be collected using a drilling rig with split-spoon sampler. The sampling protocol for soils outlined in Exhibit C shall be followed.

If BTEX or TPH is detected above the Method A cleanup standards for soils listed in Table 3 WAC 173-340-740(2)(a)(i), the location shall be resampled and the sample split for concurrent analyses at independent laboratories for verification.

If the results of the analyses of the split samples indicates the presence of one or more of the constituents above the Method A cleanup levels, Texaco shall notify WDOE within 30 days of the confirmation. No additional soils shall be applied to the affected plot after confirmation of soil contamination below the treatment zone. Texaco

shall consult with WDOE regarding remedial action alternatives following the confirmational sampling.

EXHIBIT E

HEALTH AND SAFETY PLAN

SITE SAFETY PLAN TEXACO OIL SPILL REMEDIATION - 1993

PROJECT OBJECTIVE

This project will involve the following activities related to cleanup of crude oil impacted soils at the Texaco Puget Sound Plant (PSP):

- 1) Soil sampling, and the installation and sampling of groundwater monitoring wells.
- 2) Excavation and removal of contaminated soil.

SITE DESCRIPTION

DATE: April - December, 1993

LOCATION: Anacortes, Washington

POTENTIAL HAZARDS: Volatile organic vapors (benzene, cyclohexane, toluene, ethylbenzene, xylene); hydrogen sulfide; polycyclic aromatic hydrocarbons; physical hazards associated with heavy equipment.

AREA AFFECTED: The area west of the ruptured booster pump between the refinery boundary and Fidalgo Bay (Figure A-1; Exhibit A).

SURROUNDING POPULATION: Shell refinery to the north and houses 1/2 mile to the south.

TOPOGRAPHY: Relatively flat; 0-3% slope.

WEATHER CONDITIONS: Rain, mild temperatures, occasional sunny days.

BACKGROUND INFORMATION

A pump failure resulted in the release of crude oil onto soils on adjacent private lands (Munks' property) and into Fidalgo Bay. Emergency clean-up conducted by Texaco Environmental Services (TES) included the clean-up of Fidalgo Bay, and the removal of the first six-inches of topsoil on the Munks' property. Remedial action undertaken by Texaco in 1991 included the clean-up of the residual materials remaining on the Munks' property and other affected areas. During clean-up, potential hazards were reduced by the removal of contaminated soils.

ENTRY OBJECTIVES

Soil and groundwater sampling to assess effectiveness of the 1991 remediation activities. Additional information and removal of contaminated soil, if necessary.

ON-SITE ORGANIZATION AND COORDINATION

PROJECT MANAGER: Larry Padgett, Texaco PSP

SITE SAFETY OFFICER: Dan Gibboney; Texaco PSP
Alternate - Charlie Pendergrast; Texaco PSP

FIELD TEAM LEADER: Joe Haley, Texaco PSP

TEXACO REPRESENTATIVE(S): Joe Haley
Brian Rhodes
Vern Stevens
Rich Clasen

STATE AGENCY REP'S: Kim Anderson

LOCAL AGENCY REP'S: None

ON-SITE CONTROL

Texaco personnel will control access to the Texaco PSP and to the contaminated area. Joe Haley will be the Texaco representative for on-site control.

HAZARD EVALUATION

Chemical Hazard Evaluation

The substances listed below are known to exist in crude oil (Appendix C, MSDS for Crude Oil) and could possibly be encountered during further excavation. The primary hazards associated with each of these substances is also listed.

SUBSTANCE	PHYSICAL STATE ¹	PRIMARY HAZARD ²	ANTICIPATED CONCENTRATION	PERMISSIBLE EXPOSURE LIMIT IN AIR
Benzene	gas/vapor	Inhalation	< 10 ppm	1 ppm
Hydrogen Sulfide	gas/vapor	Inhalation/dermal	< 10 ppm	10 ppm
PAHs*	particulates/vapor	Inhalation/dermal	< 10 ppm	10 ppm
Toluene	gas/vapor	Inhalation	< 50 ppm	100 ppm
Xylene	gas/vapor	Inhalation	< 50 ppm	100 ppm
Ethylbenzene	gas/vapor	Inhalation	< 50 ppm	100 ppm
Cyclohexane	gas/vapor	Inhalation	< 50 ppm	300 ppm

1- Liquid, solid, sludge, gas/vapor, particulates, other.

2- Toxic on inhalation or ingestion, absorbed through skin, irritant to eyes, irritant to respiratory tract, irritant to skin, other.

* = Polycyclic Aromatic Hydrocarbons

NOTE: Potential contact with the hazardous substances listed above has been greatly reduced by removal of soils during the 1991 cleanup activities. A photoionization detector will be used during excavation to detect organic vapors that may warrant the use of respiratory protection. This site is not likely to contain any unknown chemical hazards.

