

FS 442

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at:)

RICHARDSON'S AIRWAY, INC. FACILITY)	AGREED ORDER
YAKIMA MUNICIPAL AIRPORT)	No. DE 91TC-C455
Yakima, Washington)	

TO: Richardson's Airway, Inc.
c/o Mr. Ralph Richardson
P.O. Box 9014
Yakima, Washington 98903

Yakima Air Terminal
c/o Mr. Bruce Loy
2300 West Washington Avenue
Yakima, Washington 98903

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 Richardson's Airway, Inc. and Yakima Air Terminal.

2.1 Yakima Air Terminal owns the property ("the Facility") on which Richardson's Airway, Inc. operates. The Facility is about 1800 feet west-northwest from the intersection of Ahtanum Road and 16th Avenue in Yakima, Washington, and is within the E1/2 NW1/4 of Section 2, Township 12 North, Range 18 E.W.M.

2.2 Mr. Ralph Richardson has operated Richardson's Airway, Inc., an aerial pesticide applicator service, on the Facility property from about 1954 to present, or about 37 years. Typically the applicator airplane spray tank was filled with pesticide at the Facility and upon completion of aerial spraying, washed down in a general 'washdown area' southeast of the Richardson's Airway, Inc. office/hanger. In 1984 this general 'washdown area' was estimated to be

about 5 feet by 20 feet in size. Additional soil testing by WDOE in 1988 revealed the area of contamination to be larger. The exact size and shape will not be known until additional soil testing occurs.

2.3 Separately, but in the same general 'washdown area' (No. 2.2 above) at Richardson's Airway, Inc. (on Yakima Air Terminal property), an acutely dangerous chemical herbicide product, 2,4-Dichlorophenol (WAC 173--303-9903, UO81, Extremely Hazardous Waste) spilled from a drum and contaminated a large area of soil and vegetation, about 40 feet long and 5 to 10 feet wide.

2.4 Somewhat removed from this area (the 'washdown area'), and northwest of the Richardson's Airway, Inc. office/hanger (on Yakima Air Terminal property) is a second area. This area was operated as a 'burn pit' for many years and contains accumulated ash from previously burned pesticide containers. The 'burn pit' soil has been tested once for only ethyl and methyl parathion (April/84). The one laboratory analysis indicates that ethyl parathion is present below Method B soil cleanup level, but above Method B ground water cleanup level. The shallow ground water in this area has not been sampled.

2.5 Surface soil samples were taken in the 'washdown area' (No. 2.2 above) on 6/16/89 (Technico & Environmental Services Co.). Laboratory results confirm that the following hazardous substances are present at elevated levels which appear to exceed single substance cleanup levels [WAC 173-340-740(3), method B soil]:

- Chlordane
- DDT
- DDE
- Dieldrin
- Endosulfan
- Endrin
- 2,4-D

2.6 Surface soil samples were taken in the 'washdown area' (No. 2.3 above) and at the 2,4-D drum spill on 6/15/88 by WDOE personnel. Laboratory results confirm that the following hazardous substances are present at elevated levels which appear to exceed single substance cleanup levels [WAC 173-340-740(3), method B soil]:

- Aldrin
- DDT
- DDE
- Disulfoton
- Endosulfan
- MCPA
- 2,4-D

2.7 Surface soil samples were taken in the 'washdown area' (No. 2.2 above) on 3/02/84 by WDOE personnel. Laboratory results confirm that the following two hazardous substances are present at elevated levels which appeared to exceed single substance cleanup levels [WAC 173-340-740(3), method B soil]:

- Ethyl Parathion
- Methyl Parathion

III.

Ecology Determinations

3.1 The Yakima Air Terminal is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3). This "facility" is located west of West Washington Avenue and north of 16th Avenue in Yakima, Washington.

3.2 The Richardson's Airway, Inc. is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3). This "facility" is located west of West Washington Avenue and north of 16th Avenue in Yakima, Washington.

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

3.4 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(10).

3.5 By letter dated July 25, 1991, Ecology notified Yakima Air Terminal and Richardson's Airway, Inc. of their

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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, 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.

