

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action by:)
)
Mr. & Mrs. William F. Arnold) Enforcement Order
)
)
) No. DE 95TC-N322

To: Mr. & Mrs. William F. Arnold
14460 188th Northeast
Woodinville, WA 98072

I.

Jurisdiction

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

II.

Statement of Facts

Mr. William F. Arnold and Mrs. Erma R. Arnold are the
owners of the Manhattan Express Deli (Formerly Arnold's Mini-
Mart) located at 631 Queen Anne Avenue North in Seattle,
Washington. Credible evidence exists indicating that a
hazardous substance (petroleum product) was released at the
Manhattan Express Deli site. Petroleum hydrocarbons
presently exist in the soil, soil-gas, dissolved in the
groundwater, and as free-phase product floating on the
groundwater. The evidence supporting these findings is
contained in the following documents:

1. GeoEngineers, Inc., File No. 504-04
Report of Hydrogeologic Services
Subsurface Fuel Contamination Problem
Queen Anne District, Seattle, Washington.
Dated, December 10, 1986
2. GeoEngineers, Inc., File No. 0161-153-4
Report of Geotechnical Services
Subsurface Contamination Study
Unocal Service Station 0255, Seattle, Washington
Dated, March 9, 1989
3. Ecology & Environment, Inc.
Trip Report
Monterey Apartments Site - Soil-Gas Study Summary
Dated, September 11, 1990
4. Ecology & Environment, Inc.
Document Control No. C0089007
Phase I Remedial Investigation Report
Monterey Apartments, Seattle, Washington.
Dated, August, 1991
5. SAIC
Construction Oversight
Weekly Report, May 17-21, 1993
Dated, May 23, 1993

SAIC
Construction Oversight
Weekly Report, May 24-28, 1993
Dated, June 7, 1993

SAIC
Construction Oversight
Weekly Report, June 1-4, 1993
Dated, June 7, 1993

SAIC
Construction Oversight
Weekly Report, June 7-11, 1993
Dated, June 17, 1993

SAIC
Construction Oversight
Weekly Report, June 14-18, 1993
Dated, June 23, 1993

SAIC

Construction Oversight
Weekly Report, June 21-25, 1993
Dated, June 30, 1993

SAIC
Construction Oversight
Weekly Report, June 28-30, 1993
Dated, July 8, 1993

6. SAIC
Construction Oversight
Groundwater Monitoring Report
Dated, July 14, 1993

Copies of the above referenced documents are available for review at the Department of Ecology, Northwest Regional Office, Central Files.

III.

Ecology Determinations

1. Mr. & Mrs. William F. Arnold are the "owners" as defined at RCW 70.105D.020(7) of a "facility" as defined in RCW 70.105D.020(4).

2. The facility is known as the Manhattan Express Deli and is located at 631 Queen Anne Avenue North in Seattle, Washington.

3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(6).

4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW

70.105D.020(11).

5. By letter dated February 11, 1994, Ecology notified Mr. & Mrs. William F. Arnold that it proposed to find them "potentially liable persons" under RCW 70.105D.040. This letter invited Mr. & Mrs. William F. Arnold to submit comments on this proposed finding. Mr. & Mrs. William F. Arnold requested and were given additional time to submit comments. After reviewing information submitted by Mr. & Mrs. William F. Arnold, Ecology notified Mr. & Mrs. William F. Arnold by letter dated October 5, 1994, of their status as "potentially liable persons" under RCW 70.105D.040.

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

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

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Mr. & Mrs. William F. Arnold 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. Using qualified personnel, assume operation and maintenance of the existing vapor extraction and product/groundwater recovery and treatment system at the site by December 15, 1995. Ecology will provide initial training to familiarize such personnel with operation and maintenance requirements for the existing remedial system.

2. By December 15, 1995, assume responsibility for submitting Monthly Gallonage Discharge reports to the Seattle Engineering Department. These reports shall be sent to:

Ms. Cami Wong
Drainage and Wastewater Utility
Room 660 Dexter-Horton Building
Seattle, WA 98104

Reports shall be sent by the 5th of each month and contain the discharge quantities in gallons and the period of time involved. A monthly billing statement will be mailed from the City. Full payment is due within 30 days of the invoice date. The current rate is \$2.81 per 100 cubic feet (748 gallons). All waste discharges must meet the applicable

requirements of Chapter 21 of the Seattle Municipal Code.

