

STATE OF WASHINGTON
DEPARTMENT OF WASHINGTON

In the Matter of Remedial)
Action by:)
)
)

Enforcement Order
No. DE 93TC-N325

Mr. Al Pierce, and
Mr. Al Pierce dba Pop's Automotive, and
Pop's Automotive
1521-126th St. S.E.
Everett, WA 98208

and

Mr. Mark Roloff
15522 State St.
Snohomish, WA 98290-7019

and

Guardian Property Management
11901-124th Ave. N.E.
Kirkland, WA 98034

To: Mr. Al Pierce, and
Mr. Al Pierce dba Pop's Automotive, and
Pop's Automotive
1521-126th St. S.E.
Everett, WA 98208

and

Mr. Mark Roloff
15522 State St.
Snohomish, WA 98290-7019

and

Guardian Property Management
11901-124th Ave. N.E.
Kirkland, WA 98034

I.

Jurisdiction

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

II.

Statement of Facts

1. The Facility known as Pop's Automotive and adjacent contaminated areas, is situated at or on property known as Lot 1, and the utility and transportation easement adjacent to or situated in Lot 1, in Snohomish County Short Plat No. SP394(11-85), recorded under Recording No. 8803080365 in the property records of Snohomish County, Washington, Tax Parcel No. 302805-4-019, located in the West half of the Northwest quarter of the Southeast quarter of Section 30, Township 28 North, Range 5 East, W.M., hereinafter the "Site" or the "Facility", is the subject of this Order. See Exhibit A.

2. Pop's Automotive is a (former) auto repair facility, operated without permits and licenses, in a residential neighborhood. Operations appear to have resulted in oil contamination of soils at the site, as evidenced by photos in

Exhibit B. The vicinity of the facility exhibits wetland vegetation, and a part of the Short Plat is set aside as wetland, which is a sensitive environment as set forth in WAC 173-340-200.

3. Mr. Al Pierce, and/or Mr. Al Pierce dba Pop's Automotive, and/or Pop's Automotive operated the Facility at the time of disposal or release of a hazardous substance at the Site. Mr. Al Pierce rents the property where the Facility is located. He has operated at the site for about 3-5 years. See Exhibit B.

4. Mark Roloff is the current owner of Lot 1, and undivided one-fourth owner of the Road Parcel of Short Plat SP394(11-85), as demonstrated by Statutory Warranty Deed recorded as Snohomish County Record No. 8808120247, Vol.2164, P.2084, executed and notarized on August 10, 1988. Guardian Property Management acted as the agent of Mr. Mark Roloff in management, maintenance and rental of the property where the facility is located from 1989-1993. See Exhibit C.

5. The Site currently consists of a residential lot with an adjacent road and utility easement, and surrounding areas where hazardous substances from the site have come to be located. The building known as Pop's Automotive shop is located in part on

Lot 1 of Short Plat No. SP394(11-85), and in part in the common road and utility easement of the same short plat.

6. The Silver Lake Water District collected drinking water samples for Volatile Organics Analysis (VOA) on August 27, 1993 based on complaints of residents. The samples were collected at the tap in one of the affected residences, that of Ms. Jenny Goodrich, 12502-16th Ave. S.E., Everett, WA. Sample results showed benzene at 32.9 ug/l (micrograms per liter, parts per billion), toluene at 212.8 ug/l, ethyl benzene at 30.5 ug/l and xylene at 168 ug/l (as well as several other gasoline constituents such as trimethylbenzenes, methyl-butanenes and -pentanes, hexanes and nonanes {4-9 carbon aliphatic and aromatic hydrocarbons normally found as part of gasoline}) Benzene is a confirmed human carcinogen, with a Maximum Contaminant Level (MCL) in drinking water of 5 ug/l. (See Exhibit D)

7. The Snohomish County Health District collected samples of soils at the Site on September 10, 1993. Sample analysis results showed benzene at 10,000 ug/kg (micrograms per kilogram, parts per billion), toluene at 110,000 ug/kg, ethyl benzene at 9,700 ug/kg and xylene at 160,000 ug/kg. Sample results also showed the presence of gasoline and lubricating oil in the soil.

