

Harold's Deli

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Phil Leinart
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SCAN 545 6199

February 8, 1991

CERTIFIED MAIL (P 332 062 705)

Mr. Johnny Mercer
Johnny Mercer Realty, Inc.
P. O. Box 280
Othello, WA 99344

Dear Mr. Mercer:

Enclosed is ORDER No. DE 90-E724. All correspondence relating to this document should be directed to Phil Leinart. Should you have any questions concerning the content of this document, please call Mr. Leinart at (509) 456-2926.

This ORDER is issued under the provisions of Chapter 70.105D RCW because Ecology believes remedial action at the Harold's Deli site is in the public interest. Ecology has given you sufficient time to take appropriate independent action to investigate and begin remediation of the release. Ecology also has granted you ample opportunity to request negotiation of a Consent Decree or Agreed Order.

The intent of this ORDER is to initiate and formalize an appropriate Remedial Investigation/Feasibility Study (RI/FS) at the Harold's Deli site. Although sufficient information must be collected, developed and evaluated to enable the selection of a cleanup action, Ecology is committed to avoiding the collection of unnecessary information. Therefore, Ecology recommends you have your designated Project Coordinator contact Mr. Leinart, Ecology's Project Coordinator, as soon as possible to arrange a meeting.

Sincerely,

Flora J. Goldstein
Section Supervisor
Toxics Cleanup Section

FJG:PL:adw

Enclosure

cc: Francois X. Forgette, Attorney at Law (w/enclosure)
Mary Sue Wilson, Assistant Attorney General/Olympia (w/enclosure)
Marian Kekahuna, Enforcement Unit/Olympia

MODEL TOXICS CONTROL ACT
ENFORCEMENT ORDER

In the Matter of)
HAROLD'S DELI) Remedial Action ORDER
1298 South First Avenue) No. DE 90-E724
Othello, WA 99344)

To: Johnny Mercer Realty, Inc.
c/o Mr. Johnny Mercer
P. O. Box 280
Othello, WA 99344

and

Mr. Harold Janett
P. O. Box 399
Royal City, WA 99357

I.

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

II.

Statement of Facts

1. Harold's Deli is located at 1298 South First Avenue, Othello, WA 99344, within Adams County. The site is platted as Bonnells Addition, Lot 8, Block 7, parcel 1-529-03-052-0708. The property is bounded on the south by State Highway 26; on the east by First Avenue; on the west by an alley; and on the north by Bonnells Addition, Lots 5 through 7, Block 7. The facility, at the time of the incidents as described in ¶2 and ¶3 of this section, was operated as a retail petroleum fuel products sales outlet and convenience store. Initial assessment indicated at least seven (7) and possibly as many as ten (10) underground storage tanks on site.
2. Hazardous levels of petroleum vapors were discovered within a structure at Cenex Western Commodities, 1296 South Broadway, Othello, WA 99344, on January 29, 1990. The subject Cenex building is situated approximately 600 feet west of Harold's Deli. Subsequent to the discovery of vapors, a site check of the Cenex area revealed petroleum vapors in a nearby drain and manhole. Free petroleum product was also observed in surface water at the drain outfall.
3. Wes Kissler, the manager of Harold's Deli, reported that between January 14 and January 24, 1990, an approximate 3,800 gallon loss of inventory occurred from an on-site 8,000-gallon unleaded gasoline underground storage tank.

