



Priceless Gas Merit Truck Stop

FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N. Monroe, Suite 202 • Spokane, Washington 99205-1295 • (509) 456-2926

June 24, 1999

CERTIFIED MAIL P 616 649 579

Mr. Peter Hirschberg
Merit Truck Stop, Inc.
471 N. Curtis
Boise, Idaho 83705

Dear Mr. Hirschberg:

The Washington State Department of Ecology hereby issues Enforcement Order No. DE 99TC-E102 to Merit Truck Stop, Inc. for the Priceless Gas property in Davenport, Washington under the provisions of Chapter 70.105D RCW. This Order requires Merit Truck Stop, Inc. to conduct a Remedial Investigation/ Feasibility Study at the site.

The intent of this Order is to initiate and formalize an appropriate Remedial Investigation/ Feasibility Study at Priceless Gas. Sufficient information must be collected, developed and evaluated to enable the selection of a cleanup action. Ecology believes this action is in the public interest.

If you have questions, please feel free to contact me at (509) 456-2834.

Sincerely,

Debbie Charloe
Site Manager
Toxics Cleanup Program

DC:mg
Enclosure

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

FS
36319358

In the Matter of Remedial
Action at:

)
)
)
)
)
)
)

ENFORCEMENT ORDER

Priceless Gas
1110 Morgan Street
Davenport, Washington 99122

No. DE 99-TC-E102

**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 Priceless Gas property/facility located at 1110 Morgan Street, Davenport, Washington, within Lincoln County. This facility is located on the northeast corner of Morgan (Highway 2) and 11th Streets. It is bounded by Morgan Street on the south and 11th Street on the east (Figure 1).
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 (UST) located on site were temporarily closed. The four USTs consisted of one 12,000-gallon unleaded gasoline tank, one 10,000-gallon diesel tank, one 3,000-gallon regular gasoline tanks and one 3,000-gallon premium gasoline tank.
3. On November 13, 1998, Ecology's Spill Response Team personnel responded to a call from Mr. Bruce Dehn, the owner of the residence located directly north of the Priceless Gas facility. Mr. Dehn was concerned about an apparent gasoline odor in his home and stated that gasoline product was seeping through the rock wall in his basement.

4. Mr. Peter Hirschberg, representative for Merit, was contacted by Ecology spill response personnel on November 13, 1998, regarding the situation. Mr. Hirschberg granted Ecology access to the property to perform some investigative activities.
5. The four USTs were inspected by the Ecology response team as part of the November 13, 1998 investigation to determine how much product, if any, remained in them. Less than six inches of product was measured in each of the tanks except for the 3,000-gallon premium gasoline tank located on the north side of the Priceless Gas office structure. This UST was empty. The remainder of the product was pumped out of the three USTs by Ecology's contractor, Olympus Environmental, Inc. (Olympus).
6. During the emergency response Olympus dug a test pit on the Priceless Gas property just north of the 10,000-gallon diesel UST and the 12,000-gallon unleaded UST. Another test pit was excavated directly north of the Priceless Gas pit at the south edge of Mr. Dehn's property. Analytical results of the soil samples obtained from each of the excavations confirmed diesel and gasoline 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).
7. Ecology personnel contacted Mr. Hirschberg on November 17, 1998, to advise him of Merit's responsibility for the investigation/cleanup of the petroleum contamination discovered at the Priceless Gas property. He was informed as to the urgency in conducting the investigation to determine if this contamination is the source or contributing source impacting the residence. At that time, Mr. Hirschberg informed Ecology that Merit planned to conduct an independent investigation/cleanup action.
8. Merit hired Olympus to investigate the site. On November 23, 1998, they began excavating north of the 10,000-gallon diesel UST and 12,000-gallon unleaded UST where petroleum contaminated soil had been identified during the emergency response investigation.
9. On November 25, 1998, Olympus was hired by Mutual of Enumclaw, the homeowner's insurance company, to install two monitoring wells on Mr. Dehn's property. Ground water samples obtained from the monitoring wells identified TPH and BTEX contamination above MTCA Method A Cleanup levels.
10. Olympus began decommissioning the four underground storage tanks on December 4, 1998. The pumps and piping were removed January 20, 1999. Soil samples obtained from each of the excavations during the decommissioning identified TPH and BTEX contamination above MTCA Method A Cleanup levels, confirming a release(s) from the UST system.

