

DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE COMPLIANCE BY)
MR. ARTHUR LEYENDEKKER,)
with Chapter 70.105D RCW and the) ORDER
Rules and Regulations of the) No. DE 90-C196
Department of Ecology)

To: Mr. Arthur Leyendekker
1741 Holiday Road
Mabton, Washington 98935

I.
JURISDICTION

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

II.
FINDINGS OF FACT

1. Arthur Leyendekker owns the property ("the site") immediately northwest of the intersection of Midvale Road and Emerald Road, south of Sunnyside, Washington. The site is located in the SE 1/4 of the SE 1/4 of Section 35, Township 10 N., Range 22 E.W.M.
2. Testing of an underground storage tank in use at the site revealed that the tank was not able to hold pressure, demonstrating that the tank had one or more holes in it. The tank was subsequently removed from service. The tank was located in an area known to have shallow groundwater.
3. Surface water contamination observed by Department of Ecology personnel in a drainage canal located east of the site resulted in a Notice of Violation being issued May 8, 1990 to Arthur Leyendekker regarding the site. Department of Ecology personnel observed continuing seepage of petroleum into surface water on June 14, 1990; August 14, 1990; and other dates. This seepage could have come from no plausible source other than the site.

III.
ECOLOGY DETERMINATIONS

1. Arthur Leyendekker is an "owner" as defined in RCW 70.105D.020(6).
2. The site is a "facility" as defined in RCW 70.105D.020(3).
3. Petroleum is a "hazardous substance" as defined in RCW 70.105D.020(5).

4. The failure of the tank to hold pressure is evidence of a "release" as defined in RCW 70.105D.020(10).
5. The observed seepage constitutes a "release" as defined in RCW 70.105D.020(10).
6. Ecology finds Arthur Leyendekker to be a potentially liable person under RCW 70.105D.040. Notice of this finding, which includes opportunity for comment, is being sent to Arthur Leyendekker concurrently with this order under separate cover.
7. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050, Ecology may require potentially liable persons to conduct remedial actions with respect to the release or threatened release of hazardous substances whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology has determined that remedial action at the site is in the public interest, and that immediate stabilization of the site and investigation leading to full site remediation will lead to a more expeditious cleanup.

IV.
ORDER

Based on the foregoing facts and determinations, it is hereby ordered that Arthur Leyendekker take the following remedial actions:

1. Install by September 15, 1990 an emergency remedial system along the southern and eastern boundaries of the site designed to intercept migration of groundwater off of the property. The system shall consist of one of the following:
 - a. A trench excavated at least three feet below groundwater and refilled with washed 3/8 inch to 3/4 inch gravel. At least three monitoring/extraction wells no less than six inches in diameter shall be installed in the trench. One well shall be as near as possible to the southeast corner of the property. One well shall be located along the eastern boundary and one along the southern boundary. Groundwater shall be extracted in sufficient quantity to prevent migration across the property boundary and shall be treated and disposed of in a manner consistent with all applicable rules and regulations; or
 - b. An alternate emergency remedial system to be proposed by Arthur Leyendekker, or a consultant retained by him, no later than September 1, 1990, reviewed and approved by the Department of Ecology, and installed by the September

15, 1990 date cited above.

2. Excavation and off-site treatment or treatment in place (providing 10-foot separation from groundwater can be maintained) of all petroleum contaminated soil associated with this site before October 1, 1990. Soil cleanup levels shall be established by Ecology using the procedures of WAC 173-340-700 in final form if available on September 15, 1990 or in draft form if the final has not been approved by September 15, 1990.
3. Submit by November 1, 1990 full findings of a site hazard assessment that will include the groundwater flow direction and hydrogeology of the site, recommendations for cleanup and monitoring procedures, appropriate estimates of contaminant distribution and amounts, and associated human health and environmental risk.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions:
Unless otherwise specified, the definitions set forth in 70.105D RCW shall control meanings of these terms.
2. Public Notice: Chapter 70.105D RCW and the rules adopted thereunder require that 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 the Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect. Public notice of the remedial investigation and cleanup plan reports is also required.
3. Oversight Costs:
Arthur Leyendekker shall pay to Ecology those costs reasonably attributable to the site incurred by the Department for investigative actions, remedial actions, and orders, including costs incurred by Ecology in the oversight or administration of this Order. Arthur Leyendekker shall pay the required amount within 90 days of receiving a summary statement of Ecology's expenses, payable to the State Toxics Control Account.
4. Designated Project Coordinators:
Within ten (10) days of the effective date of this order, Arthur Leyendekker shall designate one project coordinator. The Ecology project coordinator is:

Robert D. Swackhamer
Washington Department of Ecology
Toxics Cleanup Program
801 Summitview Avenue, Suite 1
Yakima, Washington 98902
Telephone: (509) 454-7296

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Arthur Leyendekker 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 coordinators. Should Arthur Leyendekker change his project coordinator, written notification shall be given to Ecology, at least ten (10) calendar days prior to the change.