4. Ground water contamination by free petroleum fuel product was discovered on or about February 9, 1990, within a test pit situated near the underground storage tank that experienced the loss of petroleum product.
5. An emergency action for petroleum fuel product recovery was commenced by a Department of Ecology (Ecology) contractor on February 18, 1990, in response to the persistent occurrence of hazardous levels of vapors in the drain line and manhole and the presence of free product in the drain, at the outfall and in surface water. A product recovery sump excavated adjacent to the subject underground storage tank showed approximately six inches of free petroleum product floating on ground water before recovery operations started.
6. On or about November 20, 1990, the subject leaky underground storage tank was removed. An approximately one-half inch ($\frac{1}{2}$ ") diameter hole was present in the lower most side of the subject tank. Within the tank excavation, soils displayed petroleum product staining, and petroleum odor was present. Free petroleum product was observed floating upon ground water exposed in two test pits excavated approximately 100 feet west of the subject tank.
7. Releases of petroleum products, including gasoline, can result in the contamination of subsurface soils, the migration of toxic or explosive vapors and the contamination of ground and surface water.
8. Johnny Mercer Realty, Inc. presently owns the facility commonly known as Harold's Deli at 1298 South First Avenue, Othello, WA 99344. Harold Janett, as lessee, was the operator of the facility commonly known as Harold's Deli at 1298 South First Avenue, Othello, WA 99344, at the time of the petroleum release.
9. By letters dated August 29, 1990, Ecology has provided notice to Johnny Mercer, doing business as Johnny Mercer Realty, Inc., and Harold Janett that they are potentially liable persons, that a release or threatened release of a hazardous substance has occurred at the Harold's Deli facility and that remedial action will be required to protect against actual or potential harm to human health or the environment.
10. Ecology has provided the opportunity for the potentially liable persons to take independent action to investigate and remediate the release. As of the effective date of this ORDER, the known fuel tanks on site have been removed and a preliminary evaluation of the site has been performed.
11. Ecology has provided the opportunity for the potentially liable persons to request negotiation of a Consent Decree or Agreed Order for Remedial Investigation/Feasibility Study activities. As of February 1, 1991, the potentially liable persons have not requested a Consent Decree or Agreed Order.

III.

Ecology Determinations

1. Johnny Mercer Realty, 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).
2. Harold Janett is an "owner or operator" as defined in RCW 70.105D.020(6) of a "facility", as defined in RCW 70.105D.020(3).
3. The facility is known as Harold's Deli and is located at 1298 South First Avenue, Othello, WA 99344.
4. The substances found at the facility and as described in the "Statement of Facts" above are "hazardous substances" as defined in RCW 70.105D.020(5).
5. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there has been a release or threatened release of hazardous substances from the facility, as defined in RCW 70.105D.020(10).
6. By letters dated August 29, 1990, Ecology notified Johnny Mercer, doing business as Johnny Mercer Realty, Inc., and Harold Janett of their status as potentially liable persons under RCW 70.105D.040 after notice and opportunity for comment.
7. 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.
8. 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 Determination, it is hereby ORDERED that Johnny Mercer Realty, Inc. and Harold Janett take the following remedial actions:

1. Perform and report on a Remedial Investigation/Feasibility Study. The purpose of the Remedial Investigation/Feasibility Study is to collect, develop and evaluate information regarding the site and surrounding area to enable the selection of a cleanup action. The Remedial Investigation is to define the type, extent and degree of soil, ground water and surface water contamination at the facility and any off-site affected areas. The Feasibility Study is to ini-

tially screen and evaluate alternative cleanup actions that protect human health and the environment by eliminating, reducing or otherwise controlling the risk posed. To accomplish the Remedial Investigation/Feasibility Study the following actions shall be performed:

