

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Plaintiff,	)	NO DE 91IC-S266
	)	
v	)	CONSENT DECREE
	)	
JIM TORRES,	)	
	)	
Defendant,	)	
	)	

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## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology) and Mr. Jim Torres (Defendant) is to provide for reimbursement for costs incurred by Ecology in remediating a release or threatened release of hazardous substances at the Jim's BP Service Station site.

B. The complaint in this action is being filed simultaneously with this Decree. An answer has not been filed and there has not been a trial on any issue of fact or law in this case. The parties wish to resolve the issues raised by Ecology's complaint and agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, the Defendant agrees to its entry and agrees to be bound by its terms.

D. The court is fully advised of the reasons for entry of this Decree, and good cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

## II. JURISDICTION

A. This court has jurisdiction over the subject matter and personal jurisdiction over the parties pursuant to the Model Toxics Control Act (ch. 70.105D RCW).

B. Ecology has authority pursuant to RCW 70.105D.040(4) to file this Consent Decree with the appropriate superior court after appropriate public notice and comment.

C. On the basis of the testing and analysis described in the Statement of Facts Section V and Ecology files and records Ecology has determined that a release of hazardous substances has occurred at the site.

D. Ecology has determined that the Defendant is a potentially liable person for the site pursuant to RCW 70.105D.040. The Defendant has been given notice of Ecology's determination, and has had opportunity to comment thereon.

E. The Defendant has applied to Ecology for financial assistance under WAC 173-340-560. Based on the Defendant's application, Ecology has determined the Defendant is eligible for mixed funding. Ecology has also determined that making available mixed funding under the circumstances described in Section VIII of this Decree will achieve a more expeditious or enhanced cleanup than would otherwise occur and will prevent or mitigate unfair economic hardship.

F. Entering this Decree will result in a more expeditious cleanup of the site and is appropriate given the use of mixed funding at the site.

G. The actions to be taken pursuant to this Decree are necessary to protect the public health, welfare and the environment.

### III. PARTIES BOUND

This Decree shall apply to and be binding upon Mr. Jim Torres and his marital community and Ecology and their successors and assigns. The undersigned representative of each party hereby certifies that he/she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. The parties agree to undertake all actions required by the terms and conditions of this Decree and the Defendant agrees not to contest state jurisdiction regarding this Decree. No change in

ownership or corporate status shall alter the responsibility of the Defendant under this Decree

#### IV. DEFINITIONS

A. "Site" refers to the property and business located at 103 East Main Street, Battle Ground, Washington, 98604

B. "Remedial action" refers to the work performed by Ecology to clean up the site.

C. "Remedial action costs" refer to those direct and indirect costs incurred by Ecology under this Consent Decree. Such costs include work performed by Ecology or its contractors for investigations, remedial actions, and order preparation, negotiations, oversight, and administration. Ecology costs shall also 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

D. "Days" refers to calendar days unless specified otherwise.

E. "Parties" refers to the Department of Ecology and Mr. Jim Torres and his marital community.

F. The definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Decree.

#### V. STATEMENT OF FACTS

Ecology makes the following findings of fact:

##### A. Site Location and Status

Jim's BP is located at 103 East Main Street, Battle Ground, Washington, 98604. The station is operated as a service station and garage. There are two underground storage tanks in place on the property, one is a 6000 gallon regular gasoline tank and the other is a 4000 gallon super unleaded gasoline

tank. A third 8000 gallon tank is in the process of being installed to replace a 6000 gallon tank that had been removed February 1991. The 6000 gallon tank was used for unleaded gasoline and the new tank will be used for unleaded gasoline once it is installed.

B. Facility History and Operations

Jim's BP has been in operation as a service station and garage for seven years and presently continues to operate as such. Mr. and Mrs. Milton J. Torres purchased the property in January, 1984. Prior to 1984, the station was owned by Clark Holcomb and was operated as a service station and garage. Mr. Holcomb had purchased the station in 1977 from the Unocal Corporation. Prior to ownership, Mr. Holcomb had leased the station from Unocal Corporation since 1963.

