

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action at:)

ENFORCEMENT ORDER

Corner Express (Texaco))
1131 Morgan Street
Davenport, Washington 99122

No. 01TCPER-2689

To: Mr. Marvin Bain
5519 Hwy. 95
Potlatch, ID 83855

I.

Jurisdiction

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

II.

Statement of Facts

1. Marvin Bain is the owner of the Corner Express (Texaco)
facility (the Site) located at 1131 Morgan Street,
Davenport, Washington, in Lincoln County. This facility is
located on the southwest corner of Morgan Street (Highway
2) and 12th Street. It is bounded by Morgan Street on the
north and 12th Street on the west. (Figure 1.)
2. According to Washington State Department of Ecology
(Ecology) records, the facility was operated as a retail
gas station until approximately July 18, 2000. The
station remains closed as of this date.

3. The underground storage tank(UST)system at this facility includes two 5,000-gallon capacity diesel tanks and three 8,000-gallon capacity gasoline tanks.
4. In certified letters dated June 26 and July 20, 2000 Ecology provided Marvin Bain, as owner/operator of Corner Express, Notification of Correction regarding observed violations of the UST Regulations. Specific violations pursuant to Chapter 90.76 RCW and Chapter 173-360 WAC were noted. Those violations included the following:
 - A. The automatic tank gauge was not functional. As a result there was no leak detection in place to detect a leak from the USTs.
 - B. The Site's UST permit expired as of June 30, 2000. The facility continued to operate after this date.
 - C. One of the turbine pumps was not equipped with a line leak detector as required.
 - D. Water was found in turbine sumps, in effect disabling the line leak detection function of the sump sensors.
 - E. Failure to provide documentation to verify that the corrosion protection system was functional.
5. Marvin Bain was provided opportunity to respond to and correct the noted UST violations. Ecology did not receive a response to the June 26 or the July 20, 2000 Notices of Correction.

6. Gasoline, as free-phase product, has been found in a groundwater monitoring well located less than 100 feet to the northwest and hydraulically downgradient of the Corner Express site. Laboratory analysis of the gasoline found in this monitoring well characterized it as "...consistent with a "fresh" gasoline, that is, one which has not been subjected to evaporative loss or biological degradation."
7. In a certified letter dated December 14, 2000, Ecology advised Marvin Bain of heightened concerns regarding this site due to the continued failure to comply with the previously cited UST violations and the discovery of gasoline in the above-referenced monitoring well. In this letter Marvin Bain was also advised that, based on these findings, he was required to conduct a site investigation as provided for under WAC 173-360-370. Ecology did not receive a response to the certified letter of December 14, 2000.
8. In a certified letter dated December 22, 2000, Marvin Bain was advised of Ecology's proposal that he be found to be a "potentially liable person" (PLP) as defined under Chapter 70.105D RCW. Marvin Bain was provided thirty (30) days to comment on this proposed finding. No comments were received by Ecology.
9. Ecology issued Emergency Enforcement Order No. DE TCPER-1901 effective December 26, 2000. This order directed

Marvin Bain to take specific actions to address what Ecology regarded as a potential on-going threat from the UST system at this site. These actions included the inspection of the UST system and the removal of all product from the USTs(gasoline and diesel). The order also provided for the completion of a limited site assessment to identify the source of any release. The work completed under enforcement order No. DE 00TCPER-1901 was documented in a report dated January 31, 2001, and received by Ecology on February 1, 2001.

10. Ecology reviewed the report dated January 31, 2001, and determined that there remains compelling evidence of a release of a hazardous substance, gasoline, at this site.

III.

Ecology Determinations

1. Marvin Bain is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
2. The facility is known as Corner Express and is located at 1131 Morgan Street, Davenport, Washington, in Lincoln County. This facility is located on the southwest corner of Morgan Street (Highway 2) and 12th Street. It is bounded by Morgan Street on the north and 12th Street on the west.(Figure 1)

3. The substances near the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
4. Based on the presence of these hazardous substances adjacent to and hydraulically downgradient of 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).
5. In a certified letter dated April 9, 2001, Marvin Bain was advised that after providing opportunity for comment, and after consideration of the investigative work completed at the site, Ecology had found him to be a "potentially liable person" as defined under RCW 70.105D.040.
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.
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 Marvin Bain 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 thirty (30) calendar days from the effective date of this Order complete the following:
 - A. Submit a site assessment work plan for Ecology review and approval. This work plan will include a sampling and analysis plan that will serve to characterize soil and groundwater conditions in those areas most likely to be impacted by a release from the UST system at this site.
 - B. Soil sampling is to be conducted in a manner consistent with Table 5-2, Minimum Soil Sampling Requirements for Site Checks and Site Assessments, Ecology Guidance Document No. 90-52. Soil samples are to be analyzed for the following: TPH(G), TPH(D), Benzene, Toluene, Ethylbenzene, Xylenes (BTEX) and Methyl Tertiary Butyl Ether (MTBE).
 - C. The site assessment will include groundwater sampling. This will require the installation of a minimum of two (2) groundwater monitoring wells.

