

COPY
SKAGIT COUNTY, WASH.
FILED

JUL 10 1992

Thyllis Coole McKeehen, Co. Clerk
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Plaintiff,)
)
v.)
)
ERNIE OLMSTED)
and his marital community,)
)
Defendant.)

NO. 92 2 00618 1
CONSENT DECREE

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	2
II. JURISDICTION.....	3
III. PARTIES BOUND.....	4
IV. DEFINITIONS.....	4
V. STATEMENT OF FACTS.....	5
VI. WORK TO BE PERFORMED.....	8
VII. DESIGNATED PROJECT COORDINATOR.....	10
VIII. REIMBURSEMENT OF ECOLOGY'S COSTS.....	11
IX. ACCESS.....	13
X. TRANSFERENCE OF PROPERTY.....	13
XI. DISPUTE RESOLUTION.....	14
XII. AMENDMENT OF CONSENT DECREE.....	15
XIII. INDEMNIFICATION.....	15
XIV. PUBLIC NOTICE AND PARTICIPATION.....	15
XV. SATISFACTION OF THIS DECREE.....	16
XVI. EFFECTIVE DATE.....	16
XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT.....	16

CONSENT DECREE

4/16/92

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1 I. INTRODUCTION

2 A. In entering into this Consent Decree (Decree), the
3 mutual objectives of the Washington State Department of
4 Ecology (Ecology) and Mr. Ernie Olmsted and his marital
5 community (Defendant), is to provide for the remediating of a
6 release or threatened release at the site and to provide for
7 reimbursement for costs incurred by Ecology in remediating a
8 release or threatened release of hazardous substances at the
9 Truck City Truck Stop site.

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

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

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

1 II. JURISDICTION

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

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

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

12 D. Ecology has determined that the Defendant is a
13 potentially liable person for the site pursuant to RCW
14 70.105D.040. The Defendant has been given notice of Ecology's
15 determination, and has had opportunity to comment thereon.

16 E. The Defendant has applied to Ecology for financial
17 assistance under WAC 173-340-560. Based on the Defendant's
18 application, Ecology has determined the Defendant is eligible
19 for financial assistance in the form of a loan. Ecology has
20 also determined that making available financial assistance
21 under the circumstances described in Section VIII of this
22 Decree will achieve a more expeditious or enhanced cleanup
23 than would otherwise occur and will prevent or mitigate unfair
24 economic hardship. Ecology's determination of funding
25 eligibility does not constitute a funding commitment. Actual

1 funding will depend on the availability of funds and
2 legislative appropriations. WAC 173-340-560(4).

3 F. Entering this Decree will result in a more
4 expeditious cleanup of the site and is appropriate given
5 Ecology's financial assistance for remediation of the site.

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

9 **III. PARTIES BOUND**

10 This Decree shall apply to and be binding upon Mr. Ernie
11 Olmsted and his marital community and Ecology and their
12 successors and assigns. The undersigned representative of
13 each party hereby certifies that he/she is fully authorized to
14 enter into this Decree and to execute and legally bind such
15 party to comply with the Decree. The parties agree to
16 undertake all actions required by the terms and conditions of
17 this Decree and the Defendant agrees not to contest state
18 jurisdiction regarding this Decree. No change in ownership
19 or corporate status shall alter the responsibility of the
20 Defendant under this Decree.

21 **IV. DEFINITIONS**

22 A. "Site" refers to the property and business located
23 at 1731 Old Highway 99, Mount Vernon, Washington, 98273.

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

26 **CONSENT DECREE**

-4-

4/16/92

OFFICE OF THE ATTORNEY GENERAL
Ecology Division
4407 Woodview Drive S.E.
QA-44
Olympia, WA 98504-8077

1 C. "Remedial action costs" refer to those direct and
2 indirect costs incurred by Ecology under this Consent Decree.
3 Such costs include work performed by Ecology or its
4 contractors for investigations, remedial actions, and order
5 preparation, negotiations, oversight, and administration.
6 Ecology costs shall also include costs of direct activities;
7 e.g., employee salary, laboratory costs, travel costs,
8 contractor fees, and employee benefit packages; and agency
9 indirect costs of direct activities.

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

12 E. "Parties" refers to the Department of Ecology and
13 Mr. Ernie Olmsted and his marital community.

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

17 V. STATEMENT OF FACTS

18 Ecology makes the following findings of fact:

19 A. Site Location and Status

20 Truck City Truck Stop is located at 1731 Old Highway 99,
21 Mount Vernon, Washington 98273. The station is operated as a
22 24-hour truck stop and cafe. There are also two storage
23 buildings, five rental buildings and two acres of open space
24 on the property. Fifteen underground storage tanks (USTs)
25 have been identified on-site. There are eleven USTs in three

1 tank nests and one lube oil tank beneath the truck filling
2 area which range in capacity from 1000 to 15,000 gallons.
3 Three other USTs of unknown use have also been identified on-
4 site. Two of these unknown tanks are uncapped and may receive
5 surface water runoff.