There were two 6000 gallon tanks on the property at the time of purchase in January, 1984. A third tank, 4000 gallons in capacity, was installed in July, 1984 and used for premium gasoline. In August 1985, one of the 6000 gallon tanks was removed and replaced with a new 6000 gallon tank which was used for regular gasoline. In February 1991, the remaining original 6000 gallon tank was removed. It had been used for unleaded gasoline. During the removal of the tank, a gasoline release was discovered. The suspected cause for the release was malfunctioning pipe fittings.

An 8000 gallon tank is presently on the facility and is contracted to be installed; once installed it will be used for unleaded gasoline.

Mr. Torres is in the process of bringing the station into compliance with Washington Administrative Code (WAC) 173-360, Underground Storage Tank Regulations. He has contracted for the installation of new piping from all of the tanks to the pumps (WAC 173-360-310), five gallon spill container for

spill and overflow protection (WAC 173-360-315) and a monitoring system for leak detection (WAC 173-360-335)

C Previous Site Investigations

In February 1991 two soil samples were collected from the tank excavation area by N. W. Construction a general contractor located in Battle Ground, Washington. The two samples were analyzed by Columbia Inspection Inc., Portland, Oregon. The results were 900 ppm Total Petroleum Hydrocarbons (IPH) for one sample and N.D. (none detected) for the second sample. In May, 1991, ground water samples were collected from the excavation area by N. W. Construction. The samples were analyzed by Columbia Analytical Services, Kelso, Washington. The results were 742 ppb benzene, 315 ppb toluene, N.D. (none detected) ethylbenzene, and 1230 ppb xylene. These results are above the Department of Ecology cleanup standards for both soil and ground water.

VI. WORK TO BE PERFORMED

A. Scope of Work

Ecology shall direct the remedial action at the site according to the following scope of work:

1. Evaluate the existing data from previous environmental investigations and other information pertinent to the site. This information may include investigative data from areas located off the site.

2. A Remedial Investigation/Feasibility Study (RI/FS) will be conducted in accordance with the requirements of WAC 173-340-350 in order to assess the extent and degree of soil and ground water contamination. The RI/FS is more fully described in the RI/FS Scope of Work which is attached to and incorporated by reference into this Decree as Exhibit A.

3. Once the RI/FS is completed, a cleanup action will be selected in accordance with WAC 173-340-360. The cleanup action shall include at a minimum: protection of human health and the environment, compliance with cleanup standards, compliance with applicable state and federal laws and provide for compliance monitoring.

4. Cleanup levels for this site will be determined by Ecology in the Cleanup Action Plan.

5. The Cleanup Action Plan will be made available for public review and comment in accordance with WAC 173-340-600 prior to finalizing a cleanup plan.

6. Methods will be developed and recommended for cleanup of soil and ground water contamination. Cleanup may involve excavation of contaminated soils. The extent of excavation shall be determined by Ecology. Any excavated soils will be combined with any existing contaminated excavated soils that are presently stockpiled at the site. Ecology shall coordinate off-site treatment of the excavated soils. If off-site treatment of the soil is impracticable, Ecology shall coordinate disposal of the soil at an appropriate landfill. Ecology shall coordinate cleanup and/or treatment of ground water contamination.

7. All observations, conditions, and results will be documented in a final report with at least four copies, one for the Defendant and three for Ecology.

8. The Defendant shall be responsible for closure of any non-leaking underground storage tank system at the site according to all relevant and applicable federal and state regulations.

VII. DESIGNATED PROJECT COORDINATOR

The project coordinator for Ecology is:

Patricia L. Martin  
Department of Ecology  
Southwest Regional Office  
7272 Cleanwater Lane  
Olympia, WA 98504-6811

The project coordinator shall be responsible for overseeing the implementation of this Decree. To the maximum extent possible, communications between Ecology and the Defendant, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree shall be directed through the project coordinator. Should Ecology change project coordinator, written notification shall be provided by Ecology at least ten (10) calendar days prior to the change.