Physical Hazard Evaluation

Site activities present a number of routine physical hazards, including danger from construction vehicles, noise, and other safety hazards. In order to minimize these hazards, site workers must maintain a high degree of vigilance while moving about the site. Construction activities which present typical safety hazards include vehicle safety, avoidance of underground utilities, trenching and shoring, etc. All Washington State Administrative Codes shall be followed as reflected in WAC 296-155, Safety Standards for Construction Work; WAC 296-24, General Safety and Health Standards; and, WAC 296-62, General Occupation Health Standards.

PERSONAL PROTECTIVE EQUIPMENT

Based on evaluation of potential hazards, the following levels of personal protection have been designated for the applicable work areas and tasks:

<u>Location</u>	<u>Job Function</u>	<u>Protection Level</u>
Oil Spill Area	Confined Space Entry	Level C*
Oil Spill Area	Soil Excavation	Level D/C**
Oil Spill Area	Soil Sampling	Level D
Oil Spill Area	Groundwater Well Installation	Level D

*Level C protection will be used only if sufficient oxygen is present and concentrations of airborne contaminants are below permissible exposure limits for the protection afforded.

**Respiratory protection may be required if contaminated soils are encountered and organic vapors (as measured by a PID) exceed 5 ppm for time periods exceeding two minutes.

Specific protective equipment for Level C and D protection is as follows:

Level C: Full or half-face air purifying respirator equipped with organic vapor cartridges.
Rain gear / Slicker suit / Tyvek (If necessary)
Hard-hats
Chemically resistant outer gloves. (if handling contamination)
Chemically resistant safety boots (steel toed)
Goggles or safety glasses
Hearing protection (if necessary due to noise exposure)

Level D: Work clothing (i.e., long pants and long sleeve shirts)
Rain gear / Slicker suit / Tyvek (If necessary)
Chemically resistant outer gloves (if handling contamination)
Safety boots
Hard-hats
Goggles or safety glasses
Hearing protection (if necessary due to noise exposure)

There are no other specific protective clothing materials required for the necessary tasks.

ENVIRONMENTAL MONITORING

A direct reading photoionization Detector (PID) will be used to monitor the background organic vapor concentration. If at any time a measurement of 5 ppm, or more, above background concentration (but less than 20 ppm) is observed to persist for a period of at least 2 minutes, the workers will retreat to a safe area. Air Purifying Respirators equipped with organic vapor cartridges will be worn if personnel return to the area where the PID measurements exceeded 5 ppm. If PID measurements exceed 20 ppm, personnel must retreat to a safe area until levels return to below 20 ppm.

The Texaco designated site safety officer is directly responsible for Texaco safety recommendations on site. A log of site activities and environmental measurements will be maintained by the site safety officer for the duration of the field work at this site.

Respirators

Air purifying respirators equipped with organic vapor cartridges must be used when background concentrations exceed 5 ppm. If background concentrations exceed 20 ppm workers shall leave the area and shall not return until concentrations drop below 20 ppm.

Medical approval is required for any worker using a respirator. Personnel utilizing respiratory protection shall be in a medical surveillance program that authorizes the use of respiratory protection.

NIOSH Approval

Properly cleaned and maintained NIOSH-approved respirators shall be used when appropriate. It is the responsibility of the individual worker to maintain their respirator.

Changing Cartridges

As a minimum, air-purifying cartridges shall be replaced at the end of each shift, or after eight hours of use, whichever comes first. It is the workers responsibility to change cartridges at appropriate times.

Breathing Resistance or Breakthrough

Employees wearing air-purifying respirators shall be required to change filter elements whenever an increase in breathing resistance or breakthrough is detected.

Fit Testing

Only employees who have had pre-issue qualitative or quantitative fit tests and training shall be allowed to work in atmospheres where respirators are required.

Re-examination

If an employee experiences difficulty in breathing during the fit test or during use, he or she shall be reexamined by a physician to determine whether the employee can wear a respirator while performing the required duty.

Cleaning

Employees who wear respirators shall be allowed to leave the work area to wash their faces and respirator facepiece as needed to prevent potential skin irritation associated with respiratory use. Appropriate decontamination of the respirator will be conducted prior to exiting work areas.

Facial Hair

Facial hair that might interfere with achieving a good facepiece seal is prohibited.

Inspection

All respiratory protective equipment will be inspected and maintained on a regular schedule. The users of the respiratory protective equipment are responsible for this maintenance.

COMMUNICATION PROCEDURES

In the event that emergency response personnel are needed workers can contact any Texaco foreman or operator and have them contact the Boiler House on channel 4 or go to the nearest telephone and dial EXT 300 if on site or 911 if off site. Emergency phones are located throughout the refinery.

