

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial	)	Enforcement Order
Action by:	)	
	)	No. DE 96TC-C180
Paul and Bettie Haverluk	)	
1914 Hoxie Avenue	)	
Richland, WA 99352	)	

TO: Paul and Bettie Haverluk  
 c/o Thomas R. Benke, Esq.  
 Copeland, Landye, Bennett, and Wolf, LLP  
 3500 First Interstate Tower  
 Portland, OR 97201

I.

Jurisdiction

This 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 Paul and Bettie Haverluk.

1. Records of the Benton County Assessor indicate Paul Haverluk and Bettie Haverluk own the New City Cleaners property ("the Facility") at 747 Stevens Drive, Richland, Washington. The parcel number of this property is 1-1098-102-0600-018.

2. A Notification of Dangerous Waste Activities Form 2 (EPA/State Site ID No. WAD027332238), dated February 26, 1987, identifies New City Cleaners as a generator of hazardous waste: perchloroethylene (tetrachloroethene) and stoddard solvent (mineral spirits) from dry cleaning activities.

3. K. Kaser Co. Inc. submitted to Ecology "Underground Storage Tank Permanent Closure/Change-In-

Service Checklist" for tank ID No. 1 and No. 2 identifying perchloroethylene as the last substance stored. In a letter submitted to Ecology (received on July 17, 1992) by Paul Haverluk identifying tank ID No. 1 and No. 2 were used to store stoddard solvent.

4. Water and soil samples collected by representatives of Paul Haverluk during the removal of underground storage tanks from the Facility are found to contain the following "hazardous substances" as defined in the Model Toxics Control Act (MTCA).

5. Total petroleum hydrocarbons (TPH), has been found in excavation soil samples at the Facility at 1200 mg/kg (Sample No. NTS-4-92-NCC-KK) and 436 mg/kg (Sample No. NTS-6-92-NCC-KK). As reference, the MTCA Method A cleanup level for TPH (other) in soil is 200.0 mg/kg (WAC 173-340-740 (2)(a)(i)).

6. Tetrachloroethene (PCE) has been found in an excavation soil sample at the Facility at 597 ug/kg (Sample No. NTS-2-92-NCC-KK). As reference, the MTCA Method A cleanup level for PCE in soil is 0.5 mg/kg (WAC 173-340-740 (2)(a)(i)).

7. Benzene has been found in an excavation ground water sample at the Facility at 726 ug/kg (sic) (Sample No. NTS-3-92-NCC-KK). As reference, the MTCA Method A cleanup level for benzene in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

8. Toluene has been found in an excavation ground water sample at the Facility at 1590 ug/kg (sic) (Sample No. NTS-3-92-NCC-KK). As reference, the MTCA Method A cleanup level for toluene in ground water is 40.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

9. Ethylbenzene has been found in an excavation ground water sample at the Facility at 117 ug/kg (sic) (Sample No. NTS-3-92-NCC-KK). As reference, the MTCA Method A cleanup level for ethylbenzene in ground water is 30.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

10. Xylenes has been found in an excavation ground water sample at the Facility at 357 ug/kg (sic) (Sample No. NTS-3-92-NCC-KK). As reference, the MTCA Method A cleanup level for xylenes in ground water is 20.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

11. 1,2-Dichloroethane has been found in an excavation ground water sample at the Facility at 842 ug/kg (sic) (Sample No. NTS-3-92-NCC-KK). As reference, the MTCA Method A cleanup level for 1,2-dichloroethane in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

12. Trichloroethene (TCE) has been found in excavation ground water samples at the Facility at: 77 ug/kg (sic) (Sample No. NTS-7-92-NCC-KK); 982 ug/L (Sample No. NTS-8-92-NCC-KK); 254 ug/L (Sample No. NTS-9-92-NCC-KK); and 982 ug/L (Sample No. NTS-10-92-NCC-KK). As reference, the MTCA Method A cleanup level for TCE in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

13. Tetrachloroethene (PCE) has been found in excavation ground water samples at the Facility at: 70 ug/kg (sic) (Sample No. NTS-7-92-NCC-KK); 5887 ug/L (Sample No. NTS-8-92-NCC-KK); 15280 ug/L (Sample No. NTS-9-92-NCC-KK); and 5887 ug/L (Sample No. NTS-10-92-NCC-KK). As reference, the MTCA Method A cleanup level for tetrachloroethene in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

14. Tetrachloroethene (PCE) has been found in excavation soil samples at the Facility at 1100 ug/kg (Sample ID# PCE Pit) and 2120 ug/kg (Sample ID# PCE Pit Dirt). As reference, the MTCA Method A cleanup level for PCE in soil is 0.5 mg/kg (WAC 173-340-740 (2)(a)(i)).

15. Trichloroethene (TCE) has been found in excavation ground water samples at the Facility at 32.5 ug/L (Sample ID# PET Tanks 1+2) and 15 ug/L (Sample ID# PCE Water). As reference, the MTCA Method A cleanup level for TCE in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

16. Tetrachloroethene (PCE) has been found in excavation ground water samples at the Facility at: 80 ug/L (Sample ID# PET Tanks 1+2) and 23200 ug/L (Sample ID# PEC Water). As reference, the MTCA Method A cleanup level for tetrachloroethene in ground water is 5.0 ug/liter (WAC 173-340-720 (2)(a)(i)).

17. The foregoing information in items 4 through 13 is contained in the laboratory reports prepared by Precision Analytics, Inc., Pullman, Washington, and submitted to Ecology on May 19, 1992 by Mr. John Fuhrer of Nova Technical Services, Kennewick, Washington (the site assessor for New City Cleaners).