3. By December 15, 1995, assume responsibility for conducting twice-yearly influent and effluent sampling for benzene, toluene, and ethylbenzene, and submitting Annual Self-Monitoring Report to the Municipality of Metropolitan Seattle (METRO) pursuant to Metro Discharge Authorization No. 444. The report must be submitted by December 15 of each year and contain the total monthly volumes of water discharged to the sewer as well as the analytical results of all samples. Send reports to:

Ms. Fei Li
METRO Industrial Waste
130 Nickerson Street, Suite 200
Seattle, WA 98109-1658

4. Evaluate the effectiveness of the existing remedial system to achieve compliance with the Model Toxics Control Act (MTCA) cleanup standards. Provide Ecology with a Feasibility Study report detailing your evaluation, along with recommendations for improvements necessary to achieve compliance with such standards, for review and approval by March 31, 1996. As instructed by Ecology following receipt of your report, improve/upgrade the existing remedial system to Ecology's satisfaction as called out in the Cleanup Action Plan.

5. Maintain all remedial systems until compliance with Model Toxics Control Act (MTCA) cleanup standards is

demonstrated.

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 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.

Mr. & Mrs. William F. Arnold shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for past and future 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). Mr. & Mrs. William F. Arnold 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 at the rate of twelve (12) percent per annum.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Name Brian S. Sato, P.E.
Address Department of Ecology
 Northwest Regional Office
 3190 160th Avenue Southeast
 Bellevue, WA 98008-5452
 Phone: (206) 649-7265
 Fax: (206) 649-7098

Within thirty (30) days of receipt of this Order, Mr. & Mrs. William F. Arnold shall notify Ecology of the name, address, and phone number of their 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 Mr. & Mrs. William F. Arnold, 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 Mr. & Mrs. William F. Arnold change project coordinator(s), written notification shall be provided to Ecology or Mr. & Mrs. William F. Arnold at least ten (10) 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.

Mr. & Mrs. William F. Arnold 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. Mr. & Mrs. William F. Arnold 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, Mr. & Mrs. William F. Arnold shall not perform any remedial actions at the Manhattan Express Deli other than those required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" Enforcement Order

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 Mr. & Mrs. William F. Arnold. When entering the Site under ch. 70.105D RCW, 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 Mr. & Mrs. William F. Arnold during an inspection unless doing so would interfere with Ecology's sampling. Mr. & Mrs. William F. Arnold 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

Mr. & Mrs. William F. Arnold shall prepare and/or update

a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

Mr. & Mrs. William F. Arnold shall help coordinate and implement public participation for the Site.

8. Retention of Records

Mr. & Mrs. William F. Arnold 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 their possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Mr. & Mrs. William F. Arnold, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Mr. & Mrs. William F. Arnold 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. Mr. & Mrs. William F. Arnold are not relieved of any requirement of this Order during the pendency of the dispute and remain 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 Manhattan Express Deli.

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 Mr. & Mrs. William F. Arnold to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property

Prior to any voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site, Mr. & Mrs. William F.

Arnold shall provide 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 Mr. & Mrs. William F. Arnold may have in the Site or any portions thereof, Mr. & Mrs. William F. Arnold 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, Mr. & Mrs. William F. Arnold shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws

A. All actions carried out by Mr. & Mrs. William F. Arnold 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, the Work to be Performed and are binding and enforceable requirements of the Order.

Mr. & Mrs. William F. Arnold have 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 Mr. & Mrs. William F. Arnold determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Mr. & Mrs. William F. Arnold shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Mr. & Mrs. William F. Arnold 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 Mr. & Mrs. William F. Arnold and on how Mr. & Mrs. William F. Arnold must meet those requirements. Ecology shall inform Mr. & Mrs. William F. Arnold in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Mr. & Mrs. William F. Arnold 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 Mr. & Mrs. William F. Arnold 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 Mr. & Mrs. William F. Arnold's receipt of written notification from Ecology that Mr. & Mrs. William F. Arnold have 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 Mr. & Mrs. William F. Arnold refuses, without sufficient cause, to comply with any term of this Order, Mr. & Mrs. William F. Arnold will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of their refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day they refuse 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: September 8, 1995.

Michael J. Gallagher

MICHAEL J. GALLAGHER
Section Supervisor
Toxics Cleanup Program
Northwest Regional Office