6 B. Facility History and Operations

7 Truck City Truck Stop has been in operation since 1952
8 and was purchased by Mr. Olmsted in 1982. A 200 to 300 gallon
9 diesel fuel spill occurred near the current diesel UST nest in
10 1987. A tank in the southwest tank nest admitted significant
11 amounts of water prior to its abandonment 20 years ago. The
12 gasoline service station building burned in 1978 with unknown
13 effects on subsurface conditions.

14 C. Previous Site Investigations

15 A "Hydrocarbon Contamination Assessment" was prepared for
16 Mr. Olmsted by Applied Geotechnology in November 1989. This
17 assessment identified soil contamination as high as 13,000 ppm
18 TPH as diesel. The MTCA method A cleanup action level for
19 soil is 200 ppm TPH for diesel. Groundwater contamination was
20 also identified on-site with levels as high as: 7 ppm TPH;
21 Benzene 6,800 ppb; Ethylbenzene 790 ppb; Toluene 11,000 ppb;
22 and Xylenes 10,000 ppb. The MTCA method A cleanup action
23 levels for groundwater are: TPH 1 ppm; Benzene 5 ppb;
24 Ethylbenzene 30 ppb; Toluene 40 ppb; and Xylenes 20 ppb.

1 The assessment indicates that the site is located on very
2 permeable sands and it is likely that the contamination is not
3 limited to the tank backfill materials. The information
4 gathered suggests that the diesel contamination may be
5 extensive. ~~as one of the USTs was abandoned because water~~
6 ~~continually appeared in the pumped fuel.~~ This implies direct
7 contact between the tank interior and the surrounding
8 groundwater.

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9 The assessment indicated areas where information is
10 lacking. Two USTs of unknown character are located between
11 the gasoline and diesel service areas. The site assessment
12 did not sample the conditions in the immediate vicinity of
13 these tanks. The tanks are currently full of water and may
14 receive surface runoff. The soil & groundwater condition in
15 the immediate vicinity of these tanks is unknown.

16 Contamination of the near surface soil is possibly from
17 truck refueling operations and a reported surface spill.

18 The aquifer beneath this site is highly permeable and
19 groundwater contamination may extend further downgradient than
20 the monitoring wells. Further investigation is warranted to
21 determine if contamination has extended beyond the property
22 boundary.

1 VI. WORK TO BE PERFORMED

2 A. Scope of Work

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

5 1. Implement any necessary interim remedial action,
6 including, but not limited to, removal of tanks, removal of
7 any free product, and soil removal. All excavated soil will
8 be stockpiled on site in beds designed to meet the
9 specifications in section 2.3.4 of Ecology's "Guidance for
10 Remediation of Releases From Underground Storage Tanks."

11 2. Evaluate the existing data from previous
12 environmental investigations and other information pertinent
13 to the site. This information may include investigative data
14 from areas located off the site.

15 3. Conduct a Remedial Investigation/Feasibility
16 Study (RI/FS) in accordance with the requirements of WAC
17 173-340-450(5) in order to assess the extent and degree of
18 soil and groundwater contamination.

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

1 5. Cleanup levels for this site will be determined by
2 Ecology in the Cleanup Action Plan.

3 6. Ecology will prepare a Cleanup Action Plan which
4 will include a description of the proposed cleanup action.
5 Cleanup may involve excavation of contaminated soils. The
6 extent of excavation shall be determined by Ecology based on
7 the RI/FS. Excavated soils may be combined with any existing
8 contaminated excavated soils to be stockpiled at the site as
9 part of the interim action. Ecology shall evaluate on-site
10 treatment of the excavated soils. If on-site treatment of the
11 soil is impracticable, Ecology shall evaluate off-site
12 treatment or disposal of the soil at an appropriate landfill.

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

16 8. Ecology shall coordinate the implementation of the
17 soil and/or groundwater cleanup action in the final Cleanup
18 Action Plan.

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

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

26 **CONSENT DECREE**

4/16/92

1 B. Resource Limitations

2 11. Ecology's ability to perform the tasks in this
3 section is subject to and contingent upon availability of
4 funds. WAC 173-340-560(4). Therefore, the tasks will be
5 performed by Ecology as resources permit. At the time of the
6 execution of this Decree, funds in an amount sufficient for
7 Ecology to perform the interim remedial action tasks
8 (identified in paragraph 1 of this section) were available.

9 12. The parties may determine in the future that it
10 would be more expeditious for defendant instead of Ecology to
11 perform some of the tasks identified in this section. In that
12 event, defendant may request that Ecology agree to amend this
13 Decree to allow defendant to perform such work. Defendant's
14 request shall be in writing and directed to Ecology's project
15 manager. If Ecology concurs that performance by the defendant
16 instead of Ecology is appropriate, the parties may request
17 that the court amend this Decree as provided in section XII
18 below.

