

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)

Mr. Ken Peterson)

RE: Ken's Auto Wash II)
1013 E 10th Avenue)
Ellensburg, WA 98926)

AGREED ORDER
No. DE 03 TCPCR-5763

I.
Jurisdiction

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

II.
Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by Mr. Ken Peterson.

1. Ken's Auto Wash II is owned and operated by Mr. Ken Peterson and is located at 1013 E. 10th Avenue, Ellensburg, Washington. It is currently operating as a service station and carwash.
2. In June 1995, during a tank tightness test, a leak was discovered in the super unleaded fuel line coupler at the facility. Gasoline odors present in two observation wells adjacent to the underground storage tanks (USTs) and groundwater monitoring wells (MW-1 through MW-3) installed in April 1996 confirmed a gasoline leak.
3. In February 1997, Ecology placed Ken's Auto Wash II on the Hazardous Sites List based on Kittitas County Solid Waste Programs' site hazard assessment. The County ranked the site a 2.
4. In 1999, Mr. Ken Peterson entered into Ecology's Voluntary Cleanup Program. Ecology reviewed site assessment data and in a letter to Mr. Peterson dated May 24, 2000 concurred with the proposed scope for remediation and monitoring. During remediation activities, approximately 520 tons of TPH-affected soil and 5,200 gallons of contaminated groundwater were removed and disposed of offsite. Despite cleanup efforts, petroleum contaminated soil and groundwater remains above the Model Toxics Control Act Method A cleanup levels (see #5 and #6).

5. Laboratory analyses of soil samples collected at the completion of October/November 2000 excavation activities revealed that residual petroleum contaminated soil exceeds MTCA Method A cleanup levels. The MTCA Method A cleanup levels for soil are 30 ppm TPH-G, when benzene is present; 0.03 ppm benzene; 6 ppm ethylbenzene; and 9 ppm total xylenes. The following concentrations were found and not removed from the site:
 - a. Northeast Wall – 11,000 ppm TPH-G, 10.6 ppm benzene, 73.9 ppm ethylbenzene, 588 ppm total xylenes
 - b. Southeast Wall – 7,130 ppm TPH-G, 72.3 ppm ethylbenzene, 423 ppm total xylenes
 - c. Northwest Wall – 1,250 ppm TPH-G, 29.6 ppm total xylenes
 - d. Southwest Wall – 126 ppm TPH-G
6. Groundwater monitoring reports indicate that petroleum hydrocarbons are present in groundwater on and off the property. The December 2002 Groundwater Monitoring Report, provided by Hart Crowser, Inc., indicates three inches of free product were present in MW-14, a well constructed to replace MW-1. In addition, analytical results of groundwater sampled in November 2002 revealed the following contaminants are present in MW-6 at levels which exceed the Model Toxics Control Act Method A cleanup levels established in WAC 173-340-740.
 - a. Gasoline-range petroleum hydrocarbons – 1,270 ppb (Method A cleanup level is 800 ppb.)
 - b. Benzene – 9.01 ppb (Method A cleanup level is 5 ppb.)

Although groundwater samples have not recently been analyzed for lead, it has previously been detected in MW-1.

The data provided above and additional site data can be found in the following reports on file at Ecology's Central Regional Office in Yakima, Washington:

1. *Groundwater Monitoring Report and Evaluation of Remedial Alternatives*, Hart Crowser, Inc., December 16, 2002
2. *2001 Groundwater Monitoring and Remediation Status Report*, Hart Crowser, Inc., July 16, 2002.
3. *Soil Excavation Report*, Hart Crowser, Inc., January 4, 2001
4. *Third Quarter 2000 Groundwater Monitoring and Soil Investigation Report*, Hart Crowser, Inc., October 18, 2000.

5. *Final Focused Feasibility Study and Remedial Design*, Hart Crowser, Inc., August 16, 2000.
6. *Second Quarter 2000 Groundwater Monitoring Report*, Hart Crowser, Inc., July 25, 2000.
7. *Voluntary Cleanup Program Review of Limited Phase II Environmental Assessment*, Letter to Ken Peterson from Ecology, May 24, 2000.
8. *First Quarter 2000 Groundwater Monitoring Report*, Hart Crowser, Inc., April 7, 2000.
9. *Fourth Quarter 1999 Groundwater Monitoring Report*, Hart Crowser, Inc., February 10, 2000.
10. *Request for Assistance*. Letter to Ecology from Hart Crowser, Inc., November 29, 1999.
11. *Limited Phase II Environmental Assessment*, Hart Crowser, Inc., November 29, 1999.
12. *Preliminary Fourth Quarter Groundwater Monitoring Report*, Sage Earth Sciences, Inc., November 10, 1998.
13. *Limited Site Characterization Report*, Sage Earth Sciences, Inc., March 1998.

