

Town Pump

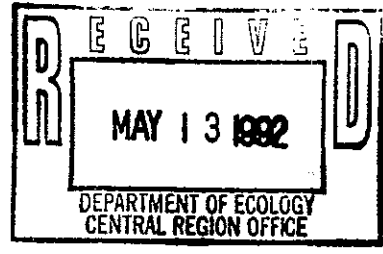
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action by:) AGREED ORDER
) No. DE 92TC-C323
)

Mr. Lyle Harp
2675 D Highway
Hood River, Oregon 97031

Mr. Kurt Osborne
Post Office Box 1174
Hood River, Oregon 97031

Mr. Randall Johnson
1396 Methodist Road
Hood River, Oregon 97031



To: Town Pump
521 East Jewett Boulevard
White Salmon, Washington 98672

I.

Jurisdiction

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

II.

Statement of Facts

Ecology makes the following Findings of Fact, without admission of such facts by Lyle Harp, Kurt Osborne, and Randall Johnson.

2.1 The Department of Ecology (Ecology), Central Regional Office, received a complaint on April 4, 1989 that gasoline was escaping from the Town Pump site in White Salmon. Fire Chief Pete Bently, White Salmon Fire

Department, found the pipes at the site to be leaking gasoline. The gasoline was reported to be traveling through the ground water beneath the site and flowing into the backyard of adjacent trailer sites, owned by the same partners that own Town Pump.

2.2 In a followup site visit on April 28, 1989 Ecology personnel found evidence to confirm that a release of petroleum products had occurred.

2.3 On May 24, 1989 Ecology spoke with Mr. Randall Johnson, co-owner of the site, to recommend remedial procedures to him. Mr. Johnson never responded.

2.4 On March 19, 1991 Ecology performed a Site Hazard Assessment. Results of the Site Hazard Assessment indicated that levels of hazardous substances exceeded MTCA cleanup levels and the site was found to rank a 1 (one).

2.5 On August 21, 1991 Ecology sent an initial Potentially Liable Party (PLP) status letter to Mr. Johnson. This letter requested Mr. Johnson to provide information regarding other PLPs that might exist for this site. Mr. Johnson did not reply with any further information about PLPs.

2.6 On December 13, 1991 Ecology mailed Mr. Osborne and Mr. Harp, co-owners of the site, proposed PLP status letters.

2.7 On January 28, 1992 PLP final determination letters were sent to Messrs. Lyle Harp, Kurt Osborne, and Randall Johnson, the three partners, herein after known as the Respondents, with the statement that they were all PLPs.

2.8 On March 23, 1992 Ecology received a letter from Mr. Osborne stating that he had signed a contract with North West Construction (NW Construction) to start an independent cleanup.

2.9 On March 23, 1992 Ecology called NW Construction who stated their contract was to remove one UST. NW Construction was not aware the site was contaminated and were not contracted to perform a site cleanup or an RI/FS.

2.10 On April 9 and 10, 1992 NW Construction removed one UST at the site. Ecology monitored the removal of the tank. During the removal evidence of extensive petroleum contamination at the site was identified, also evidence of possible additional USTs was found.

III.

Ecology Determinations

3.1 The Respondents are "owners" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2 The facility is known as Town Pump and is located at 521 East Jewett Boulevard, White Salmon, Washington.

3.3 The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(5).

3.4 Based on the presence of 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 in RCW 70.105D.020(10).

3.5 By letter dated January 28, 1992 Ecology notified Messrs. Randall Johnson, Lyle Harp, and Kurt Osborne of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment.

3.6 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.

3.7 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 the Respondents take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

4.1 No later than thirty (30) days after issuance of this Agreed Order, the Respondents shall submit to Ecology for review and approval, a draft plan for completion of a Facility Remedial Investigation/Feasibility Study (RI/FS). This draft plan shall include a detailed plan for work which, at a minimum, shall include hydrogeologic characterization, hydrocarbon fuel plume characterization, sampling and analysis, expected time required to complete the RI/FS, and analysis of alternative cleanup methods. The RI/FS shall be completed in compliance with WAC 173-340-350.

4.2 Ten (10) days after receipt of Ecology's comments on the draft plan, the Respondents shall submit a final plan for approval by Ecology.

4.3 No later than twenty (20) days after receipt of Ecology's written approval of the draft plan, the Respondents shall begin the RI/FS work described in the plan. The RI/FS work shall be completed within the time frame described in the approved plan.

4.4 In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to the Appendix : GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology as required under the schedule established in provision 2, above.

V.

Terms and Conditions of Order

5.1 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.

5.2 Public Notice 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.

5.3 Remedial Action Costs The Respondents 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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. The Respondents 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 may result in interest charges.

5.4 Designated Project Coordinators
The project coordinator for Ecology is:
John Wietfeld
Washington Department of Ecology
Central Regional Office
106 South 6th Avenue
Yakima, WA 98902-3387

Town Pump-White Salmon
Agreed Order
No. DE 92TC-C323
Page 6

The project coordinator for the Respondents is:

Russell K. Taylor
PLSA Engineering and Surveying
1120 West Lincoln Avenue
Yakima, WA 98902

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Respondents, 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 the Respondents change project coordinator(s), written notification shall be provided to Ecology or the Respondents at least ten (10) calendar days prior to the change.

5.5 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.

The Respondents 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 Respondents 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 when necessary to abate an emergency situation, the Respondents shall not perform any remedial actions at Town Pump 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.

5.6 Access Ecology or any Ecology authorized representative shall have the 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 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 the Respondents. By signing this Agreed Order, the Respondents 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 the Respondents during an inspection unless doing so would interfere with Ecology's sampling. The Respondents shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

5.7 Public Participation The Respondents shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. The Respondents shall help coordinate and implement public participation for the Site.

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

5.9 Dispute Resolution The Respondents 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, of this Order. Ecology resolution of the dispute shall be binding and final.

The Respondents 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.

5.10 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 the Respondents 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 the Respondents to require those remedial actions required by this Agreed Order, provided the Respondents 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 the Town Pump site.

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 the Respondents to stop further implementation of this Order for such period of time as needed to abate the danger.

5.11 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 the Respondents 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 the Respondents have in the Site or any portions thereof, the Respondents 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, the Respondents shall notify Ecology of the contemplated transfer.

5.12 Compliance With Other Applicable Laws All actions carried out by the Respondents pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the Respondents receipt of written notification from Ecology that the Respondents 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

- 7.1 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 the Respondents refuse, without sufficient cause, to comply with any term of this Order, the respondents will be liable for:

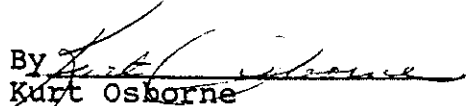
- (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.


D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

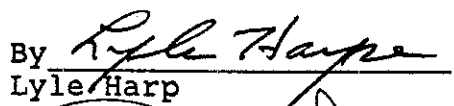
Effective date of this Order: MAY 13 1992.

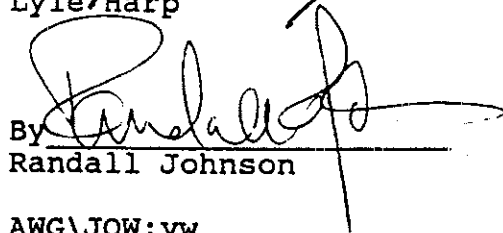
TOWN PUMP

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
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Section Manager
Toxics Cleanup Program
Central Regional Office

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