

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action at:)
)
Priceless Gas (former)) No. 03TCPER-5598
1110 Morgan Street
Davenport, Washington 99122

To: Merit Truck Stop, Inc (Merit) / F.O.F., Inc.
Attn: Peter Hirschburg, Representative for Merit
471 North Curtis Road
Boise, ID 83706

I.

Jurisdiction

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

II.

Statement of Facts

1. Merit Truck Stop, Inc. (Merit) is the owner of the former Priceless Gas facility (the Site) located at 1110 Morgan Street, Davenport, Washington, in Lincoln County. This facility is located on the northwest corner of Morgan Street (Highway 2) and 11th Street. It is bounded by Morgan Street on the south and 11th Street on the east.
2. According to Washington State Department of Ecology (Ecology) records, the facility was operated as a retail gas station until June 1998 when the four underground storage tanks (USTs) located on-site were temporarily closed.

3. The four USTs consisted of one 12,000-gallon capacity unleaded gasoline tank, one 10,000-gallon diesel tank, one 3,000-gallon regular gasoline tank and one 3,000-gallon premium gasoline tank.
4. On November 13, 1998, Ecology's Spill Response Team personnel responded to a call from the owner of a residence located directly north of the Priceless Gas facility. The homeowner was concerned about an apparent gasoline odor in his home and stated that gasoline was seeping thorough the rock wall of his basement.
5. Mr. Peter Hirschburg, representative for Merit, was contacted by Ecology spill response personnel on November 13, 1998 regarding the situation. Mr. Hirschburg granted Ecology access to the property and the UST system for the expressed purpose of completing an incident investigation.
6. The Priceless Gas UST system was inspected by Ecology as part of an emergency response investigation on November 13, 1998. The investigation determined that several inches of petroleum product remained in each of the tanks, except for one. The 3,000-gallon capacity gasoline UST located on the north boundary of the Priceless site was empty. The product remaining in the other USTs was pumped out by an Ecology emergency response contractor.
7. As part of the emergency response, a test pit was excavated on the Priceless Gas Site, immediately north of the 10,000-gallon diesel and the 12,000- gallon gasoline USTs. Another test pit was dug directly north of the Site at the south edge of the affected residence. Analytical results of soil samples taken from each of these excavations confirmed gasoline and diesel contamination above the Model Toxics Control Act

(MTCA) Method A Cleanup levels for total petroleum hydrocarbons (TPH) and gasoline constituents benzene, toluene, ethylbenzene, and xylenes (BTEX).

- 8 Subsequent independent remedial actions completed in November 1998 included the excavation of petroleum contaminated soils along the northern perimeter of the Site and the installation of two monitoring wells on the affected residential property.
- 9 In December 1998 the four USTs at the Site were decommissioned and removed along with the associated piping and product dispensers. An inspection identified numerous holes in the bottom of the 12,000-gallon gasoline UST and apparent compromises in the product distribution lines. Soil sampling conducted at the time of the UST removals, along with the visual evidence, served to confirm a release from the UST system.
- 10 By a letter dated January 22, 1999 Ecology issued a proposed finding of potential liability status, as provided under MTCA, to Merit. A letter of response to this proposed finding was submitted to Ecology by Peter Hirschburg on behalf of Merit.
- 11 In a letter dated March 30, 1999, Ecology acknowledged Mr. Hirschburg's response and notified Merit of their final status as a "potentially liable person" (PLP) as defined under RCW 70.105D.040.
- 12 In the letter dated March 30, 1999 Ecology also notified Merit of specific required interim actions, including the following:
 - Submittal of a site characterization report documenting the work completed and the status of the on-going investigation;
 - Characterization and disposal of the petroleum contaminated soil stockpiled on-site;

- Backfilling of the open UST excavation with clean backfill material;
 - Initiation of a Remedial Investigation / Feasibility Study.
13. In response to Ecology's letter of March 30, 1999, on April 13, 1999 Olympus Environmental submitted to Ecology a report titled "Site Investigation, UST Removal, and Remedial Activities Report". The report documented Merit's compliance with the interim actions described in Ecology's letter.
14. Ecology subsequently determined that independent remedial actions taken at the site were not adequate and that additional investigative and cleanup activities would best be achieved through the enforcement process provided for under MTCA.
15. Ecology issued Enforcement Order No. DE 99 TC-E102 effective June 24, 1999. The Order directed Merit Truck Stop, Inc. to conduct and report on a Remedial Investigation/Feasibility Study (RI/FS) consistent with WAC 173-340-350. The purpose of the RI was to define the type, extent and the degree of soil, groundwater and surface water contamination at the Site and all off-site affected areas. The FS was to identify and evaluate appropriate remedial action alternatives that would most appropriately accomplish a final cleanup.
16. The RI/FS was completed. The results of the investigation and the evaluation of considered cleanup options are documented in the final report dated April 9, 2001. This report also provides a comprehensive summary of all completed remedial actions associated with the Site.