Benzene, toluene, ethyl benzene and xylene (BTEX) are chemical constituents of gasoline used as indicator chemicals of gasoline contamination. Cleanup standards for residential soils established in WAC 173-340-740(2)(a)(i) are 500 ug/kg for benzene, 40,000 ug/kg for toluene, 20,000 ug/kg for ethyl benzene and 20,000 ug/kg for xylene. (See Exhibit E)

8. Affected residences are located on Lots 2, 3 and 4 of Short Plat SP 394(11-85), and are the residences of Dan and Missy Hower, 12504-16th Ave. S.E., Scott Chadderdon and Patti Goodrich, 12502-16th Ave. S.E. and Charles and Sylvia Hennon, 12428-16th Ave. S.E. All three affected water supply pipes run within two to three inches of each other, in a common trench, and are of the same plastic material. The soil surrounding the water supply lines is permeated with gasoline at a point adjacent to the Facility, where surface staining above the pipes indicates the release confirmed by the analytical results described above. Soil samples were collected from soils adjacent to the water supply lines after the lines were exposed by digging down to them. Any release is a threat to all three lines, and gasoline odors have been detected in all residences.

9. Gasoline and lubricating oils are hazardous substances generally associated with the use and maintenance of automobiles.

10. Petroleum is defined as a hazardous substance by statute in RCW 70.105D.020(5)(d), and has an established cleanup standard found in WAC 173-340-740(2)(i) of 200 mg/kg (ppm). Gasoline and lubricating oils are petroleum products.

11. Contamination at the Site is exposed to rain, wind and is accessible in whole or in part to the public. Contamination has also entered and contaminated residential water service lines running underneath the contaminated area.

III.

Ecology Determinations

1. Mr. Al Pierce, and/or Mr. Al Pierce dba Pop's Automotive, and/or Pop's Automotive was an "owner or operator" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3) at the time of release or threatened release of a hazardous substance, and is therefore a Potentially Liable Person (PLP) at the Site. See Exhibit B.

2. Mr. Mark Roloff is an "owner or operator " as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3), and is therefore a PLP at the Site. See Exhibit "C".

3. Guardian Property Management, Inc. is an "owner or operator " as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3) and is therefore a Potentially Liable Person (PLP) at the Site. See Exhibit "D".

4. The facility is known as Pop's Automotive and is located at 1521-126th Street S.E., Everett, in Snohomish County, Washington, located at the east side of Lot 1 and impinging on the road and utility easement of Short Plat No. SP394(11-85), located in the West half of the Northwest quarter of the Southeast quarter of Section 30, Township 28 North, Range 5 East, W.M., and surrounding areas where hazardous substances from the site have come to be located..

5. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(5). Contamination levels of benzene, toluene and xylene are in excess of cleanup criteria established in WAC 173-340-740(2)(a)(i), the Model Toxics Control Act Regulations. This contamination of the soil has resulted in contamination of drinking water with

benzene, a confirmed human carcinogen, and other gasoline constituents.

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

7. By letter enclosed with this Order DE 93TC-N325, Ecology notified each person referenced in Determinations 1-3 (above) of their or its status as a "potentially liable person" under RCW 70.105D.040, as concurrent notice appropriate to issuance of an Emergency Order, and therein provides notice and opportunity for comment as specified in said letter, but in no event to exceed 30 (thirty) days from receipt of this Order.

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

9. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest. Because this release threatens public water supply lines, an emergency exists which requires immediate remedial action.

10. This is an Emergency Order issued to abate an imminent threat to the public health and the environment.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that PLP Group 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. All persons determined to be Potentially Liable Persons as set forth in Determinations 1-3 of this order, hereinafter known as the PLP Group, shall select and empower a single person who shall represent and be the primary contact for the PLP Group by the Department of Ecology in the matter of compliance with this Order by the PLP Group. Said person shall be selected within three (3) days of receipt of this Order and communicated immediately to the department verbally, to be followed in writing not later than five (5) days following receipt of this order.