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 **Yakima Air Terminal**, and **Richardson's Airway, Inc.** (hereinafter referred to as the **Respondents**) perform the following remedial actions set forth below:

- 4.1 Conduct a Remedial Investigation/Feasibility Study (RI/FS), consistent with WAC 173-340-350, to include:
 - Adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the soil at the Richardson's Airway, Inc. 'washdown area' and 'burn pit'.
 - Investigation of Facility geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water. To include physical properties and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected ground waters; location of private and public wells.
 - Recommend method(s) for cleanup of soil and ground water contamination for those

hazardous substances found at the Facility. The recommendation shall also include estimated costs and effectiveness of cleanup options.

- Investigate and determine the potential for off-site environmental and human health impacts of identified contamination.

4.2 Remedial Investigation/Feasibility Study work plans and report, as well as Sampling and Analysis plans, shall be submitted to Ecology for approval prior to commencing work. At a minimum, soil samples shall be analyzed for herbicides, organochlorides, organophosphates, organic matter content, soil pH, and total metals. Water samples shall be analyzed for herbicides, organochlorides, organophosphates, and total metals. All samples shall be analyzed through an Ecology Accredited Laboratory.

4.3 Submit a Health and Safety Plan.

4.4 Schedule for completion of the work shall begin on the day of the effective date of this Order.

Complete and submit to Ecology:

- **Draft RI/FS work plan:** within 90 days of effective date of this Order.
- **Final RI/FS work plan:** within 45 days from WDOE approval of draft RI/FS work plan.
- **Perform RI field work:** within 60 days from WDOE approval of final RI/FS work plan.
- **Draft RI/FS report:** within 60 days from field work completion.
- **RI/FS final report:** within 45 days from WDOE approval of draft RI/FS report.

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 Notices. WAC 173-340-600(10)(c) requires 30 days advance notice of this Order. 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. Respondents shall pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and order preparation, negotiations, 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 agree to 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. 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:

Dick Bassett
Department of Ecology
106 South 6th Avenue
Yakima, Washington 98902-3387

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The project coordinator for the **Respondents** is:

Bruce Loy, Airport Manager
Yakima Municipal Airport
2300 West Washington Avenue
Yakima, Washington 98903

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 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 Facility.

5.6 Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Facility 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** agree that this Order constitutes reasonable notice of access, and agrees to allow access to the Facility 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 interferes with Ecology's

sampling. The **Respondents** shall allow split or replicate samples to be taken by Ecology and shall provide 7 days notice before any sampling activity.

5.7 Public Participation. The **Respondents** shall prepare a public participation plan for the Facility. Ecology shall maintain the responsibility for public participation at the Facility. The **Respondents** shall help coordinate and implement public participation for the Facility.

5.8 Retention of Records. The **Respondents** shall preserve in a readily retrievable fashion, during the pendency of this Order and for 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** agree to include in their contract with such contractors or agents 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 to 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 take additional enforcement actions against the **Respondents** to require those remedial actions required by this Agreed Order, provided the **Respondents** comply with this Agreed Order. Ecology reserves the right, however, to require additional remedial actions at the Facility should it deem such actions necessary.

In the event Ecology determines that conditions at the Facility 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

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

By entering into this Agreed Order, the **Respondents** agree to perform the tasks required by this Agreed Order and not to contest Ecology's jurisdiction over the site. Notwithstanding any other provision of this Agreed Order, the **Respondents** enter into this Agreed Order making no admission of liabilities, violations of law, or factual or legal determinations including PLP determinations made by the Department. The **Respondents** expressly reserve all rights to assert any claims or defenses available under any provision of law. The Agreed Order shall not be construed to waive or otherwise affect the **Respondents'** right to bring an action for contribution, indemnity or to recover costs under the Model Toxics Control Act or any other provision of law against any other party.

5.11 Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility 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** may have in the Facility 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 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

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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 Facility.
- 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 the **Respondents** to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day the **Respondents** refuse 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: January 30, 1992

YAKIMA AIR TERMINAL

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By Bruce W. Loy
Mr. Bruce Loy

By Anthony W. Grover
Mr. Anthony Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

RICHARDSON'S AIRWAY, INC.

By Ralph R. Richardson
Mr. Ralph Richardson

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