

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF REMEDIAL ACTION BY: )  
Mr. Frank Burleson ) AGREED ORDER  
1115 Bigelow Avenue Northeast ) NO. DE 00ICPHQ-1408  
Olympia, WA 98506 )

IO: Mr. Frank Burleson  
1115 Bigelow Avenue Northeast  
Olympia, WA 98506

I.

JURISDICTION

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

II.

FINDINGS OF FACT

The Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by Mr. Frank Burleson:

1. The Olympia Cleaners site (Site) is located on property owned by Frank Burleson and is located at 606 East Union Avenue in Olympia, Washington. In 1970, a corporation owned by Mr. Frank Burleson and four others built the existing structure located on this real property and operated the Olympia Dry Cleaners business for approximately eleven (11) years.
2. In approximately 1981, Mr. Frank Burleson became sole owner of the real property and leased the real property to Mr. Gaylor Bolton. For the next fourteen (14) years (approximately) Mr. Gaylor Bolton continued the operating of the Olympia Dry Cleaners business.
3. In May of 1995, Mr. Gaylor Bolton hired Conrex, Inc. to conduct an environmental site assessment. Conrex, Inc. provided Mr. Gaylor Bolton with the Phase II Environmental Site Assessment report to document their environmental assessment of the real property.
4. The Phase II Environmental Site Assessment documented staining on and around a raised concrete walkway at the back of the Olympia Dry Cleaner's structure. Based on this

observation, two boreholes were augured in the area of the walkway on May 19, 1995. Groundwater was encountered at approximately twelve (12) inches below the ground surface. A viscous material with an oily sheen was observed on the groundwater surface. Groundwater samples were obtained from the boreholes. The laboratory analyses of the groundwater samples documented levels of 1,2 Dichloroethene (4340 ppb), Tetrachloroethene (41,300 ppb), Trichloroethene (3680 ppb), and Heavy Oil (2,700,000 ppb) above the Model Toxics Control Act cleanup standards. The presence of Heavy Oils was also documented in both groundwater and soils. Elevated levels of Total Etylenes were also documented in groundwater.

5. On May 23, 1995, six additional boreholes were drilled to depths of nine (9) feet from the ground surface. Five (5) boreholes were augured on the northeast side of the dry cleaning structure and one borehole was augured on the northwest side of the structure. Gasoline (29 ppb), 1,2 Dichloroethene (4340 ppb), Trichloroethene (8 ppb), Tetrachloroethene (41300 ppb), and Gasoline (26000 ppb) were detected in the groundwater sample.

6. Currently Mr. Howard McCullough has leased the real property and is operating Howard's Cleaners in the existing structure.

7. On November 23, 1999, the Thurston County Health Department secured and analyzed two water samples from a groundwater interception trench down gradient and on the Olympia Dry Cleaner's property edge. The first sample detected Vinyl Chloride at 80 parts per billion and at 59 parts per billion at the second sample location.

8. Investigation of the site and evaluation of potential remedial alternatives will be conducted under Model Toxics Control Act regulations with formal Ecology oversight. If a remedial action(s) is/are warranted based on the remedial investigation and feasibility studies, it will be conducted pursuant to an amendment to this Agreed Order, a separate Agreed Order or a separate Consent Decree developed for the Site

### III.

#### ECOLOGY DETERMINATION

1. Mr. Frank Burleson is an "owner and operator" as defined in RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

2. The Site is located 606 East Union Avenue in Olympia, Washington. The Site is located in Section 23, Township 18 North, Range 2 West, W.M., in Olympia, Thurston County, Washington at the intersection of Union and Cherry.
3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the Site, and all factors known to Ecology, there has been a release of hazardous substances from the Site, as defined in RCW 70.105D.020(19).
5. By a letter dated November 30, 1999, Ecology notified Mr. Frank Burleson of his status as a "potential liable person" under RCW 70.105D.040, after notice and opportunity for comment. By a letter of January 3, 2000, Ecology determined that Mr. Frank Burleson is a "potentially liable person" under 70.105D.040.
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 activities required by this Order are in the public interest.