- a. Within forty-five (45) calendar days of receipt of this ORDER submit to Ecology for approval a Work Plan describing the work to be performed and a schedule for the Remedial Investigation phase, consistent with WAC 173-340-350. At a minimum, the Work Plan shall include:
 - (1) A Health and Safety Plan fulfilling the requirements of Chapter 296-62 WAC.
 - (2) A Quality Assurance/Quality Control (QA/QC) Plan, consistent with the adopted amendment, WAC 173-340-830, describing how high quality reliable data is to be obtained. The QA/QC Plan shall include a detailed description of sampling procedures and equipment; the number and type of blanks, spikes and duplicates; chain of custody procedures; analytical methods; and data reduction, validation and reporting methods.
 - (3) A Sampling Plan describing the anticipated depth and location of all wells, soil borings, test pits, soil and water samples, the sample frequency, and parameters to be analyzed for. In preparing the Sampling Plan, site specific characteristics and the criteria of the Remedial Investigation, as referenced in Section IV, 1., c. of this ORDER, shall be considered.
 - (4) A Contractors List naming the firms anticipated to be working on the Remedial Investigation. The list is to include consultants, contractors and subcontractors.
 - (5) A Qualification Statement for the professional and technical personnel anticipated to be conducting the Remedial Investigation. The Statement shall include the name, function and appropriate general experience, skills, training, and education of the staff member.
 - (6) A Site Waste Management Plan describing the procedure to be used to excavate, contain, stockpile, characterize, and treat/dispose of contaminated materials (soil and water) encountered during the Remedial Investigation.
 - (7) A Public Participation Plan consistent with Section V, 7., of this ORDER.
 - (8) A Work Schedule outlining the anticipated progress of Remedial Investigation activities.

- b. Ecology will review and, if appropriate, approve the Remedial Investigation Work Plan. (No work shall be commenced without Ecology's written approval.) Upon approval by Ecology, the Work Plan shall become incorporated into this ORDER and be enforceable. Upon Ecology's approval of the Work Plan, implementation of the Remedial Investigation shall begin within thirty (30) calendar days of the receipt of approval.
- c. The final Remedial Investigation report shall be submitted within thirty (30) calendar days of completion of the work, but no later than November 1, 1991. The final Remedial Investigation report shall, at minimum, include the following:
 - (1) General Facility Information. General information, including: project title; name, address and telephone number of the Project Coordinator; legal description of the facility location and affected off-site properties; dimensions of the facility; present owner and operator; chronological listing of past owners and operators; operational history (including spills, leaks or other releases of hazardous substances); an inventory of underground storage tanks on site, both past and present; and other pertinent information.
 - (2) Site Conditions Maps, Cross-Sections and Photographs. Sufficient maps, cross-sections and photographs which illustrate relevant current site features such as: property boundaries; surface topography; surface and subsurface structures and utilities; well, soil boring and test pit locations; contaminant distribution (illustrating the extent and degree of soil and ground water contamination); ground water table conditions; sample locations; geologic/soil conditions; and other pertinent information.
 - (3) Methods. A description of the work performed, methods used and any deviations from the Work Plan.
 - (4) Findings. A description characterizing the distribution of hazardous substances present at the facility and surrounding affected area and the threat to human health and the environment. This description shall, at a minimum, address the following:
 - (a) Soils. Areal and vertical distribution and concentration of hazardous substances in the soil due to the release at the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement cleanup actions.

- (b) Geology and Ground Water System. Characterization of site geology and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected aquifers; location of public and private production water wells; areas of ground water discharge; ground water quality data; and seasonal variation of ground water levels.
 - (c) Land Use. Characterization of human populations exposed or potentially exposed to the hazardous substance released from the facility, and present and proposed land uses and zoning for the site and potentially affected areas. This shall include the name and address of any affected or potentially affected landowners in the area.
 - (d) Surface Water. Characterization of surface water for the distribution, concentration and migration of hazardous substances resulting from the release at the facility. This shall include a description of significant features, such as: surface drainage patterns; wetlands, drains, dry wells and storm sewers; the interrelationship between ground water and surface water, including drain outfalls, springs and seeps; and flow direction.
 - (e) Hazardous Substance Sources. Description of location, quantity, areal, and vertical extent and concentration and sources of hazardous substances at the facility. This shall include an assessment of all underground storage tank locations, past and present, to determine if there has been a release of a hazardous substance. Information on the physical and chemical characteristics and biological affects of the hazardous substances shall be provided.
 - (f) Natural Resources and Ecology. Characterization of impact or potential impact of the hazardous substances released from this facility on the natural resources and ecology of the area affected, such as: sensitive environment, plant and animal species, wetlands, and other environmental receptors.
- (5) Appendix. The Remedial Investigation report shall contain an appendix of supporting information and data that shall include, at a minimum: sample chain of custody report;

sample analysis laboratory reports; and well, soil boring and test pit logs.