The following standard hand signals will be used when verbal communication is impossible:

- | | |
|---|--------------------------|
| • Hand gripping throat | Out of air, can't breath |
| • Grip partner's wrist or both hands around waist | Leave area immediately |
| • Hands on top of head | Need assistance |
| • Thumbs up | OK, I understand |
| • Thumbs down | No, negative |

DECONTAMINATION PROCEDURES

In order that the contaminated materials are not spread from the site, proper decontamination procedures will be employed for both equipment and personnel.

Personnel Decontamination

- a. If contaminated, detergent wash boots, pants and outer gloves, and rinse with water prior to leaving the site.
- b. Workers are encouraged to wash hands, respirator facepiece, etc. numerous times throughout the day to minimize risk of dermal exposure.

Equipment Decontamination

- a. All equipment and vehicles which have entered the contaminated area must be inspected for cleanliness prior to leaving the site. If contaminated, they shall be power washed or steam cleaned.
- b. Sampling equipment and hand tools will be washed with detergent and rinsed with water prior to leaving the site.

EMERGENCY PROCEDURES

The following standard emergency procedures will be used by on-site personnel. The Site Safety Officer shall be notified of any on-site emergencies and be responsible for ensuring that the appropriate procedures are followed.

Personnel Injury: If necessary, emergency response personnel will be contacted as soon as an injury occurs. Upon notification of an injury in the support zone, the Project Leader and Site Safety Officer will assess the nature of the injury. If the cause of the injury or loss of the injured person affects the safety of others at the site - work will be discontinued until the problem is resolved. The Site Safety officer will be responsible for ensuring that the injured person(s) is treated in an appropriate manner.

Fire/Explosion: Upon notification of a fire or explosion on site (a "wildcat" whistle from the Boiler House), workers shall stop all hotwork activities and proceed as advised during the Texaco safety orientation meeting. If the fire is in the support zone workers will leave the area, in an upwind direction, and the fire department shall be alerted. If a worker leaves the site they must return to the contractors gate and notify Texaco that they are safe.

Personal Protective Equipment Failure: If any worker experiences a failure or alteration of protective equipment that affects the protection factor, that person shall immediately leave the affected area. Re-entry shall not be permitted until the equipment has been repaired or replaced.

Other Equipment Failure: If any other equipment on site fails to operate properly, the Field Team Leader shall be notified and must determine the effect of this failure on continuing operations on site. If the failure affects the safety of personnel work will be halted until the problem is fixed.

In all situations, when an on-site emergency results in evacuation of the oil spill area, personnel shall not reenter until:

1. The conditions resulting in the emergency have been corrected.
2. The hazards have been reassessed.
3. The Site Safety Plan has been reviewed.
4. Site personnel have been briefed on any changes in the site safety plan.

SITE SAFETY PLAN

Dan Gibboney / Dan Yount is the designated Texaco Site Safety Officer and is directly responsible for safety recommendations on site. All individuals on the contaminated site will have an orientation given by Texaco for instruction on Texaco's emergency procedures.

Emergency medical information for substances present:

<u>Substance</u>	<u>Exposure symptoms</u>	<u>First-Aid</u>
Volatile Organic compounds	Dizziness, nausea	Remove from immediate area; seek medical assistance
Hydrogen Sulfide (H ₂ S)	Dizziness, nausea, Irritant to eyes and skin	Remove from immediate area; seek medical assistance

Emergency Phone Numbers:

Police:	ext. 147 or 9-911
Fire:	ext. 300 or 9-911
Medical Facility:	Island Hospital in Anacortes
Hospital:	(206) 293-3181
On-site Medical Facility:	ext. 896
Texaco Contact: Joe Haley	ext. 517
Facility Security:	ext. 701

Any emergency can be reported on Texaco radio channel # 1.
Appendix B is a map highlighting directions to Island Hospital in Anacortes.

HEALTH SURVEILLANCE AND TRAINING CERTIFICATION

If respiratory protection is required, in accordance with OSHA and WISHA requirements, the employees involved in this project have been examined by a physician trained in occupational medicine, for the purpose of determining fitness with respect to handling hazardous materials and wearing personal protective equipment. The results of the examinations indicate that these employees are physically capable and qualified to work under the conditions described in this plan, without risk to personal health and safety.

The employees scheduled to participate in the tasks described in this plan have been trained in personal protection and safety in handling hazardous materials in accordance with 29 CFR 1910.120.

SAFETY PLAN APPROVAL

PROJECT NUMBER: 5384

PROJECT NAME: Fidalgo Bay Spill

PROJECT MANAGER: _____

THIS SAFETY PLAN HAS BEEN APPROVED BY TEXACO AND MUST BE ADHERED TO. ANY CHANGES TO THIS PLAN MUST BE APPROVED BY TEXACO.