#### IV.

#### WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Mr. Frank Burleson perform a remedial investigation/feasibility study and that these actions be conducted in accordance with Chapter 173-340 Washington Administrative Code (WAC) unless otherwise specifically provided for herein.

1. Within sixty (60) days of the effective date of this order, submit to Ecology for review and approval a draft remedial investigation (RI) work plan for determining the nature and extent of site soils contamination, potential groundwater contamination, and providing steps to initiate interim actions as provided in WAC 173-340-350. The work plan shall also include a:

- Draft sampling and analysis plan, which includes quality assurance/quality control activities prepared per the requirements of WAC 173-340-820. Proposed analytical procedures shall be in accordance with WAC 173-340-830.
- Draft health and safety plan. All work performed at the site shall be in accordance with the provisions specified in WAC 173-340-810(1). A health and safety plan shall be prepared per WAC 173-340-810(2). Although the health and safety plan must be submitted to Ecology for review and comment, Ecology does not have authority to approve the plan.

Ecology's comments on the draft work plan shall be incorporated into the final work plan, which shall be submitted, to Ecology within thirty (30) days of receipt of such comments. The implementation of the final RI work plan shall be in accordance with the schedule approved in the Final RI Work Plan or as modified, in writing, with the agreement of all parties.

2. The work plan shall provide a process to determine the nature and extent of contamination and potential contamination in the Site soils and groundwater both on-site and off-site. The work plan shall include steps to assess seasonal variation in the groundwater contamination levels, and ground water flow direction. This shall include monthly measurements of water levels in both aquifers for a minimum of one year. Ecology may review the frequency of water level measurements at its discretion or at the request of Mr. Frank Burleson.

If groundwater contamination is detected, the work plan shall focus and schedule the site investigation work such that interim measures can be designed and implemented to stop the migration of contaminated groundwater off-site as soon as possible. The work plan shall provide for other interim actions, which can correct problems which may become substantially worse or cost substantially more if action is delayed. An example of such an interim action would be removal of contaminated soils before they contaminate larger areas, as provided in WAC 173-340-430. The work plan shall include a schedule for all activities and for submittal of a final remedial investigation report.

3. The RI work plan shall describe analytical methods, parameters and detection limits, in addition to all quality assurance/quality control details needed as described in the most

recent publication *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW-846)*.

4. Within ninety (90) days of receiving all analytical data, submit to Ecology for review a draft remedial investigation report. Ecology's comment on the draft report shall be incorporated into a Final Remedial Investigation Report within thirty (30) days of the comments.

5. Within sixty (60) days of the approval of the remedial investigation report, Mr. Frank Burleson will be required to submit a work plan for a feasibility study (FS), per the requirements of Chapter 173-340 WAC. Upon approval by Ecology of the feasibility study work plan, the feasibility study shall be performed and a feasibility study report will be submitted for Ecology's review and approval. Ecology's comment on the draft feasibility study report shall be incorporated into a Final Feasibility Study Report within thirty (30) days of the comments.

6. Sixty (60) days after completion and approval of the feasibility study, Mr. Frank Burleson shall draft a Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400.

7. After public review and comment, the draft Cleanup Action Plan will be finalized by Ecology. Ecology and Mr. Frank Burleson will enter into discussions for a consent decree or agreed order as determined by the parties hereto or an enforcement order as determined by Ecology to design, construct, operate, and monitor the selected cleanup.

8. In accordance with WAC 173-340-840(5), environmental sampling data shall be submitted on paper within ten (10) working days of receipt from the laboratory.

9. Once approved, or modified and approved in writing by Ecology, all Ecology-approved submittals are incorporated by reference and become enforceable parts of this Order as if fully set forth herein.