5. Performance:

All remedial 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 waste site investigation and cleanup. Arthur Leyendekker 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. The Ecology Project Coordinator shall determine when the services of a professional engineer or hydrogeologist is necessary.

6. Access:

Ecology or any Ecology authorized representative shall have 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 work being performed pursuant to this Order; conducting such tests or collecting such 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 Arthur Leyendekker. This Order constitutes reasonable notice of access at all reasonable times for purpose of overseeing work performed under this Order.

7. Investigative Sampling:

With respect to the implementation of this Order, Arthur Leyendekker shall make the results of all sampling, laboratory reports, or test results generated by him, or on his behalf,

available to Ecology in interim and final reports required under this Order.

At the request of Ecology, Arthur Leyendekker shall allow split or duplicate samples to be taken by Ecology or its authorized representatives of any samples collected pursuant to the implementation of this Order. Except in the event of an emergency, Arthur Leyendekker shall notify Ecology five (5) days in advance of any sample collection activity. Ecology shall allow split or duplicate samples to be taken by Arthur Leyendekker or his authorized representatives, of any samples collected by Ecology pursuant to the implementation of this Order unless Arthur Leyendekker fails to make available a representative for this purpose or unless splitting samples unreasonably interferes with Ecology's sampling.

8. Public Participation:
Ecology shall maintain the responsibility for public participation regarding the site.
9. Retention of Records:
Arthur Leyendekker 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 his possession relevant to this Order. Should any portion of the work performed hereunder be undertaken by contractors or agents of Arthur Leyendekker, Arthur Leyendekker shall require such contractors or agents to preserve all records, reports, documents and underlying data relevant to this Order until the work required by this Order has been completed.
10. Modifications:
Arthur Leyendekker shall submit any request for significant modification to the work scope or schedule encompassed by this Order to Ecology's Project Coordinator for approval. Ecology shall indicate its approval or disapproval of such request in writing within a reasonable time after the request for modification is received. Any such disapproval shall state reason(s) for the disapproval. Ecology's decision regarding such request for modification shall be binding and final.

Ecology shall notify Arthur Leyendekker in writing of significant modifications to the work scope or schedule of this Order that it may require and the basis for such modification. Arthur Leyendekker shall thereafter comply with such modifications.

No guidance, suggestions, or comments by Ecology will construed as relieving Arthur Leyendekker of his obligation to obtain formal approval as may be required by this Order. No verbal communication by Ecology shall relieve Arthur Leyendekker of the obligations specified herein.

11. Dispute Resolution:

Arthur Leyendekker may request Ecology to resolve factual or technical disputes which arise during the implementation of this Order. Such request shall be in writing and directed to the signatory of this Order. Ecology shall issue a determination which shall be binding and final. Arthur Leyendekker is not relieved of any requirement of this Order during pending dispute resolution and remains responsible for timely compliance with the terms of this Order unless otherwise provided by Ecology in writing.

12. Reservation of Rights:

Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology reserves the right to require additional remedial action(s) at this site should it deem such action(s) necessary. Ecology reserves the right to take appropriate action under 70.105D RCW or any other applicable law or regulation.

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 the environment, Ecology may order Arthur Leyendekker to stop further implementation of this Order for such time as needed to abate the danger.

13. Transference of Property:

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of this site shall be consummated by Arthur Leyendekker without provision for continued implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Arthur Leyendekker may have in the site or any portions thereof, Arthur Leyendekker 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, Arthur Leyendekker shall notify Ecology of the contemplated transfer.

14. Compliance with Other Applicable Laws:

All actions carried out by Arthur Leyendekker pursuant to this

Order shall be done in accordance with all applicable federal, state and local requirements, including requirements to obtain necessary federal, state or local permits.

VI.
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. If Arthur Leyendekker refuses, without sufficient cause, to comply with any term of this Order, then (a) Arthur Leyendekker may be liable for up to three times the amount of any costs incurred by the state of Washington as a result of his refusal to comply; and (b) additionally, Arthur Leyendekker may be liable for civil penalties of up to \$25,000 per day for each day he 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 Section 6 of 70.105D RCW.

Effective date of Order:

August 24, 1990

Dated this 23 day of

August

Clar Pratt

Clar Pratt, Section Supervisor
Toxics Cleanup Program
Central Regional Office
State of Washington
Department of Ecology