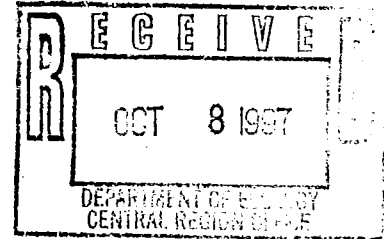


STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



In the Matter of Remedial Action by:

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AGREED ORDER

Mr. Earl Storey

No. DE 97TC-C172

Ms. Susanne Storey

Ms. Marilyn Storey

Ms. Joanne Storey Mankus

To: Earl Storey, Susanne Storey,
Marilyn Storey, and Joanne Storey Mankus
Storey Gas Station
1310 East First Street
Cle Elum, WA 98922

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. Earl Storey, Ms. Susanne Storey, Ms. Marilyn Storey, and Ms. Joanne Storey Mankus.

1. Records of the City of Cle Elum indicate Earl Storey as the owner of the business, Storey Service, located at 1310 East First Street, Cle Elum, Washington.

2. Records of the Kittitas County Assessor indicate Susanne Storey, Marilyn Storey, and Joanne Storey Mankus as owners of the property located at 1310 East First Street, Cle Elum, Washington. The Tax Account Numbers for this property are: 20-15-2552-0021-00 and 20-15-2552-0029-00.

3. A Washington State Underground Storage Tank Notification Form, Site ID No. 100603, dated May 17, 1991, identifies Earl Storey as the owner of the underground storage tanks located on Susanne's Service at 1310 East First Street, Cle Elum, Washington.

4. Water and soil samples collected by Washington State Department of Ecology (Ecology) Central Regional Office Toxics Cleanup Program from Storey Gas Station are found to contain the following "hazardous substances" as defined in the Model Toxics Control Act.

a. Gasoline-range hydrocarbons, measured as WTPH-G, have been detected in one soil boring sample (Soil Boring No. 23) at 730 milligrams per kilogram (mg/kg). As reference, the MTCA Method A cleanup level for gasoline-range hydrocarbons is 100 mg/kg.

b. Diesel-range hydrocarbons, measured as WTPH-D, have been detected in one soil boring sample (Soil Boring No. 23) at 610 mg/kg. As reference, the MTCA Method A cleanup level for diesel-range hydrocarbons is 200 mg/kg.

c. Benzene has been detected in ground water samples (Monitoring Well No. 23) at 35 micrograms per liter ($\mu\text{g/L}$), and (Monitoring Well No. 24) at 320 $\mu\text{g/L}$ and 410 $\mu\text{g/L}$. As reference, the MTCA Method A cleanup level for benzene is 5 $\mu\text{g/L}$.

d. Toluene has been detected in ground water samples at 400 and 100 $\mu\text{g/L}$ (Monitoring Well No. 24). As reference, the MTCA Method A cleanup level for toluene is 40 $\mu\text{g/L}$.

e. Ethylbenzene has been detected in ground water samples at 79 and 31 $\mu\text{g/L}$ (Monitoring Well No. 24). As reference, the MTCA Method A cleanup level for ethylbenzene is 30 $\mu\text{g/L}$.

f. Xylenes have been detected in ground water samples at 55 $\mu\text{g/L}$ (Monitoring Well No. 23), and 500 $\mu\text{g/L}$ and 75 $\mu\text{g/L}$ (Monitoring Well No. 24). As reference, the MTCA Method A cleanup level for xylenes is 20 $\mu\text{g/L}$.

g. Total petroleum hydrocarbons have been detected in ground water samples at 1260 $\mu\text{g/L}$ and 1600 $\mu\text{g/L}$ (Monitoring Well No. 24). As reference, the MTCA Method A cleanup level for total petroleum hydrocarbons is 1000 $\mu\text{g/L}$.

h. The foregoing information in items a through g is contained in the report *Phase 1 & Phase 2 Environmental Site Assessment, Former and Current Service Stations and Bulk Storage Facilities, Cle Elum, Washington, December 1996*, prepared by Washington State Department of Ecology Central Regional Office Toxics Cleanup Program. The report is on file at the Ecology Central Regional Office in Yakima, Washington.

III.