11. Approximately 155 tons of petroleum contaminated soil were excavated and removed from the site by Olympus as part of the UST removal and initial over-excavation. The excavation was not immediately backfilled, and approximately 482 tons of petroleum contaminated soil remained stockpiled on site. The USTs were cleaned and removed from the site on January 21, 1999.
12. Ecology issued a combined early notice letter and proposed finding of potential liability status under MTCA to Merit in a letter dated January 22, 1999. A response to the proposed finding status submitted by Mr. Hirschberg on behalf of Merit was received by Ecology on February 4, 1999.
13. In a letter dated March 30, 1999, Ecology acknowledged Mr. Hirschberg's response and notified Merit of their final status as a "potentially liable person" (PLP) under RCW 70.105D.040. This letter also notified Merit of several additional requirements that needed to be performed. These requirements included the following:
 1. Submittal of the site characterization report documenting the work completed and the status of the investigation;
 2. Characterization and disposal of the petroleum contaminated soil stockpiled on site;
 3. Backfilling of the open UST excavation with clean soil after the ground water has been characterized, pumped out and disposed of;
 4. Initiation of the Remedial Investigation/Feasibility Study.
14. Olympus was hired by Merit to perform the interim actions required in the March 30, 1999 Ecology letter. On April 7, 1999, they characterized and removed approximately 482 tons of petroleum contaminated soil that was stockpiled on the site. The analytical results of the ground water sample obtained from the open tank excavation identified petroleum contamination above MTCA Method A Cleanup levels so the ground water was pumped into a baker tank on May 5, 1999, for temporary storage at the site. The open excavation was then backfilled with clean soil according to Olympus personnel. On April 13, 1999, Ecology received a report titled "Site Investigation, UST Removal, and Remedial Activities Report" from Olympus.
15. Ecology has provided the opportunity for the PLP to take independent actions to investigate and remediate the effect of the release at this site. Actions taken by the PLP have focused on removing petroleum contaminated soil from the site and decommissioning the UST system. Limited data has been gathered which actually characterizes the area-wide extent and contamination levels of the petroleum impacted soils and ground water on and off site.

III. Ecology Determinations

1. Merit Truck Stop, Inc. is an "owner" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Priceless Gas and is located at 1110 Morgan Street, Davenport, Washington.
3. The substances found at the facility, as described above, are "hazardous substances" as defined in RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at and near the facility and all factors known to Ecology, it has been determined that there has been a release or threatened release of hazardous substances from the facility as defined RCW 70.105D.020(20) which poses a threat to human health or the environment.
5. In a letter dated March 30, 1999, after providing notice and opportunity for comment, Ecology notified Peter Hirschberg, representing Merit, of their status as a "potentially liable person" under RCW 70.105D.040.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate and conduct other remedial actions with respect to the release or threatened release of hazardous substances, 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 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 Merit Truck Stop, Inc. take the following remedial actions and that these actions be conducted in accordance with the Model Toxics Control Act Cleanup Regulation [Washington Administrative Code (WAC) 173-340].

1. Conduct and report on a Remedial Investigation/Feasibility Study consistent with WAC 173-340-350. The purpose of the investigation is to collect, develop and evaluate information regarding the site and potentially affected areas so as to enable the selection of an appropriate cleanup action. The Remedial Investigation will define the type, the extent and the degree of soil, ground water and surface water contamination at the facility and all off-site affected areas. It will also

identify the impacts of the contamination on those affected areas. The purpose of the Feasibility Study is to identify, develop, evaluate and select remedial action alternatives which are consistent with a permanent remedy to prevent or minimize the release or threatened release of hazardous substances from the site.