Groundwater will be analyzed for TPH(G), TPH(D), BTEX and MTBE.

2. The site assessment fieldwork is to be completed within twenty(20) calendar days following the receipt of Ecology's verbal or written approval of the site assessment work plan.
3. A site assessment report will be submitted to Ecology within thirty (30) calendar days following completion of the fieldwork.
4. If, in the course of conducting the site assessment, it is determined that there has been a release of a hazardous substance associated with the UST system, the following actions are to be taken:
 - A. The discovery of free phase product on the groundwater will be addressed as provided for under WAC 173-340-450(3)(b).
 - B. Conduct and report on a Remedial Investigation/ Feasibility Study (RI/FS) consistent with WAC 173-340-350. The purpose of the remedial investigation is to collect, develop and evaluate information regarding the site and potentially affected areas so as to enable the selection of an appropriate cleanup action.

The Remedial Investigation will define the type, the extent and the degree of soil, ground water and

surface water contamination at the facility and all off-site affected areas. It will also identify the impacts of the contamination on those affected areas. The purpose of the Feasibility Study is to identify, develop, evaluate and select remedial action alternatives that are consistent with a permanent remedy to prevent or minimize the release or threatened release of hazardous substances from the site.

To fulfill the goals of this RI/FS, the following actions shall be performed:

- (1) Within thirty (30) calendar days of confirmation of a release from this site, submit to Ecology for approval a Work Plan describing the work to be performed and a proposed schedule for the Remedial Investigation. At a minimum the Work Plan shall include the following:
 - a. A Health and Safety Plan fulfilling the requirements of WAC 173-340-810.
 - b. A Sampling and Analysis Plan consistent with WAC 173-340-820. This plan shall specifically describe the depth and the location of all proposed wells and soil borings, and include specific information regarding all proposed soil and water

sampling including parameters to be analyzed, detection limits and the frequency of sampling. Parameters that must be analyzed at a minimum are TPH for gasoline and diesel, BTEX, total lead and MTBE.

- c. Quality Assurance/Quality Control (QA/QC) Plan, consistent with WAC 173-340-830. The QA/QC Plan shall include a detailed description of sampling procedures and equipment to be used; the number and types of blanks, spikes, and duplicates; chain of custody protocol; analytical methods; and data validation and reporting methods.
- d. A Public Participation Plan consistent with the requirements of WAC 173-340-600.
- e. A Site Waste Management Plan detailing the procedure to be employed to contain, stockpile, characterize and treat/dispose of contaminated materials encountered during the course of the Remedial Investigation.
- f. A Contractor List identifying those firms that will be participating in activities associated with the Remedial Investigation.

This list will include all consultants, contractors and subcontractors.

g. A Statement of Qualifications for those individuals involved in the professional and technical work associated with this Remedial Investigation. This Statement shall include the names, duties, pertinent experience, skills, training and education of the personnel involved.

h. A Proposed Work Schedule identifying the anticipated progress of the Remedial Investigation activities.

(2) Ecology will evaluate and determine the appropriateness of the Draft Remedial Investigation Work Plan. The Work Plan shall not be implemented without Ecology's written approval. Upon approval by Ecology, the Final Work Plan and its schedule shall become an enforceable element of this Order.

Implementation of the Final Work Plan shall begin within fifteen (15) calendar days of the receipt of Ecology's approval.

(3) A draft Remedial Investigation Report shall be submitted to Ecology for review within thirty (30) calendar days of the completion of the

work. The final Remedial Investigation Report shall be submitted within twenty (20) calendar days of Ecology's completed review and approval. The Remedial Investigation Report shall, at a minimum, include the following:

a. General Facility Information.

General information, including: project title; name, address, and telephone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history.

b. Site Conditions Maps and Photographs.

Maps and photographs illustrating relevant site features such as: property boundaries; facility boundaries; surface topography; surface and subsurface structures; utility lines; well and soil boring locations; contaminant distribution, illustrating the extent and degree of soil, groundwater and surface water contamination; static water levels of groundwater including an indication of the seasonal variability;

sample locations; geologic/soil conditions; and other pertinent information.

c. Field Investigations.

An evaluation based on developed documentation, characterizing the distribution of hazardous substances at the facility and adjacent affected areas. This would include a characterization of the threat to human health and the environment posed by this release. This evaluation shall, at a minimum, address the following:

Surface Water.

Investigation of surface water and its drainage features to evaluate potential migration routes. This shall include a description of features such as: drains, dry wells and storm water drainage systems and the relationship between these features and the surface water.

Soils.

Characterization of the areal and vertical distribution and concentration of hazardous substances in the soil due to the release at the facility. Properties of surface and subsurface soils that are likely to

influence the type and rate of hazardous substance migration, or which are likely to affect the ability to implement alternative cleanup actions shall be characterized.

Geology and Groundwater Characteristics.

Investigation of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the groundwater and to identify those features which may affect the fate and transport of these hazardous substances. This shall include, as appropriate, the description, physical properties and distribution of bedrock and unconsolidated materials; groundwater flow rate and gradient for affected and potentially affected aquifers; areas of groundwater discharge; groundwater quality data; and seasonal variation of groundwater levels; the relationship between groundwater, surface water and artificial drainage features in the affected and potentially affected area.