19 VII. DESIGNATED PROJECT COORDINATOR

20 The project coordinator for Ecology is:

21 John Stormon (206) 649-7274
22 Department of Ecology
23 Northwest Regional Office
24 3190 - 160th S.E.
25 Bellevue, WA 98008-5452

26 The project coordinator shall be responsible for overseeing
the implementation of this Decree. To the maximum extent

1 possible, communications between Ecology and the Defendant,
2 and all documents, including reports, approvals, and other
3 correspondence concerning the activities performed pursuant to
4 the terms and conditions of this Decree, shall be directed
5 through the project coordinator. Should Ecology change its
6 project coordinator, written notification shall be provided by
7 Ecology at least ten (10) calendar days prior to the change.

8 **VIII. REIMBURSEMENT OF ECOLOGY'S COSTS**

9 1. Ecology has determined that the Defendant is
10 eligible for mixed funding. The Defendant agrees to reimburse
11 Ecology for the costs Ecology incurs in remediating the
12 release and/or threatened release of hazardous substances at
13 the site, including future monitoring (if any), up to a
14 maximum dollar amount of \$100,000. In the event Ecology
15 incurs remedial action costs exceeding \$100,000, payment of
16 such costs shall be satisfied by use of funds from the Toxics
17 Control Account.

18 2. Payment of Ecology's remedial action costs shall be
19 due on the first (1st) of each calendar month commencing the
20 first day of the month following the completion of the back-
21 filling of the tank excavation. Ecology shall provide the
22 Defendant summary statements invoiced quarterly, itemizing the
23 remedial action costs incurred at the site.

24 3. During the reimbursement period, the Defendant
25 agrees to make monthly payments of not less than \$500. The

1 Defendant shall be notified in writing when its obligation to
2 reimburse Ecology under this Decree has been satisfied.

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

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

23 6. The Defendant consents to the immediate filing of a
24 special lien in the amount of \$60,000 on the property located
25 at 1731 Old Highway 99, Mt. Vernon, Washington 98273 to secure

1 the Defendant's performance under this Decree. Once the
2 Defendant's obligation to reimburse Ecology under this Decree
3 has been satisfied, the Defendant may request in writing that
4 Ecology file a lien termination statement with the court.

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

17 **IX. ACCESS**

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

23 **X. TRANSFERENCE OF PROPERTY**

24 A. No voluntary conveyance or relinquishment of
25 Defendant's title, easement, leasehold, or other interest in

1 any portion of the site shall be consummated without provision
2 for continued performance of all of Defendant's obligations
3 under this Decree. If an involuntary conveyance or
4 relinquishment of such interest occurs, the Defendant shall,
5 if possible, give prior written notice of this Decree to the
6 transferee.

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

18 **XI. DISPUTE RESOLUTION**

19 The Defendant may request Ecology to resolve disputes
20 which may arise during the implementation of this Consent
21 Decree. Such request shall be in writing and directed to the
22 Ecology Project Coordinator. Ecology resolution of the
23 dispute shall be binding and final. The Defendant is not
24 relieved of any requirement of this Consent Decree during the
25 pendency of the dispute and remains responsible for timely

1 compliance with the terms of the Consent Decree unless
2 otherwise provided by Ecology in writing.

3 **XII. AMENDMENT OF CONSENT DECREE**

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

9 **XIII. INDEMNIFICATION**

10 The Defendant agrees to indemnify and save and hold the
11 State of Washington, its employees, and agents harmless from
12 any and all claims or causes of action for death or injuries
13 to persons or for loss or damage to property arising from or
14 on account of acts or omissions of the Defendant, its
15 officers, employees, agents, or contractors in entering into
16 and implementing this Decree; provided, however, that the
17 Defendant shall not indemnify the State of Washington nor save
18 nor hold its employees and agents harmless from any claims or
19 causes of action brought by third parties arising out of the
20 negligent acts or omissions of the State of Washington, or the
21 employees or agents of the state, in implementing the
22 activities pursuant to this Decree.

23 **XIV. PUBLIC NOTICE AND PARTICIPATION**

24 Ecology shall be the lead for public notice and
25 participation at the site. Ecology shall allow the Defendant
26

1 to review fact sheets, press releases, and public notices
2 prior to issuance.

3 **XV. SATISFACTION OF THIS DECREE**

4 The provisions of this Decree shall be deemed satisfied
5 upon the Defendant's reimbursement to Ecology of all
6 reasonable costs incurred by Ecology in performing remedial
7 action at the site as defined more specifically in Section VI
8 and upon Ecology's written verification.

9 **XVI. EFFECTIVE DATE**

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

12 **XVII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

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

19 Should public comment on the Cleanup Action Plan disclose
20 facts or considerations which indicate that Ecology's
21 continued performance of the tasks outlined in section VI
22 (Work to be Performed) above is inappropriate, improper, or
23 inadequate, Ecology reserves the right to unilaterally seek to
24 amend this Decree so it responds to those concerns raised by
25 public comment.

26 **CONSENT DECREE**

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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 5th day of May, 1992.

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

Ernie Olmsted
ERNIE OLMSTED
Owner and Operator
Truck City Truck Stop
Mount Vernon, Washington

Mary Sue Wilson
MARY SUE WILSON, WSBA #19257
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