To fulfill the goals of this Remedial Investigation/Feasibility Study, the following actions shall be performed:

- a. Within thirty (30) calendar days of receipt of this Order, submit to Ecology for approval a Work Plan describing the work to be performed and a proposed schedule for the Remedial Investigation phase. At a minimum the Work Plan shall include the following:
 - (1) A Health and Safety Plan fulfilling the requirements of WAC 173-340-810.
 - (2) A Sampling and Analysis Plan consistent with WAC 173-340-820. This plan shall specifically describe the depth and the location of all proposed wells and soil borings, and include specific information regarding all proposed soil and water sampling including parameters to be analyzed and the frequency of sampling. Parameters that must be analyzed at a minimum are TPH for gasoline and diesel, BTEX and total lead.
 - (3) A Quality Assurance/Quality Control (QA/QC) Plan, consistent with WAC 173-340-830. The QA/QC Plan shall include a detailed description of sampling procedures and equipment to be used; the number and types of blanks, spikes, and duplicates; chain of custody protocol; analytical methods; and data validation and reporting methods.
 - (4) A Public Participation Plan consistent with the requirements of WAC 173-340-600.
 - (5) A Site Waste Management Plan detailing the procedure to be employed to contain, stockpile, characterize and treat/dispose of contaminated materials encountered during the course of the Remedial Investigation.
 - (6) A Contractor List identifying those firms which will be participating in activities associated with the Remedial Investigation. This list will include all consultants, contractors and subcontractors.
 - (7) A Statement of Qualifications for those individuals involved in the professional and technical work associated with this Remedial Investigation. This Statement shall include the names, duties,

pertinent experience, skills, training and education of the personnel involved.

- (8) A Proposed Work Schedule identifying the anticipated progress of the Remedial Investigation activities.
- b. Ecology will evaluate and determine the appropriateness of the Draft Remedial Investigation 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.
- c. A draft Remedial Investigation Report shall be submitted within thirty (30) calendar days of the completion of the work to Ecology for review. The final Remedial Investigation Report shall be submitted within twenty (20) working days after the approval date by Ecology. The Remedial Investigation Report shall, at a minimum, include the following:
 - (1) General Facility Information. General information, including: project title; name, address, and telephone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history.
 - (2) Site Conditions Maps and Photographs. Maps and photographs illustrating relevant site features such as: property boundaries; facility boundaries; surface topography; surface and subsurface structures; utility lines; well and soil boring locations; contaminant distribution, illustrating the extent and degree of soil, ground water and surface water contamination; static water levels of ground water including an indication of the seasonal variability; sample locations; geologic/soil conditions; and other pertinent information.
 - (3) Field Investigations. An evaluation, based on developed documentation, characterizing the distribution of hazardous substances at the facility and adjacent affected areas. This would include a characterization of the threat to human health and the environment posed by this release. This evaluation shall, at a minimum, address the following:
 - (a) Surface Water. Investigation of surface water and its drainage features to evaluate potential migration routes. This shall include a description of features such as: drains, dry wells and storm water drainage systems, and the relationship between these features and the surface water.

- (b) Soils. Investigations to characterize the 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 alternative cleanup actions shall be characterized.
 - (c) Geology and Ground Water System Characteristics. Investigation of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water 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; areas of ground water discharge; ground water quality data; and seasonal variation of ground water levels; the relationship between ground water, surface water and artificial drainage features in the affected and potentially affected area.
 - (d) Land Use. Characterization of human populations exposed or potentially exposed to the hazardous substances released from this facility and present and proposed land uses for the site and potentially affected areas. This shall include the name and address of any affected or potentially affected landowners in the area.
 - (e) Natural Resources and Ecology. Characterization of the impact or potential impact of the hazardous substance released from the facility on the natural resources and ecology of the area such as: sensitive environment, plant and animal species, and other environmental receptors.
- (4) Appendix. The Remedial Investigation Report shall contain an appendix of documentation, and data shall include, at a minimum, the following: sample chain of custody reports for all samples; laboratory reports of samples analysis; start cards and logs, as appropriate, for wells and soil borings.
- d. Within thirty (30) calendar days of submitting the Final Remedial Investigation report, you shall submit a Preliminary Feasibility Study

report. The Preliminary Feasibility Study report will serve as an initial screening of cleanup action alternatives. The RI will serve as a basis for the selection of the appropriate cleanup alternatives.