Said person is the project coordinator for the PLP Group. Any reference to the PLP Group shall include all PLPs, individually and collectively.

2. Actions shall be taken which eliminate present exposure to adjacent water-system users, and prevent future exposures to adjacent water-system users, to contamination at the Pop's Automotive Site. Such actions shall, at a minimum, replace grossly contaminated water delivery pipe, remove residual contamination from any delivery pipe not replaced, protect replacement pipe from potential future contamination by contaminants at the Site, and assure that contaminants from the Site are not present at the points of use on the water system which are now, or become in the future, contaminated by gasoline and/or petroleum at the Site. (In the context of this Order, exposure shall mean the presence of any gasoline constituents at or above federal or state drinking water standards in effect at the time of testing, as determined in consultation with the Snohomish County Health District and the Washington State Health Department. Potential exposure shall mean the presence of gasoline odors, and/or the presence of any gasoline constituent at or above 80% of drinking water standards for that constituent as determined above for exposures.)

3. The PLP Group shall arrange for and bear the cost of quarterly testing of drinking water for gasoline and/or petroleum contamination (in the remainder of this paragraph, "contamination") at the affected users' residences for a period of not less than one (1) year from the effective date of this Order, except that if gasoline odors are present, or if contamination is detected above or at 80% of drinking water standards, testing shall be increased to weekly at all residences affected and potentially affected until such contamination is abated or ended for six consecutive weeks. Sampling and analysis shall be conducted in accordance with State and EPA guidelines and regulations. If, after one (1) year, no gasoline or petroleum contamination as specified above has been detected in any drinking water samples at the users' residences for six (6) or more consecutive weeks, sampling frequency shall revert to that specified by law for the system as a whole, but shall be conducted at the affected user's residences at the expense of the PLP Group for one additional year. If contamination is still detected at the affected user's residences at the end of one (1) year, but is consistently less than 80% of drinking water standards (MCLs), sampling shall continue until contamination is no longer present in the water at the affected user's residences for at least six (6) consecutive months.

4. A security fence shall be installed around the perimeter of the site which prevents access to contaminated or potentially contaminated portions of the Site by the public and other unauthorized persons. Said fence shall be of the chain-link type, or provide equivalent protection, and shall be attached firmly to posts securely placed in the ground. The top of the fence shall be at least six (6) feet in height above the ground. Said fence shall be equipped with locking gates meeting the same requirements as the remainder of the fence, which allows access to the site by authorized persons and such vehicles and construction equipment as may be required to finally remediate the Site. Signs shall be placed on the fence at every gate, and on each side of the periphery which is not equipped with a gate, which signs shall state conditions and the nature of the threat to human health present at the site, the name, address and telephone number of the PLP Group Representative, and the name and telephone number of representatives of the regulatory agencies involved in the site, to include at a minimum the Department of Ecology and the Snohomish County Health District. Lettering on the signs shall be clear and legible, and not less than two (2) inches in height. Signs shall also include a standard hazard recognition diamond and placards normally used in transporting wastes having the characteristics of those found at the site, as warning to emergency responders. The fence and

signs required by this condition of Order shall be installed to the satisfaction of the department by February 10, 1994.

5. An impervious, fabric reinforced cover not less than six (6) mils in thickness shall be placed over all materials contaminated and potentially contaminated by gasoline and/or petroleum at the Site as a temporary remedial action to preclude rainwater infiltration and erosion of the piles, and entrainment in the air of dust from the piles. Said cover shall be of sufficient strength to prevent ripping by wind, and sufficiently secured to prevent disturbance or blow-off by wind. The cover shall be maintained until the final remediation of the site is accomplished or until the site is delisted by the Department of Ecology, whichever shall occur first. The cover may be temporarily removed during remediation at the site, with the approval of the Department of Ecology or their authorized agent(s). The nature of the cover shall not hinder in any way the final remediation of the site. Said cover shall be installed to the satisfaction of the department by January 25, 1994.

