

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Mr. Man Kyu Pak)	AGREED ORDER
Black Lake Grocery)	
4409 Black Lake Boulevard)	No. DE 95-S202
Olympia, Washington 98502-2250)	
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To: Mr. Man Kyu Pak
Black Lake Grocery
4409 Black Lake Boulevard
Olympia, Washington 98502-2250

I.

Jurisdiction

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

II.

Findings of Fact

The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by Mr. Man Kyu Pak (Pak).

1. Pak is the owner of the Black Lake Grocery located at 4409 Black Lake Boulevard, Olympia, Washington (Site).
2. In "Addendum Report of Geotechnical Services, Black Lake Boulevard Expansion" (Dames and Moore, March 2, 1990), levels of petroleum contamination in soil and groundwater on-site and in areas adjacent to the site were found to be in excess of Model Toxics Control Act (MTCA) (Chapter 173-340 WAC) Method A cleanup standards.

3. Underground storage tanks (USTs) on-site were tightness tested on October 2, 1990. Although one tank failed the initial test, it was later re-tested on December 18, 1990, and found to be tight.

4. On October 16, 1990, the store's water supply well and a neighboring well were sampled. Analytical results showed benzene levels at 36.5 micrograms per liter (ug/l) for the store's well. The Method A cleanup level for benzene is 5.0 ug/l. Contaminants were not detected in samples collected from the neighboring well.

5. On May 23, 1991, Pak was sent a letter from Ecology outlining the requirements for receiving financial assistance from Ecology for cleaning up contaminated leaking underground storage tank (LUST) sites. The letter included an application and a request that the form be submitted to Ecology if financial assistance is needed. No application was filed with Ecology at that time.

6. On September 13, 1991, Pak was sent a second letter from Ecology outlining the requirements for owners of LUST sites. No response was received from Pak.

7. On February 27, 1992, Ecology sent a third letter restating the reporting requirement to Pak by certified mail.

Pak responded by telephone and requested a meeting with Ecology to discuss the future of the site.

8. On March 10, 1992, Pak attended a meeting with Lynn Gooding, Tom Todd, and Dick Walker of Ecology and Tim Tayne of the Thurston County Health Department. At that meeting, Pak agreed to conduct new tightness tests for all tanks in use (UST regulation requirement) and to make arrangements for the removal of the two USTs no longer being used.

9. On March 13, 1992, tightness tests were performed on the in-use tanks. These tanks tested tight.

10. On April 20, 1992, Pak submitted an application for financial assistance. It was determined that Pak would be required to finance up to \$100,000 of the cleanup costs. The application did not include all the personal financial records necessary to make a final determination of financial capability.

11. On April 22 and 23, 1992, two USTs no longer in use were removed and soil samples were collected from the tank excavation. Analytical results showed levels of total petroleum hydrocarbons (TPH) as gasoline of 650 and 530 milligrams per kilogram (mg/kg). The Method A standard for TPH as gasoline is 100 mg/kg.

12. On May 22, 1992, Pak attended a meeting with Lynn Gooding and Hun Seak Park of the Pollution Liability Insurance Agency to discuss Pak's financial eligibility. Pak agreed to submit additional financial information to Ecology. It was determined, at a minimum, Pak would be responsible for up to

\$100,000 of the cleanup costs. After submitting the requested information, it was determined that Pak did not qualify for financial assistance.

13. In August 1993, Pak signed Agreed Order No. DE93TC-S171. At that time Pak was planning to remove all USTs at the site and remove petroleum contaminated soils. The Order required a Phase I Initial Site Investigation to determine the severity of the contamination prior to removing the tanks and contaminated soil. Based on the findings of Phase I, Phase II activities may be conducted. The Order also stated that if Phase I activities revealed that contamination was excessive, the Order would be amended or a new Order would be issued which would require a Remedial Investigation/Feasibility Study (RI/FS).

14. In February 1994, "Phase I Initial Site Investigation" was submitted to Ecology by Blazer Construction on behalf of Pak. This document concluded that severe contamination of both soil and ground water existed at the site and that an RI/FS would be necessary.

III.

Ecology Determinations

1. Pak is an "owner or operator" [or transporter/generator/manufacturer] as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

2. The facility is known as Black Lake Grocery and is located at 4409 Black Lake Boulevard, in Olympia, Washington.

3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

5. By letter dated September 28, 1992, Ecology notified Pak of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

V.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Pak take the following remedial actions

and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Conduct RI/FS as described in the attached proposal (Exhibit A). Additional work described in Exhibit A shall be performed. This work shall include collecting the described ground water data and surveying all wells. MW-10 (D10) shall be replaced if deemed necessary by Ecology. In addition, water supply wells within a one-half mile radius of the site shall be identified. Potential receptors, including any surface water bodies, shall also be identified.

2. Additional soil borings/monitoring wells. After review of the data available, Pak shall install additional soil borings and/or monitoring wells if deemed necessary by Ecology. The locations of these borings/wells shall be presented to Ecology in a draft work plan which shall be submitted for comment and approval. This work plan shall include a map showing locations of the proposed wells and well construction details including well construction diagrams and other pertinent information. All wells installed shall have compatible construction with existing wells at the Site. A revised work plan shall be submitted to Ecology for approval within **two (2) weeks** following receipt of Ecology's comments on the draft work plan.

3. Submit draft RI/FS report. A draft RI/FS report shall be submitted to Ecology for comment within six (6) weeks

following the effective date of this Order unless additional monitoring wells are required. If additional monitoring wells are deemed necessary, an alternate submittal date for the RI/FS shall be set.

4. Submit revised RI/FS report. The draft RI/FS report shall be revised based on Ecology comments and submitted for approval within four (4) weeks following receipt of Ecology's comments on the draft version.

V.

Terms and Conditions of Order

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

2. Public Notices. RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs. Pak shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight, and administration. Ecology costs shall include

costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). In the event that Pak fails to perform the actions required under this Agreed Order, Pak shall be responsible for the costs of the work performed by contractors hired by the Ecology to perform such work at the site. Pak shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

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

Tammy Hall

Department of Ecology, Southwest Regional Office

Post Office Box 47775

Olympia, WA 98501-7775

Pak shall designate a project coordinator. The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Pak, and all documents, including reports, approvals, and other correspondence

concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Pak change project coordinator(s), written notification shall be provided to Ecology or Pak at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Pak shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Pak shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Pak shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Pak. By signing this Agreed Order, Pak agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Pak during an inspection unless doing so interferes with Ecology's sampling. Pak shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation. Mr. Pak shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Pak shall help coordinate and implement public participation for the site.

8. Retention of Records. Pak shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Pak, then Pak agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Pak may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final.

Pak is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Pak to recover remedial action costs paid to and received by Ecology

under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Pak to require those remedial actions required by this Agreed Order, provided Pak complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Black Lake Grocery.

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

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

Prior to transfer of any legal or equitable interest Pak may have in the site or any portions thereof, Pak shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Pak shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws

A. All actions carried out by Pak pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV and are binding and enforceable requirements of the Order.

Pak has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Pak determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Pak shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Pak shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Pak and on how Pak must meet those requirements. Ecology shall inform Pak in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Pak shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer

any federal law, the exemption shall not apply and Pak shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

Satisfaction of this Order

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

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Pak refuses, without sufficient cause, to comply with any term of this Order, Pak will be liable for:

- (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: June 21, 1995

MAN KYU PAK

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

By 

By 