VIII. REIMBURSEMENT OF ECOLOGY'S COSTS

1. Ecology has determined that the Defendant is eligible for mixed funding. The Defendant agrees to reimburse Ecology for the costs Ecology incurs in remediating the release and/or threatened release of hazardous substances at the site, including future monitoring (if any), up to a maximum dollar amount of fifty thousand dollars (\$50,000). In the event Ecology incurs remedial action costs exceeding fifty thousand dollars (\$50,000), payment of such costs shall be satisfied by use of funds from the Toxics Control Account.

2. Payment of Ecology's remedial action costs shall be due on the first (1st) of each calendar month commencing April 1, 1992. Ecology shall provide the Defendant summary statements, invoiced quarterly, itemizing the remedial action costs incurred at the site.

3 During the reimbursement period, the Defendant agrees to make monthly payments of not less than three hundred dollars (\$300.00). The Defendant shall be notified in writing when its obligation to reimburse Ecology under this Decree (Order) has been satisfied.

4. Monthly payments not received by Ecology within thirty (30) days of the date due shall be considered late payments and bear interest at a rate of one percent (1%) per month, or fraction thereof.

5. Ecology's determination regarding mixed funding applies only to the Defendant and is not transferable. In the event the Defendant sells, assigns, or otherwise transfers any or all interest in the site while this Decree (Order) is in effect, the new owner may be liable for remedial action costs incurred by Ecology at the site. If the Defendant sells, assigns, or otherwise transfers its interest in the site while this Decree is in effect, the remedial action costs incurred by Ecology up to the date of such sale, assignment, or transfer shall become immediately due and payable regardless of whether the payment period described in paragraph 3 above has commenced. Unless the immediate payment required under this paragraph fully satisfies the Defendant's obligation under Section VIII, paragraph 1 of this Decree, the Defendant shall remain liable for payment of Ecology's future remedial action costs at the site according to the terms of this agreement.

6. The Defendant consents to the immediate filing of a special lien in the amount of fifty thousand dollars (\$50,000) on the property located at 103 East Main Street, Battle Ground, Washington, to secure the Defendant's performance under this Decree (Order). Once the Defendant's obligation to reimburse Ecology under this Decree (Order) has been satisfied, the Defendant

may request in writing that Ecology file a lien termination statement with the court

The Defendant agrees that if it fails to fully reimburse Ecology for its share of remedial action costs or refuses to make the monthly payments required under this Decree (Order) after thirty (30) days written demand, Ecology may pursue any means authorized by law including, but not limited to, foreclosure of its lien to satisfy the Defendant's obligation under this Decree (Order). If foreclosure of the lien occurs but fails to satisfy the Defendant's obligation under this Decree (Order), the Defendant shall remain liable to reimburse Ecology for any outstanding balance owing. Foreclosure proceedings will be in accordance with all applicable Washington laws and regulations.

#### IX. ACCESS

Ecology or any Ecology authorized representative or contractor hired by Ecology, shall have the authority to enter and freely move about the site at all reasonable times for the purposes of performing remedial action at the site.

#### X. TRANSFERENCE OF PROPERTY

A. No voluntary conveyance or relinquishment of Defendant's title, easement, leasehold, or other interest in any portion of the site shall be consummated without provision for continued performance of all of Defendant's obligations under this Decree. If an involuntary conveyance or relinquishment of such interest occurs, the Defendant shall, if possible, give prior written notice of this Decree to the transferee.

3 Within 90 days of entry of this Decree the Defendant shall record a notice in the title records to that portion of the property underlying the site over which Defendant holds free title. The notice shall state that a Consent Decree entered in the above-captioned proceeding imposes certain restrictions on the use and improvement of the site, and that said restrictions run with the land until all remedial actions have been successfully carried out and cleanup levels achieved. Within 30 days of filing the notice with the Clark County Auditor, the Defendant shall forward a copy of the notice to Ecology.