6. In order to prevent further releases or potential releases of hazardous substances to the environment from the site, the PLP Group shall employ the services of a firm or contractor which is, to the satisfaction of the department, qualified and experienced in conducting remedial actions at

contaminated sites similar to this site. A Site Safety and Health Plan shall be provided to the Department of Ecology for review at least three (3) days prior to any site work. Detailed design drawings and diagrams, and specifications for materials and methods of installation for all work performed pursuant to this order, shall be provided to the department at least three (3) working day prior to the commencement of site work and/or material installation, and are subject to approval by the department. The PLP Group shall also provide the department documentation confirming that it has notified appropriate local agencies, including, but not limited to Fire Department, Snohomish County Planning Department, Snohomish County Building Inspector, utilities (including utility locator services), and confirmed that either no permits are required, or have obtained necessary permits prior to performance of work at the site, and assured that all utilities have been located and marked prior to any excavation.

7. The PLP Group shall provide to the department, within 15 (fifteen) working days of completion of site work required under this Order, a written report, including but not limited to, a complete narrative description of activities and actions at the site taken to satisfy this Order, as-built drawings and specification of all structures, accessories and all work

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conducted at the site, and soil and water analytical data for affected media before and after remedial action. Post-remedial action samples shall be taken, at a minimum, at the limits of final excavation prior to backfilling, and in the sidewalls and bottom of the trench at intervals of not less than five (5) feet along the entire length of the excavation. The report specified in this section shall be prepared by or under the supervision of, and bear the seal of, a Professional Engineer (P.E.) licensed to practice in the State of Washington. Said documents shall be completed to the satisfaction of the department.

V.

Terms and Conditions of Order

1. Definitions

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

2. Public Notice

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.

The PLP Group 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 as defined in WAC 173-340-550(2), including, but not limited to: employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

The PLP Group 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:

Name: Norman D. Peck

Address: Department of Ecology,
Northwest Regional Office
3190-160th Avenue S.E.
Bellevue, WA 98008-5452

The name of the project coordinator for the PLP Group shall be provided to the department project coordinator within three (3) days of receipt of this Order, and is herein incorporated upon receipt by the department as a condition of the Order.

Name

Address

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the PLP Group, 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 the PLP Group change project coordinator(s), written notification shall be provided to Ecology or the PLP Group 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.

The PLP Group 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. The PLP Group 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 when necessary to abate an emergency situation, the PLP Group, collectively and/or individually, shall not perform any remedial actions at the Site, the Pop's Automotive Site, outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at 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 the PLP Group, its members, agents, contractors or assigns. When entering the Site under RCW 70.105D , Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by the PLP Group during an inspection unless doing so would interfere with Ecology's sampling. The PLP Group shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

The PLP Group shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

The PLP Group shall help coordinate and implement public participation for the Site.

8. Retention of Records

The PLP Group 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 the PLP Group, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

The PLP Group may request Ecology to resolve factual or technical 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), of this Order. Ecology resolution of the dispute shall be binding and final. The PLP

Group 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

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the Pop's Automotive Site.

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 the PLP Group 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 the PLP Group or any of its members 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 the PLP Group or its members may have in the Site or any portions thereof, the PLP Group or its members 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, the PLP Group shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by the PLP Group pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the PLP Group's receipt of written notification from Ecology

that the PLP Group has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this 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 the PLP Group refuses, without sufficient cause, to comply with any term of this Order, the PLP Group 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 RCW 70.105D.060.

Effective date of this Order: January 19, 1994.

Michael J. Gallagher
Michael J. Gallagher
Section Manager
Northwest Regional Office
Toxics Cleanup Program

ORDER #92TCN174

EXHIBIT A

Short Plat and Site Diagrams

ORDER #93TCN325

EXHIBIT B

Mr. Al Pierce and Pop's Automotive

ORDER #93TCN325

EXHIBIT C

Lot 1 Title and Attachments
Mr. Mark Roloff

ORDER #93TCN325

EXHIBIT D

Guardian Property Management, Inc.

Management Contract

ORDER #93TCN325

EXHIBIT E

Drinking Water Contamination Data

ORDER #93TCN325

EXHIBIT F

Soil Contamination Data