- d. Within forty-five (45) calendar days of submitting the Final Remedial Investigation report to Ecology, submit a Preliminary Feasibility Study report. The purpose of the Preliminary Feasibility Study is to serve as an initial screening of cleanup action alternatives that may be used at the site and affected offsite areas to reduce the number of potential remedies for the final detailed evaluation. Information and data obtained by the Remedial Investigation is to be used. As a guideline for this preliminary evaluation of cleanup alternatives, the "Technology Selection" chapters of the following EPA publications may be used:

Assessing UST Corrective Action Technologies: Early Screening of Clean-up Technologies for the Saturated Zone. EPA 600/12-9-/027, June, 1990.

Assessing UST Corrective Action Technologies: Site Assessment and Selection of Unsaturated Zone Treatment Technologies. EPA 600/2-90/011, March, 1990.

The Preliminary Feasibility Study shall, at a minimum, include the following:

- (1) A general evaluation of alternative remedial actions for contamination occurring in the unsaturated (vadose) zone.
 - (2) A general evaluation of alternative remedial actions for contamination occurring in the saturated (ground water) zone.
 - (3) Recommendations for remedial actions which may be effective at the site and affected off-site areas. Such recommendations shall not necessarily be limited to considering clean-up of the saturated and unsaturated zones as distinct activities, but also consider combining technologies to effectively remediate the site. Should a combination of remedial technologies be recommended, a general compatibility analysis shall be included.
- e. Ecology will review and evaluate the Remedial Investigation Report and Preliminary Feasibility Study Report to select potential remedies for detailed Final Feasibility Study. The type and number of cleanup actions selected for final study shall be determined by Ecology and may not necessarily consist of or be limited to those remedies recommended by the Preliminary Feasibility Study Report.

- f. Within seventy-five (75) days of receiving written notice of Ecology's selection of potential remedies for detailed study, submit a Final Feasibility Study Report. The final report shall be a detailed evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing or otherwise controlling risks posed through each exposure pathway and migration route. The study shall, at a minimum, consider factors, where appropriate, consistent with WAC 173-340-350(6)(e).
2. Keep Ecology informed on the progress and achievements attained during the Remedial Investigation/Feasibility Study process. To accomplish this, the following provisions shall apply:
 - a. The designated Project Coordinator for Johnny Mercer Realty, Inc. and Harold Janett shall make, at a minimum, unless otherwise approved by Ecology, the following reports to Ecology's Project Coordinator:
 - (1) A weekly verbal report, summarizing the progress achievements and new findings of the Remedial Investigation.
 - (2) A monthly written report summarizing accomplishments, changes in work plan and scheduling and new findings.
 - b. Ecology and other appropriate agencies shall be promptly notified should the Remedial Investigation activities reveal conditions which may be an immediate threat to human health or safety.
 - c. The following information and/or data shall be submitted to Ecology during Remedial Investigation activities:
 - (1) Preliminary well, soil boring and test pit logs showing, at a minimum, sample locations, ground water conditions, lithology, and observed contamination. Such preliminary logs shall be submitted within fifteen (15) calendar days of completion of the well, boring or pit.
 - (2) Laboratory sample analysis reports. Such reports shall be submitted to Ecology within fifteen (15) calendar days of receipt by the supervising engineer, hydrogeologist or other project coordinator.
 - (3) Other information and/or data pertinent to the Remedial Investigation as requested by Ecology. Such information and/or data may include, but not be limited to, general site information, and preliminary site condition maps and crosssections.

- c. During the period of this ORDER, either Project Coordinator may request a meeting provided a minimum seven (7) calendar days written notice of requested meeting is given to the affected Project Coordinator.