The following personnel have read the contents of this plan and understand and agree to its provisions and to the Texaco Health and Safety provisions, and the provisions of the WISHA regulations referenced in this document. In addition, all personnel have completed the Texaco Health and Safety Orientation.

Project Manager: _____ Date: _____

Site Safety Officer: _____ Date: _____

Field Team Leader: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

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Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

Field Team Member: _____ Date: _____

EXHIBIT F

REPORT OF THE INTERIM ACTION CLEANUP ACTIVITIES
AND REMEDIAL INVESTIGATION/FEASIBILITY STUDIES
RELATED TO THE FEBRUARY 22, 1991 CRUDE OIL SPILL
AT THE TEXACO PUGET SOUND PLANT

EXHIBIT G

RESTRICTIVE COVENANT

EXHIBIT G

RESTRICTIVE COVENANT

The property that is the subject of this Restrictive Covenant has been the subject of remedial action under Chapter 70.105D RCW. The work done to clean up the property (hereafter the "Cleanup Action") is described in the Consent Decree entered in State of Washington Department of Ecology v. Texaco Refining and Marketing Incorporated, Skagit County Superior Court No. _____, and in attachments to the Decree and in documents referenced in the Decree. This Restrictive Covenant is required by Ecology under Ecology's rule WAC 173-340-440 (1991 ed.) because the Cleanup Action on the Site resulted in residual concentrations of petroleum contaminants which exceed Ecology's Method A or Method B cleanup levels for soils established under WAC 173-340-740(2) or (3).

The undersigned, Texaco Refining and Marketing Incorporated, is the fee owner of real property in the County of Skagit, State of Washington (legal description attached), hereafter referred to as the "Pump Station Area of the Site". The pump station area of the site refers to two crude oil booster pumps and pipeways west of the pump station and the subsurface areas impacted by the petroleum contamination. More specifically, the Pump Station Area of the Site is an area bounded on the north by North Texas Road, on the west by Shell Oil railroad right of way, on the south by a line 150 feet south of North Texas Road and on the east by the western crude oil booster pump. Texaco Refining and Marketing Incorporated makes the following declaration as to limitations, restrictions, and uses to which the Pump Station Area of the Site may be put, and specifies that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Pump Station Area of the Site.

Section 1. No groundwater may be taken for domestic purposes from any well at the Pump Station Area of the Site.

Section 2. Any activity on the Pump Station Area of the Site that may interfere with the Cleanup Action is prohibited. Any activity on the Pump Station Area of the Site that may result in the release of a hazardous substance that was contained as part of the Cleanup or Interim Cleanup Action(s) is prohibited. The foregoing prohibitions notwithstanding, the owner may engage in activity in the Pump Station Area of the Site that is reasonable and necessary for the conduct of owner's petroleum refining business, including but not limited to excavation, inspection, repair or replacement of the crude oil transfer pipelines, booster pumps, or associated equipment. Owner shall give the Department of Ecology, or a successor agency, prior notice of any such activity, when a reasonable person would anticipate that the activity

may result in a release of a hazardous substance that has remained on the site following completion of the Cleanup or Interim Action(s).

Section 3. The owner of the Pump Station Area of the Site must give written notice to the Department of Ecology, or to a successor agency, of the owner's intent to convey any interest in the Pump Station Area of the Site. No conveyance of title, easement, lease or other interest in the Pump Station Area of the Site shall be consummated by the owner without adequate and complete provision for the continued operation, maintenance and monitoring of the Cleanup Action.

Section 4. The owner must notify and obtain approval from the Department of Ecology, or from a successor agency, prior to any use of the Pump Station Area of the Site that is inconsistent with the terms of this Restrictive Covenant. The Department of Ecology or its successor agency may approve such a use only after public notice and comment.

Section 5. The owner shall allow authorized representatives of the Department of Ecology, or of a successor agency, the right to enter the Pump Station Area of the Site at reasonable times for the purpose of evaluating compliance with the Cleanup Action Plan and the Consent Decree, to take samples, to inspect Cleanup Actions conducted at the Pump Station Area of the Site, and to inspect records that are related to the Cleanup Action.

Section 6. The owner of the Pump Station Area of the Site and the owner's assigns and successors in interest reserve the right under WAC 173-340-740 and WAC 173-340-440 (1991 ed.) to record an instrument which provides that this Restrictive Covenant shall no longer limit the use of the Pump Station Area of the Site or be of any further force or effect. However, such an instrument may be recorded only with the consent of the Department of Ecology, or successor agency. The Department of Ecology, or a successor agency may consent to the recording of such an instrument only after public notice and comment.

Name
Title
of Texaco Refining and Marketing, Inc.

Date

EXHIBIT H

CLEANUP ACTION PLAN