#### XI. DISPUTE RESOLUTION

The Defendant may request Ecology to resolve disputes which may arise during the implementation of this Consent Decree. Such request shall be in writing and directed to the Ecology Project Coordinator. Ecology resolution of the dispute shall be binding and final. The Defendant is not relieved of any requirement of this Consent Decree during the pendency of the dispute and remains responsible for timely compliance with the terms of the Consent Decree unless otherwise provided by Ecology in writing.

#### XII. AMENDMENT OF CONSENT DECREE

Any Amendment to this Decree must be in writing and signed by the parties. Such amendment shall become effective when entered by the court. If the amendments to the Decree are substantial, Ecology will provide additional public notice and opportunity for public comment.

#### XIII. INDEMNIFICATION

The Defendant agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to

property arising from or on account of acts or omissions of the Defendant, its officers, employees, agents, or contractors in entering into and implementing this Decree; provided, however, that the Defendant shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action brought by third parties arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the state, in implementing the activities pursuant to this Decree.

#### XIV. PUBLIC NOTICE AND PARTICIPATION

Ecology shall be the lead for public notice and participation at the site. Ecology shall allow the Defendant to review fact sheets, press releases, and public notices prior to issuance.

#### XV. SATISFACTION OF THIS DECREE

The provisions of this Decree shall be deemed satisfied upon the Defendant's reimbursement to Ecology of all reasonable costs incurred by Ecology in performing remedial action at the site as defined more specifically in Section VII.

#### XVI. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the court.

#### XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

This Decree will be subject to public notice and comment under RCW 70.105D.040(4)(a). Ecology reserves the right to withdraw or withhold its consent to the proposed final Decree should the comments received by Ecology disclose facts or considerations which indicate that the proposed Decree is inappropriate, improper, or inadequate.

If the court withholds or withdraws its consent this Decree shall be null and void at the option of any party and the accompanying complaint shall be dismissed without cause and without prejudice. In such an event no party shall be bound by the requirements of this Decree. It is so agreed this \_\_\_\_ day of June 1991

Carol Fleskes  
CAROL FLESKES, PROGRAM MANAGER  
TOXICS CLEANUP PROGRAM  
WASHINGTON STATE  
DEPARTMENT OF ECOLOGY

Jim Torres  
JIM TORRES  
Owner and Operator  
Jim's BP Service Station

Katherine Manning WSBA #17498  
~~JAY MANNING, WSBA #13579~~  
Assistant Attorney General  
Ecology Division  
Washington State  
Office of Attorney General

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## EXHIBIT A

### JIM'S BP RI/FS

#### INTRODUCTION

The purpose of this scope of work is to aid in the development of work plan for a remedial investigation/ feasibility study (RI/FS) for Jim's BP, Battle Ground, Washington. This study is being conducted in accordance with the Model Toxics Control Act regulations per Chapter 173-340 WAC.

The purpose of the RI/FS is to collect, develop, and evaluate sufficient information about the site to enable the selection of a cleanup action which is protective of human health and the environment, complies with local, state, and federal law, and is a permanent solution (to the event practicable). Adequate monitoring of the site is required as part of the final cleanup action to ensure effectiveness.

#### Site Background

Jim's BP is an active gas station and garage owned and operated by Jim Torres and is located in Battle Ground, Washington (see attached map). Soil contamination was confirmed in February, 1991 when soil samples taken from an excavation where an underground storage tank had been removed revealed levels of 900 ppm total petroleum hydrocarbons as gasoline. Groundwater gasoline contamination was confirmed in May, 1991 when water samples taken from the excavation revealed BTEX values of: 742 ppb benzene, 315 ppb toluene, N.D. (none detected) ethylbenzene, and 1230 ppb xylene.