V.

Terms and Conditions to 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 and improper in any respect.
3. Remedial Action Costs - Johnny Mercer Realty, Inc. and Harold Janett 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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

Johnny Mercer Realty, Inc. and Harold Janett 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, a general description of work performed, an identification of involved staff, and the amount of time spent by involved staff members on the project. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs may result in interest charges.

4. Designated Project Coordinators - Within ten (10) calendar days of the effective date of this ORDER, Johnny Mercer Realty, Inc. and Harold Janett shall designate a Project Coordinator, and notify Ecology as to the identity, address and telephone number of such Project Coordinator.

The Project Coordinator for Ecology is: Phil Leinert, Department of Ecology, Eastern Regional Office, N. 4601 Monroe, Suite 100, Spokane, WA 99205-1295; telephone: (509) 456-6199.

The Project Coordinators shall be responsible for overseeing the implementation of this ORDER. To the maximum extent possible, communications between Ecology and Johnny Mercer Realty, Inc. and Harold

Janett, and all documents, including reports and approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this ORDER, shall be directed through the Project Coordinators. Should Ecology or Johnny Mercer Realty, Inc. and Harold Janett change Project Coordinator, written notification shall be provided to Ecology or Johnny Mercer Realty, Inc. and Harold Janett 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 equivalent, with experience and expertise in hazardous substance site investigation and cleanup. Johnny Mercer Realty, Inc. and Harold Janett shall notify Ecology as to the identity of such engineer(s), hydrogeologist(s) or equivalent, and of any contractors or subcontractors to be used in carrying out the terms of this ORDER, in advance of their involvement at the site.

[Note: All "construction" performed pursuant to this ORDER must be conducted by individuals or firms appropriately licensed in Washington to do such "construction".]

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 Coordinators 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 Johnny Mercer Realty, Inc. and Harold Janett. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Johnny Mercer Realty, Inc. and Harold Janett during an inspection, unless such activity would interfere with Ecology's sampling. Johnny Mercer Realty, Inc. and Harold Janett shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) calendar days notice before any sampling activity.
7. Public Participation - Johnny Mercer Realty, Inc. and Harold Janett shall prepare, if appropriate, and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Johnny Mercer Realty, Inc. and Harold Janett shall coordinate and implement public participation at the site.
8. Retention of Records - Johnny Mercer Realty, Inc. and Harold Janett 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 to be undertaken through contractors or agents of Johnny Mercer and Harold Janett, the potentially liable persons shall include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution - Johnny Mercer Realty, Inc. and Harold Janett 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 of this ORDER. Ecology's resolution of the dispute shall be binding and final. Johnny Mercer Realty, Inc. and Harold Janett are not relieved of any requirement of this ORDER during the pendency of the dispute and remains responsible for timely compliance with 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.

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 Johnny Mercer Realty, Inc. and Harold Janett 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 Johnny Mercer Realty, Inc. and Harold Janett 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 Johnny Mercer Realty, Inc. and Harold Janett may have in the site or any portions thereof, Johnny Mercer Realty, Inc. and Harold Janett shall serve a copy of this ORDER upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) calendar days prior to finalization of any transfer, Johnny Mercer Realty, Inc. and Harold Janett shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws - All actions carried out by Johnny Mercer Realty, Inc. and Harold Janett 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 Johnny Mercer Realty, Inc. and Harold Janette's receipt of written notice from Ecology that Johnny Mercer Realty, Inc. and Harold Janett have completed the remedial activities 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 Johnny Mercer Realty, Inc. and Harold Janett refuse, without sufficient cause, to comply with any term of this ORDER, Johnny Mercer Realty, Inc. and Harold Janett may 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 as provided under RCW 70.105D.060.

Effective date of this ORDER: February 7, 1991.



Flora J. Goldstein
Section Supervisor
Toxics Cleanup Section