Ecology Determinations

1. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus are "owners or operators" 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 Storey Gas Station; a.k.a. Storey Service, Storey's Service Station, and Susanne's Service; is located at 1310 East First Street, Cle Elum, Washington, and includes the area impacted by a release(s) of hazardous substances from Storey Gas Station.
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 Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By letters dated March 24, 1997, Ecology notified Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus of their 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, Ecology 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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. Within twenty (20) calendar days after the effective date of this Order, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review and approval, a final Remedial Investigation and Feasibility Study Work Plan. The Work Plan shall incorporate Ecology's comments and recommendations of July 14, 1997 on the *Draft Remedial Investigation/Feasibility Study Work Plan - Storey Gas Station, Cle Elum, Washington* submitted to Ecology on July 3, 1997.

2. Within twenty (20) calendar days after the effective date of this Order, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review and approval a Public Participation Plan in accordance with WAC 173-340-600 and for review and comment a Health and Safety Plan in accordance with WAC 173-340-810. No sampling shall be conducted prior to Ecology approval of the Health and Safety Plan. The Public Participation Plan and the Health and Safety Plan may be incorporated into the final Work Plan for submittal to Ecology for review and approval.

3. Within two hundred forty (240) calendar days after Ecology's approval of the final Work Plan, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review a draft Remedial Investigation and Feasibility Study Report.

4. Within thirty (30) calendar days after receipt of Ecology's comments on the draft Remedial Investigation and Feasibility Study Report, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review and approval a final Remedial Investigation and Feasibility Study Report. This final Remedial Investigation and Feasibility Study Report shall address and incorporate Ecology's comments on the draft Remedial Investigation and Feasibility Study Report.

5. Within thirty (30) calendar days after Ecology's approval of the final Remedial Investigation and Feasibility Study Report, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review a draft Cleanup Action Plan/Engineering Design Report for cleanup actions at the Storey Gas Station.

6. Within thirty (30) calendar days after receipt of Ecology's comments on the draft Cleanup Action Plan/Engineering Design Report, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review and approval a final Cleanup Action Plan/Engineering Design Report. This final Cleanup Action Plan/Engineering Design Report shall address and incorporate Ecology's comments on the draft Cleanup Action Plan/Engineering Design Report.

7. Within ninety (90) calendar days after Ecology's approval of the Cleanup Action Plan/Engineering Design Report, and quarterly thereafter until the completion of the cleanup

activities, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review a quarterly report documenting all aspects of the cleanup action in accordance with WAC 173-340-400.

8. Within thirty (30) calendar days after the completion of the cleanup activities, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall submit to Ecology for review and approval a final report documenting all aspects of the cleanup action in accordance with WAC 173-340-400.

9. All reports shall be submitted in accordance with WAC 173-340-840.

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 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. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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). Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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:

Chung Ki Yee, P.E.
Department of Ecology
Central Regional Office
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3401

Within ten (10) calendar days after the effective date of this Order, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall notify Ecology as to the identity of the person designated by Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus as the project coordinator for Storey Gas Station.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus, 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus change project coordinator(s), written notification shall be provided to Ecology or Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall not perform any remedial actions at Storey Gas Station 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 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus.

By signing this Agreed Order, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus agree that this Order constitutes reasonable notice of access, and agree 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus during an inspection unless doing so interferes with Ecology's sampling. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site.

Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall help coordinate and implement public participation for the site.

8. Retention of Records. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus, then Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus are 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 chapter 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus to require those remedial actions required by this Agreed Order, provided Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus comply 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 Storey Gas Station.

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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus may have in the site or any portions thereof, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

a. All actions carried out by Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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.

Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus have 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus determine 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus and on how Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus must meet those requirements. Ecology shall inform Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(l), including any requirements to obtain permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus's receipt of written notification from Ecology that Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus have 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

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. In the event Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus refuse, without sufficient cause, to comply with any term of this Order, Earl Storey, Susanne Storey, Marilyn Storey, and Joanne Storey Mankus 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 chapter 70.105D RCW.

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2. Each PLP named in this Agreed Order is individually responsible for compliance with the terms and conditions of this Order. Compliance with this Agreed Order by any PLP is not conditioned on the performance of any other PLP or group of PLPs. Similarly, the right of Ecology to enforce this Order against any PLP is not conditioned on the performance of or enforcement against any PLP or group of PLPs.

Effective date of this Order: OCT 27 1997

Earl Storey
Susanne Storey
Marilyn Storey
Joanne Storey Mankus

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By

Earl Storey
Earl Storey

By

Donald W. Abbott

By

Susanne Storey
Susanne Storey

By

Marilyn Storey
Marilyn Storey

By

Joanne Storey Mankus
Joanne Storey Mankus