#### Site Conditions

The site is located in an active business district in the city of Battle Ground. The site is surrounded by small businesses, private residences, and a public library. The site is located on a corner lot and is bordered on two sides by commercial businesses. The public library is located on the opposite side of the street and diagonally across Main Street from the site. The nearest private residence is located across Main Street from the site. The city of Battle Ground is on a municipal water supply. The city well is located approximately seven city blocks from the site.

The site is underlain by pebbly, silty, sandy clay. At the time of the tank decommissioning, the water table was approximately 7 to 10 feet below ground surface and ground water was in the excavation.

Ecology has received two reports of releases at location that are near the site. One reported release is located at Genex Farm and Home, 310 E. Main St., which is approximately two blocks east of the site. The release reported at Genex site is being investigated and it is not known at this time if it has had an influence on the conditions at Jim's BP. The second reported release is located at the Battle Ground High School which is located at 204 W. Main St. and is approximately three blocks west of the site. There is no evidence at this time that the second release has had an influence on the site at this time.

## SCOPE OF WORK

The scope of work has been divided into six separate tasks which are described as follows:

### TASK 1 INTERIM ACTION

1. Determine the level of contamination in the soils stock-piled on the site. Determine the best remediation technique given the limitations of the site and the degree of contamination in the stock-piled soils. Perform the remediation of pile of contaminated soil on site.

### TASK 2 EVALUATE EXISTING DATA AND PREPARE WORK PLANS

#### A. Evaluation of existing data

1. Analyze and interpret previous environmental, geologic, and hydrogeologic investigations and other information pertinent to the site. This information shall include but not be limited to driller's logs for water wells near the site and any reports prepared by N W. Construction.
2. Investigate for possible contributing sources of contamination originating from areas located off the study site. The information shall include but not be limited to reports of reported petroleum releases from businesses that are located within a reasonable distance of influence from the study site.

#### B. RI/FS Work Plan

1. Prepare a work plan for conducting tasks 2-4.
2. This work plan shall include a description of each task to be performed.
3. The RI/FS shall be conducted in accordance with the approved RI/FS work plan.
4. The work plan shall include a schedule for each task to be performed.

The Model Toxics Control Act (MTCA), WAC 173-340-350 lists a comprehensive description of the contents of the required work. This RI/FS work plan must conform with the MTCA regulations, modified as appropriate to the site.

#### Deliverables:

Report-Detailed RI Work Plan, Draft  
Report-Detailed RI Work Plan, Final

C Sampling and Analysis Plan (SAP)

1. Prepare a Sampling and Analysis Plan which shall consist of a quality assurance/quality control (QA/QC) project plan and a field sampling plan.
  - a. The QA/QC plan will describe the purpose, objectives, organization, responsibilities, activities, quality assurance and quality control protocols, and laboratory reports necessary to achieve the intended objectives.
  - b. The field sampling plan will define the sampling and data-gathering methods, and field logs and notes to be used. A sampling schedule shall be included in this plan.
  - c. The sampling plan shall provide plan view maps of buildings, structures, underground and overhead utilities which may limit field sampling on the site and other adjacent properties which will require investigation.

Chapter 173-340-820 WAC of the Model Toxics Control Act outlines the requirements of the Sampling and Analysis Plan. The plan shall address all elements including the work to be done by established commercial laboratories as well as field screening techniques. Ecology shall be provided with copies of original laboratory reports for all tests, including QA/QC data, conducted in regard to this site.

**Deliverables:**

**Report-Sampling and Analysis Plan, Draft**

**Report-Sampling and Analysis Plan, Final**

D. Health and Safety Plan (HSP)

1. Prepare and follow a site-specific Health and Safety Plan in accordance with all applicable Occupational Safety and Health Association (OSHA) and Washington Department of Labor and Industries, Division of Industrial Safety and Health (WISHA) worker protection requirements. Although Ecology does not approve the HSP, Ecology will provide technical comments and suggestions. It is the contractor's responsibility to ensure compliance with all applicable health and safety requirements.

**Deliverables:**

**Report-Health and Safety Plan, Draft**

**Report-Health and Safety Plan, Final**