18. The foregoing information in items 14 through 16 is contained in the laboratory reports prepared by ALCHEM Laboratory, Boise, Idaho, and submitted to Ecology on July 8, 1996 by Mr. Thomas R. Benke of Copeland, Landye, Bennett and Wolf, LLP, Portland, Oregon (Representative of Mr. and Mrs. Paul Haverluk with regard to environmental conditions at New City Cleaners).

### III.

#### Ecology Determinations

1. Paul and Bettie Haverluk are "owners or operators" as defined at RCW 70.105D.020(11) of a "Facility" as defined in RCW 70.105D.020(4).

2. The Facility is known as the New City Cleaners site, is located at 747 Stevens Drive, Richland, Washington, and includes the area impacted by a release(s) of hazardous substances from New City Cleaners.

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(19).

5. By letter dated 10 June 1996, Ecology notified Paul and Bettie Haverluk 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 Paul Haverluk and Bettie Haverluk 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 forty-five (45) calendar days after the effective date of this Order, Paul and Bettie Haverluk shall submit to Ecology for review, a draft Work Plan for the completion of a Remedial Investigation (RI). This draft RI Work Plan (Work Plan) shall address, as appropriate, the components of the RI presented in Attachment A, "Scope of Work for Remedial Investigation Work Plans under Chapter 173-340 WAC, Draft Document, June 1996" and a proposed Schedule of Work. The draft Work Plan shall be of sufficient technical quality to support the completion of a Feasibility Study (FS) and the selection of a cleanup action as defined under Chapter 173-340-350 WAC. Attachment A is incorporated by this reference and is an integral and enforceable part of this Order.

2. Within twenty (20) calendar days after receipt of Ecology's comments of the draft Work Plan, Paul and Bettie Haverluk shall submit to Ecology for review and approval a final Work Plan which incorporates Ecology comments and recommendations.

3. Within forty-five (45) calendar days after the effective date of this Order, Paul and Bettie Haverluk shall submit to Ecology for review and approval a Public Participation Plan in accordance with WAC 173-340-600.

4. Within forty-five (45) calendar days after the effective date of this Order, Paul and Bettie Haverluk shall submit to Ecology for review and approval a Quality Assurance/Quality Control (QA/QC) Plan in accordance with Ecology's *Guidelines and Specifications for Preparing Quality Assurance Project Plans*, May 1991. No sampling

shall be conducted prior to Ecology approval of the QA/QC Plan.

5. Within forty-five (45) calendar days after the effective date of this Order, Paul and Bettie Haverluk shall submit to Ecology for review and approval 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.

6. Within one hundred eighty (180) calendar days after Ecology's approval of the final Work Plan, Paul and Bettie Haverluk shall submit to Ecology for review a draft Remedial Investigation Report.

7. Within sixty (60) calendar days after receipt of Ecology's comments on the draft Remedial Investigation Report, Paul and Bettie Haverluk shall submit to Ecology for review and approval a final Remedial Investigation Report.

8. The Public Participation Plan, the QA/QC Plan, and the Health and Safety Plan may be incorporated into the Work Plan for submittal to Ecology for review and approval.

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. Paul and Bettie Haverluk 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).

Paul and Bettie Haverluk shall pay the required amount within ninety (90) calendar 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 shall 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 shall result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

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

509454-7844  
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Within ten (10) calendar days after the effective date of this Order, Paul and Bettie Haverluk shall notify Ecology as to the identity of the person designated by Paul and Bettie Haverluk as the project coordinator for New City Cleaners.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Paul and Bettie Haverluk, 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 Paul and Bettie Haverluk change project coordinator(s), written notification shall be provided to Ecology or Paul and Bettie Haverluk 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.

Paul and Bettie Haverluk 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. Paul and Bettie Haverluk 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 shall be in compliance with this Order.

Except where necessary to abate an emergency situation, Paul and Bettie Haverluk shall not perform any remedial actions at the New City Cleaners 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 Paul and Bettie Haverluk. When entering the Site under Chapter 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Paul and Bettie Haverluk during an inspection unless doing so interferes with Ecology's sampling. Paul and Bettie Haverluk shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) calendar days notice before any sampling activity.

7. Public Participation. Paul and Bettie Haverluk shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site in accordance with WAC 173-340-600.

Paul and Bettie Haverluk shall help coordinate and implement public participation for the site.

8. Retention of Records. Paul and Bettie Haverluk 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 Paul and Bettie Haverluk, then Paul and Bettie Haverluk agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. Paul and Bettie Haverluk 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. Paul and Bettie Haverluk are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights. Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from New City Cleaners.

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 Paul and Bettie Haverluk 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 Paul and Bettie Haverluk 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 Paul and Bettie Haverluk may have in the Site or any portions thereof, Paul and Bettie Haverluk shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) calendar days prior to finalization of any transfer, Paul and Bettie Haverluk shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

a. All actions carried out by Paul and Bettie Haverluk 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 are binding and enforceable requirements of the Order.

Paul and Bettie Haverluk 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 Paul and Bettie Haverluk determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Paul and Bettie Haverluk shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Paul and Bettie Haverluk 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 Paul and Bettie Haverluk and on how Paul and Bettie Haverluk must meet those requirements. Ecology shall inform Paul and Bettie Haverluk in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Paul and Bettie Haverluk 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 Paul and Bettie Haverluk 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 Paul and Bettie Haverluk's receipt of written notification from Ecology that Paul and Bettie Haverluk have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

#### VII.

##### Enforcement

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. 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.
3. In the event Paul and Bettie Haverluk refuse, without sufficient cause, to comply with any term of this Order, Paul and Bettie Haverluk will be liable for:

a. up to three times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. civil penalties of up to \$25,000 per day for each day it refuses to comply.

4. 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: JUL 22 1996

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By 