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

- (1) An evaluation of alternative remedial actions for contamination within the unsaturated (vadose) zone.
 - (2) An evaluation of alternative remedial actions for contamination within the saturated zone.
 - (3) Preferred alternatives for remedial actions for the site and those affected areas off-site. The use of multiple cleanup technologies may be considered.
- e. Ecology will review and evaluate the Preliminary Feasibility Study report. Based on the Remedial Investigation Report and the Preliminary Feasibility Study Report, specific cleanup actions will be selected for final study. Those actions selected for final study may not necessarily be limited to those proposed in the Preliminary Feasibility Study report.
- f. Within thirty (30) days of receiving Ecology's written notice of those cleanup alternatives selected for additional study, submit a Final Feasibility Study report. This report shall provide a detailed evaluation of the selected cleanup action(s). The evaluation criteria shall address the concerns for protection of human health and the environment. The action(s) selected shall be consistent with the goal of eliminating, reducing or otherwise controlling risks posed through each exposure pathway and migration route. The alternatives shall be evaluated for compliance with the requirements of WAC 173-340-360.

2. To facilitate communication with Ecology, the following provisions shall apply:

- a. The designated Project Coordinator for Merit shall, at a minimum, unless otherwise approved by Ecology, submit the following reports to Ecology's Project Coordinator:
- (1) During the implementation phase of the Remedial Investigation, a weekly verbal progress report. The frequency and timing of the reports may be amended with approval of Ecology's Project Coordinator.
 - (2) A monthly written report summarizing activities, changes in the Work Plan, scheduling and other pertinent findings.
- b. The following information shall be submitted to Ecology during the implementation phase of the Remedial Investigation:

- (1) Preliminary logs obtained during the construction of wells, soil borings or excavations. These logs would describe, at a minimum, sample locations, lithology, ground water conditions and observed contamination. This preliminary data shall be submitted within seven (7) calendar days of completion of the well, soil boring or excavation.
 - (2) Reports of laboratory sample analysis. These reports shall be submitted within seven (7) calendar days of receipt by the designated Project Coordinator.
 - (3) All additional information, data or reports deemed pertinent to the Remedial Investigation as requested by Ecology.
3. Ecology and other appropriate agencies shall be contacted immediately if the Remedial Investigation activities identify conditions which may pose an immediate threat to human health or safety. Potential threats on this site may include the accumulation of vapors or the presence of free product.

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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

Merit Truck Stop, Inc. 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.

The Project Coordinator for Ecology is:

Debbie Charloe
WA Department of Ecology
Eastern Regional Office
4601 North Monroe, Suite 202
Spokane, WA 99205-1295
(509) 456-2834
e-mail: dcha461@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 Truck Stop, Inc., 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 Truck Stop, Inc. change project coordinator(s), written notification shall be provided to Ecology or Merit Truck Stop, Inc. 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 an experienced professional with appropriate training, experience and expertise in hazardous waste site investigation and cleanup.

Merit Truck Stop, Inc. shall notify Ecology as to the identity of such person(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 Truck Stop, Inc. 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 Truck Stop, Inc. shall not perform, or cause to be performed, any remedial actions at the Priceless Gas site outside that required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at Priceless Gas 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 Truck Stop, Inc. When entering Priceless Gas under Chapter 70.105D RCW, Ecology shall provide reasonable notice prior to entering Priceless Gas unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Merit Truck Stop, Inc. during an inspection unless doing so would interfere with Ecology's sampling. Merit Truck Stop, Inc. 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 Truck Stop, Inc. shall prepare and/or update a public participation plan for Priceless Gas. Ecology shall maintain the responsibility for public participation at Priceless Gas. Merit Truck Stop, Inc. shall help coordinate and implement public participation for Priceless Gas.

8. Retention of Records

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

9. Dispute Resolution

Merit Truck Stop, Inc. 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. Merit Truck Stop, Inc. 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 Priceless Gas site.

In the event Ecology determines that conditions at Priceless Gas are creating or have the potential to create a danger to the health or welfare of the people on the Priceless Gas site or in the surrounding area or to the environment, Ecology may order Merit Truck Stop, Inc. 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 Priceless Gas shall be consummated by Merit Truck Stop, Inc. 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 Truck Stop, Inc. may have in Priceless Gas or any portions thereof, Merit Truck Stop, Inc. 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 Truck Stop, Inc. shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

All actions carried out by Merit Truck Stop, Inc. 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 Merit Truck Stop, Inc.'s receipt of written notification from Ecology that Merit Truck Stop, Inc. 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 Priceless Gas.
 - C. In the event Merit Truck Stop, Inc. refuses, without sufficient cause, to comply with any term of this Order, Merit Truck Stop, Inc. 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 24, 1999

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By *Isaac J. McEwen*

CERTIFIED MAIL: P 616 649 579