III.

Ecology Determinations

1. Merit Truck Stop, Inc. is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as the former Priceless Gas and is located at 1110 Morgan Street, Davenport, Washington, in Lincoln County. This facility is located on the northwest corner of Morgan Street (Highway 2) and 11th Street. It is bounded by Morgan Street on the south and 11th Street on the east.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances in the soils and groundwater at, adjacent to and hydraulically downgradient of 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(20).
5. In a certified letter dated March 30, 1999 Mr. Peter Hirschburg, representing Merit Truck Stop, Inc., was advised that after providing opportunity for comment, and after consideration of the investigative work completed at the site, Ecology had found Merit to be a "potentially liable person" as defined 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. Soil and groundwater contamination at this site, in exceedance of established cleanup levels, continues to represent a threat to human health and the environment
8. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

IV

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Merit Truck Stop, Inc. shall implement the remedial actions described in the attached Cleanup Action Plan (Exhibit A) as further described in the attached Scope of Work (Exhibit B).

As provided for in the attached Scope of Work (Exhibit B), within forty-five (45) calendar days of the effective date of this Order submit to Ecology for approval, a Cleanup Action Work Plan describing the work to be performed and a proposed schedule for implementation.

Within thirty (30) calendar days of the effective date of this Order submit to Ecology a copy of the Restrictive Covenant (Exhibit C) as recorded by the local land use authority.

Ecology will evaluate and determine the appropriateness of the Cleanup Action Work Plan. The Work Plan shall not be implemented without Ecology's written approval. Upon approval by Ecology, the Final Work Plan and its schedule shall become an enforceable element of this Order. Implementation of the Final Work Plan shall begin within fifteen (15) calendar days of the receipt of Ecology's approval.

The attached exhibits are incorporated by reference and are integral and enforceable elements of this Enforcement Order. The attached exhibits consist of the Cleanup Action Plan

(Exhibit A), the Scope of Work (Exhibit B), and the Restrictive Covenant Agreement (Exhibit C).

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 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.

Merit Truck Stop, Inc. 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). Merit shall pay the required amount within ninety (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 ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

Within ten (10) days of the effective date of this ORDER, Merit shall designate a Project Coordinator and notify Ecology as to the identity, address and telephone number of such Project Coordinator. This notification may be made by telephone or e-mail with written confirmation to follow.

The Project Coordinator for Ecology is:

Michael Boatsman
Washington State Department of Ecology
Eastern Regional Office
4601 N. Monroe
Spokane, WA 99205-1295
Phone: (509) 329-3492
e-mail: mboa461@ecy.wa.gov

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Merit, 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 Merit change project coordinator(s), written notification shall be provided to Ecology or Merit at least ten (10) calendar days prior to the change.

5. Performance

All actions are to be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

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. WAC 173-340-400(6) (b) (i) requires that any "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

Merit 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. Merit 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, Merit shall not perform any remedial actions at the former Priceless Gas outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

To facilitate the effective and expeditious implementation of this order the following provisions shall apply:

1. The designated Project Coordinator for Merit shall, at a minimum, provide weekly progress reports to Ecology's Project Coordinator. These reports may be made verbally.

2. The following information shall be submitted to Ecology during the implementation of this order:

- (a) Groundwater conditions and observed or field measured contamination.
- (b) Reports of laboratory sample analysis. These reports shall be submitted within seven (7) calendar days of receipt by the designated Project Coordinator
- (c) All additional information, data or reports deemed pertinent as requested by Ecology.

Ecology and other appropriate agencies shall be contacted immediately if during the implementation of the cleanup action conditions are identified which may pose an immediate threat to human health or the environment. Particular concerns at this site would include the presence of gasoline vapors or free-phase product.

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 Merit. When entering the Site under Chapter 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 Merit during an inspection unless doing so would interfere with Ecology's sampling.

Merit 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

Merit shall prepare a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Merit shall help coordinate and implement public participation for the Site.

8. Retention of Records

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

9. Dispute Resolution

Merit 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 her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Merit 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 former Priceless Gas.

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 Merit 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 Merit 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 Merit may have in the Site or any portions thereof, Merit 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, Merit shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by Merit pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Merit's receipt of written notification from Ecology that Merit 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

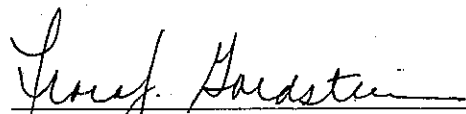
1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Merit refuses, without sufficient cause, to comply with any term of this Order, Merit 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: June 23, 2003

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

BY



Flora J. Goldstein
Section Manager
Toxics Cleanup Program
Eastern Regional Office