

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

FILE COPY

In the Matter of Remedial)
Action at:)
)
Corner Express (Texaco))
1131 Morgan Street
Davenport, Washington 99122

No. 02TCPER-4991

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.
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 for the USTs.
 - B. The Site's UST permit was expired as of June 30, 2000. However, 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. The owner/operator failed to provide documentation verifying 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, was 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 TCPER-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 remained compelling evidence of a release of a hazardous substance, gasoline, at this site.
11. Ecology issued Enforcement Order No. 01TCPER-2689 effective April 10, 2001. This Order directed Marvin Bain to provide for an investigation to identify the source of any release from the USTs at the Site. Further, the Order directed Marvin Bain to complete a Remedial Investigation / Feasibility Study (RI/FS).
12. The RI/FS was completed. The investigation served to characterize the nature and extent of contamination resulting from a release(s) from the UST system. The results of this investigation and considered cleanup options are documented in a report dated January 31, 2002.

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 the former Corner Express (Texaco) and is located at 1131 Morgan Street, Davenport, Washington, in Lincoln County. This facility is located on the southeast corner of Morgan Street (Highway 2) and 12th Street. It is bounded by Morgan Street on the north and 12th Street on the west.
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 in the soils and groundwater 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(4).
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. Soil and groundwater contamination at this site, in exceedance of established cleanup levels, continues to represent a threat to human health and the environment.
8. 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 shall implement the remedial actions described in the attached Final Cleanup Action Plan (Exhibit A) as further described in the attached Scope of Work (Exhibit B).

Within forty-five (45) calendar days of the effective date of this Order, Marvin Bain shall submit to Ecology for approval a Cleanup Action Work Plan describing the work to be performed and a proposed schedule.

Ecology will evaluate and determine the appropriateness of the Cleanup Action 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.

The attached exhibits are incorporated by reference and are integral and enforceable elements of this Enforcement Order. The attached exhibits consist of the Final Cleanup Action Plan (Exhibit A), the Scope of Work (Exhibit B), and the Restrictive Covenant Agreement (Exhibit C).

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in Chapter 70.105 D 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. This notification may be made by telephone or e-mail with written confirmation to follow.

The Project Coordinator for Ecology is:

Michael Boatsman
Washington State Department of Ecology
Eastern Regional Office
4601 North Monroe
Spokane, WA 99205-1295
Phone: (509) 329-3492
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 actions are to be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

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. WAC 173-340-400(7) (b) (i) requires that any "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington. 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.

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

1. 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.
2. The following information shall be submitted to Ecology during the implementation of this order:
 - (a) Groundwater conditions and observed or field measured contamination.
 - (b) Reports of laboratory sample analysis. These reports shall be submitted within seven (7) calendar days of receipt by the designated Project Coordinator.
 - (c) All additional information, data or reports deemed pertinent as requested by Ecology.
6. Ecology and other appropriate agencies shall be contacted immediately if during the implementation of the cleanup action conditions are identified 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-phase product.

7. 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.

8. 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.

9. 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.

10. 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 the 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.

11. 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.

12. 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.

13. 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.

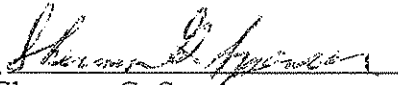
VII.

Enforcement

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 Marvin Bain refuses, without sufficient cause, to comply with any term of this Order, Marvin Bain 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: January 22, 2003

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
Sherman G. Spencer
Acting Section Manager
Toxics Cleanup Program
Eastern Regional Office