Land Use.

Characterization of human populations exposed or potentially exposed to the hazardous substances released from this facility and present and proposed land uses for the site and potentially affected areas. This shall include the name and address of any affected or potentially affected landowners in the area.

Natural Resources and Ecology.

Characterization of the impact or potential impact of the hazardous substance(s) released from the facility on the natural resources and ecology of the area such as: sensitive environment, plant and animal species, and other environmental receptors.

d. Appendix.

The Remedial Investigation Report shall contain an appendix which shall include, at a minimum, the following: sample chain of custody reports for all samples; laboratory reports of samples analysis; start cards and logs, as appropriate, for wells and soil borings.

- (4) Within thirty (30) calendar days of submitting the Final Remedial Investigation report, as approved by Ecology, submit a Preliminary Feasibility Study report. The Preliminary Feasibility Study report will serve as an initial screening of cleanup action alternatives. The RI will serve as a basis for the selection of the appropriate cleanup alternatives.

The Preliminary Feasibility Study shall, at a minimum, include the following:

- An evaluation of alternative remedial actions for contamination within the unsaturated (vadose) zone.
- An evaluation of alternative remedial actions for contamination within the saturated zone.
- Preferred alternatives for remedial actions for the site and those affected areas off-site. The use of multiple cleanup technologies may be considered.

Ecology will review and evaluate the Preliminary Feasibility Study report. Based on the Remedial Investigation Report and the Preliminary Feasibility Study Report, specific cleanup

actions will be selected for final study. Those actions selected for final study may not necessarily be limited to those proposed in the Preliminary Feasibility Study report.

Within thirty (30) calendar days of receiving Ecology's written notice of those cleanup alternatives selected for additional study, submit a Final Feasibility Study report. This report shall provide a detailed evaluation of the selected cleanup action(s). The evaluation criteria shall address the concerns for protection of human health and the environment. The action(s) selected shall be consistent with the goal of eliminating, reducing or otherwise controlling risks posed through each exposure pathway and migration route. The alternatives shall be evaluated for compliance with the requirements of WAC 173-340-360.

5. To facilitate the effective and expeditious implementation of this order the following provisions shall apply:

A. The designated Project Coordinator for Marvin Bain shall, at a minimum, provide weekly progress reports to Ecology's Project Coordinator. These reports may be made verbally.

B. The following information shall be submitted to Ecology during the implementation of this order:

(1) Preliminary logs obtained during the construction of wells, soil borings or excavations. These logs would describe, at a minimum, sample locations, lithology, groundwater conditions and observed or field measured contamination. This preliminary data shall be submitted within seven (7) calendar days of completion of the well, boring or excavation.

(2) Reports of laboratory sample analysis. These reports shall be submitted within seven (7) calendar days of receipt by the designated Project Coordinator.

(3) All additional information, data or reports deemed pertinent as requested by Ecology.

6. Ecology and other appropriate agencies shall be contacted immediately if the investigation identifies conditions which may pose an immediate threat to human health or the environment. Particular concerns at this site would include the presence of gasoline vapors or free product.

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 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.

3. Remedial Action Costs.

Marvin Bain 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). Marvin Bain 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.

Within ten (10) days of the effective date of this ORDER, Marvin Bain shall designate a Project Coordinator and notify Ecology as to the identity, address and telephone number of such Project Coordinator.

The Project Coordinator for Ecology is:

Michael Boatsman

Washington State Department of Ecology

Eastern Regional Office

4601 North Monroe, Suite 202

Spokane, WA 99205-1295

Phone: (509) 456-4457

e-mail: mboa461@ecy.wa.gov

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and

Marvin Bain, 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 Marvin Bain change project coordinator(s), written notification shall be provided to Ecology or Marvin Bain 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.

Marvin Bain 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. Marvin Bain 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, Marvin Bain shall not perform any remedial actions at the former Corner Express (Texaco) 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 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 Marvin Bain. 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 Marvin Bain during an inspection unless doing so would interfere with Ecology's sampling. Marvin Bain shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation

Marvin Bain shall prepare a Public Participation Plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Marvin Bain shall help coordinate and implement public participation for the Site.

8. Retention of Records

Marvin Bain 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 Marvin Bain, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Marvin Bain may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Marvin Bain 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

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 the former Corner Express (Texaco).

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 Marvin Bain 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 Marvin Bain 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 Marvin Bain may have in the Site or any portions thereof, Marvin Bain 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, Marvin Bain shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

All actions carried out by Marvin Bain pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Marvin Bain's receipt of written notification from Ecology that Marvin Bain has 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.

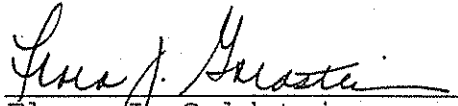
Enforcement

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 Marvin Bain refuses, without sufficient cause, to comply with any term of this Order, Marvin Bain 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 RCW 70.105D.060.

Effective date of this Order: April 10, 2001.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
Flora J. Goldstein