III.
Ecology Determinations

1. Mr. Ken Peterson is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Ken's Auto Wash II and is located at 1013 E. 10th Avenue, Ellensburg, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By letter dated February 28, 2003, Ecology notified Mr. Peterson of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. 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 Determinations, it is hereby ordered that Mr. Peterson take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Mr. Peterson shall prepare a Draft Remedial Investigation/Feasibility Study Report (RI/FS) for Ecology review and approval and for public comment. The Draft RI/FS shall comply with WAC 173-340-350 through 370 and shall describe the horizontal and vertical extent and magnitude of all hazardous substances released at the site and evaluate cleanup action alternatives to enable a cleanup action to be selected for the site. The RI/FS shall describe the facility background; environmental investigations and remedial actions; site physical characteristics, including site geology and hydrogeology; nature and extent of contamination in soil and groundwater; maps illustrating the site conditions; cleanup objectives and criteria; and remedial alternative development and evaluation. The RI/FS shall integrate previous investigations and sampling and analysis results including tabulated groundwater elevation data, soil chemistry, groundwater chemistry, and product thickness. Logs for soil borings, groundwater wells, and other subsurface explorations and laboratory analytical documentation may be referenced to previous reports.
2. Upon Ecology approval of the Draft RI/FS and incorporation of public comment, Mr. Peterson shall deliver three copies of the Final RI/FS to Ecology.
3. In accordance with WAC 173-340-450, upon the discovery of free product at the site, it shall be recovered to the maximum extent practicable.
4. In accordance with Environmental Information Management guidelines, all future groundwater and/or soil sample data submittals shall include the following information: name of site, physical address, latitude/longitude (or other location identifier for the site, latitude/longitude (or other location identifier) for each well and soil sample location, well ID number, well owner's name, short description of well construction, depth of well, groundwater elevation in each well, sample matrix, source of sample, sample identification

number, date sampled, sample depth, concentration of each analyte for each sample, unit of measurement, and the EPA method used.

This submittal shall be provided to Ecology as required under the schedule established below.

5. In accordance with WAC 173-340-600, Mr. Peterson shall submit to Ecology for review and approval a Public Participation Plan.
6. In accordance with WAC 173-340-810, Mr. Peterson shall submit to Ecology for review a Worker Safety and Health Plan with the Draft RI/FS.
7. In accordance with WAC 173-340-820, Mr. Peterson shall submit to Ecology for review and approval a Sampling and Analysis Plan with the Draft RI/FS.

The work listed above and required under the Order shall be completed in such a manner to meet the following schedule.

Deliverable or Action Required	Completion or Date Due to Ecology
Draft Remedial Investigation/Feasibility Study (RI/FS)	Due 45 days after the issue date of the Agreed Order
Public Participation Plan	Due 45 days after the issue date of the Agreed Order
Worker Safety and Health Plan	Due 45 days after the issue date of the Agreed Order
Sampling and Analysis Plan	Due 45 days after the issue date of the Agreed Order
Final RI/FS	Due 30 days after receipt of public and Ecology comments on Draft RI/FS

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in Ch. 70.105D RCW and Ch. 173-340 WAC shall control the meanings of the terms used in this Order.
2. Public Notices. 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. Mr. Peterson shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Mr. Peterson shall pay the required amount within 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 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Krystal Rodriguez
15 West Yakima Avenue Suite 200
Yakima, WA 98902
(509) 454-7842
Fax: (509) 575-2809

The project coordinator for Mr. Peterson is:

Richard Moore
Hart Crowser, Inc.
1910 Fairview Avenue East
Seattle, WA 98102-3699
(206) 826-4354

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Mr. Peterson, 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 Mr. Peterson change project coordinator(s), written notification shall be provided to Ecology or Mr. Peterson 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 similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and

cleanup. Mr. Peterson 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. Mr. Peterson 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 where necessary to abate an emergency situation, Mr. Peterson shall not perform any remedial actions at Ken's Auto Wash II outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Mr. Peterson. By signing this Agreed Order, Mr. Peterson agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Mr. Peterson during an inspection unless doing so interferes with Ecology's sampling. Mr. Peterson shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.
7. Public Participation. Mr. Peterson shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site.

Mr. Peterson shall help coordinate and implement public participation for the site.

8. Retention of Records. Mr. Peterson 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 Mr. Peterson, then Mr. Peterson agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Mr. Peterson may request Ecology to resolve 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), to this Order. Ecology resolution of the dispute shall be binding and final. Mr. Peterson 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/No Settlement. This Agreed Order is not a settlement under Ch. 70.105D RCW. 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 will not, however, bring an action against Mr. Peterson to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Mr. Peterson to require those remedial actions required by this Agreed Order, provided Mr. Peterson complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Ken's Auto Wash II.

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 Mr. Peterson 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 Mr. Peterson 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 Mr. Peterson may have in the site or any portions thereof, Mr. Peterson 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, Mr. Peterson shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by Mr. Peterson pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

- B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV, the Work to be Performed, and are binding and enforceable requirements of the Order,

Mr. Peterson has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Mr. Peterson determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Mr. Peterson shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Mr. Peterson shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Mr. Peterson and on how Mr. Peterson must meet those requirements. Ecology shall inform Mr. Peterson in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Mr. Peterson shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

- C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Mr. Peterson shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Mr. Peterson's receipt of written notification from Ecology that Mr. Peterson has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.
Enforcement

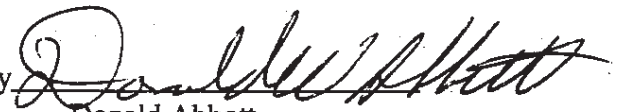
- I. Pursuant to RCW 70.105D 050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event Mr. Peterson refuses, without sufficient cause, to comply with any term of this Order, Mr. Peterson will be liable for:
 - i. up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - ii. 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 Section 6 of Ch. 70.105D RCW.

Effective date of this Order: October 10, 2003

MR. KEN PETERSON

By 
Ken Peterson

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
Donald Abbott
Section Manager
Toxics Cleanup Program
Central Regional Office