10. Mr. Frank Burleson shall provide a bi-monthly (every two months) progress report, which will include the following:

- activities that happened in the past two (2) months;
- activities planned for the next two (2) months;
- a written summary of all lab data required by this order;

- all lab data required by this order or requested by Ecology shall be provided in an Ecology-approved electronic format.

This progress report frequency may be revised by Ecology if adequate justification is provided by Mr. Frank Burleson or if Ecology provides justification for a change.

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.

WAC 173-340-600(10)(c) requires a thirty (30)-day public comment period before this Agreed Order for a state RI/FS becomes effective. 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.

Mr. Frank Burleson 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). Mr. Frank Burleson shall pay the required amount within ninety (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 ninety (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:

Name: Robert Warren

Address: Department of Ecology  
Southwest Regional Office  
P.O. Box 47775

Olympia, Washington 98504-7775

Telephone: (360) 407-6991

Fax: (360) 407-6305

E-Mail: rwar461@ecy.wa.gov

The project coordinator for Olympia Dry Cleaners is:

Name: Mr. Frank Burleson

Address: 1115 Bigelow Avenue Northeast  
Olympia, Washington 98506

Telephone: (360) 352-4138

(360) 866-0657

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Mr. Frank Burleson, 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). If Ecology or Mr. Frank Burleson should change project coordinator(s), written notification shall be provided to the other party 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. Mr. Frank Burleson shall notify Ecology about 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. Mr. Frank Burleson 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, Mr. Frank Burleson shall not perform any remedial actions at the Site beyond 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 the state of Washington. Mr. Frank Burleson shall provide seven (7) days notice to Ecology's site manager prior to conducting work activities.

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 Mr. Frank Burleson. By signing this Agreed Order, Mr. Frank Burleson 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 Mr. Frank Burleson during an inspection unless doing so interferes with Ecology's sampling. Mr. Frank Burleson shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before conducting any activity relative to this order.

7. Public Participation

Mr. Frank Burleson shall help prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the site. Mr. Frank Burleson shall help coordinate and implement public participation for the site.



8. Retention of Records

Mr. Frank Burleson 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. If any portion of the work performed hereunder is undertaken by contractors or agents of Mr. Frank Burleson, then Mr. Frank Burleson agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution

Mr. Frank Burleson 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's resolution of the dispute shall be binding and final. Mr. Frank Burleson is 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 Mr. Frank Burleson 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 Mr. Frank Burleson to require those remedial actions required by this Agreed Order, provided Mr. Frank Burleson 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 Mr. Frank Burleson (or his tenants) located at 606 E. Union Avenue Olympia, Washington.

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 Mr. Frank Burleson 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 Mr. Frank Burleson 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 Mr. Frank Burleson may have in the site or any portions thereof, Mr. Frank Burleson 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, Mr. Frank Burleson shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws.

A. All actions carried out by Mr. Frank Burleson 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 are binding and enforceable requirements of the Order.

Mr. Frank Burleson has 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 Mr. Frank Burleson determines 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 Mr. Frank Burleson shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Mr. Frank Burleson 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 Mr. Frank Burleson and on how Mr. Frank Burleson must meet those requirements. Ecology shall inform Mr. Frank Burleson in writing of these requirements. Once established by Ecology,

the additional requirements shall be enforceable requirements of this Order. Mr. Frank Burleson 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.

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 Mr. Frank Burleson 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 Mr. Frank Burleson's receipt of written notification from Ecology that Mr. Frank Burleson has 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 Mr. Frank Burleson refuses, without sufficient cause, to comply with any term of this Order, Mr. Frank Burleson will be liable for:
    - (1) up to three (3) 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 he 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.

Effective date of this Order: 2/28/01

Mr. Frank Burleson

State of Washington  
Department of Ecology

By Steve Conway  
for Owner  
Perkins Corp.

By David B. Jansen  
Section Supervisor  
Southwest Regional Office  
Toxics Cleanup Program