

**RESPONSIVENESS SUMMARY
CIRCLE K STATION #1461
(FORMER)
FEBRUARY 25, 1992**

**FOR THE CONSENT DECREE, CLEANUP ACTION PLAN AND
PUBLIC PARTICIPATION PLAN.**

INTRODUCTION

The Washington Department of Ecology (Ecology) has responded to all comments received during the public comment period December 17, 1991 to February 6, 1992.

The public was encouraged to comment on Ecology's Cleanup Action Plan, the Consent Decree, and Public Participation Plan for cleanup of the former Circle K Station #1461.

A public hearing was held at the Montlake Community Center on January 9, 1992 to provide the public with a formal opportunity to comment. About 25 people attended the hearing.

A fact sheet was distributed announcing the thirty day public comment period and the public hearing on December 13, 1991, and a fact sheet announcing the extension of the comment period due to failure to give a timely notice was distributed January 7, 1992.

Other public notices were conducted, and are outlined in the Public Participation Plan for the site.

Ecology received no written comments and two oral comments at the public hearing. Commenters at the hearing were:

- *Mr. Larry Penberthy
- *Mr. Gerald Pierce

THE RESPONSIVENESS SUMMARY

This Responsiveness Summary is organized as follows:

1. The transcript of the public hearing comments.
2. The responses to the comments by Ecology's site manager.

IF YOU HAVE QUESTIONS:

Please contact Susan Lee (Public Involvement) if you have questions about the Responsiveness Summary or about public involvement opportunities, at (206) 649-7138 or 1-800-458-0920.

For questions regarding site cleanup, or responses to specific comments, contact Joe Hickey (Site Manager) at (206) 649-7202.

INFORMATION REPOSITORIES:

Remember, all documents concerning the PACCAR site are available for your review at the following locations:

Department of Ecology
Attn: Judy Fisher
3190 160th Ave. SE
Bellevue, WA 98008-5452
(206) 649-7239

Formal Public Hearing Transcript

CirleK Gas Station/Convenience Store

For the record, I am Susan Lee, hearings officer for tonights hearing. Tonight we are here to discuss the Consent Decree for the cleanup of contaminated soils at the Circle K site in Seattle Wa. Tonights meeting has three main parts. First, Ecology program staff has given a brief overview to explain the cleanup proposal. Second, the floor has been open for questions for about 40 minutes. And now we will begin the formal part when we record your comments for the record. Let the record show it is now 8:25 pm on Thursday, January 9, 1992, and this hearing is being held in the annex of the Mountlake Community Center in Seattle Wa. Legal notice of this hearing was published in the Department of Ecology (Ecology) site register on Dec. 10, 1991, Dec 23, 1991, and in the Ecology Public Involvement Calendar for January, 1992. Paid notices were published on Dec. 25, 1991, and Jan 6, 1992, in the regular edition of the Seattle Times. In addition, notices of the hearing were mailed to about 120 interested people. Many of you received that notice. As tonights hearings officer, my job is to conduct the hearing. I have two responsibilities. One, I need to make sure that everybody who wants has the opportunity to come up and comment. Second, I need to make sure that Ecology obtains a clear record of all comments. I will need your cooperation to do my job. First, I will call you by name in the order that I received your cards. Then I will open the floor for anyone else who has decided to speak. When you come up to the front, would you please speak into the microphone, give your name and address so we can give a formal response to your comments? We only have two people commenting, but I think we will still hold the time limit for each one to about 10 minutes. At that time, we will open it up to anybody else who might decide to speak. At the end, we will again allow anyone more formal comment.

Please summarize the length of your comments or repetitive ones and do not forget you can always give your comments in writing to the Ecology. The address is on the front of your agenda. The comment period is open until Feb. 6, 1992. Any comment received by that deadline will be given consideration before any final decisions are made and will be responded to. Remember, this portion is to give comment only, no questions. Although if you have a specific question, please address it first into the microphone. You will receive no answers at this time. Your answers will come in writing in Responsiveness Summary. I would appreciate it if you would all be quiet those of you who are in the audience can hear. Do not talk during the comments, so that I can receive a clear tape of this. Please try to keep your comments pertinent to this site and to the issues involved in this site. So let me just summarize a minute these things that I am asking of you. One person talk at a time up here in front so all can hear, keep comments to 10 minutes or less, certain questions can be asked for the record but they will not be answered here, hold down the noise, and keep the comments pertinent. Are these agreeable to you? Ok, we can begin. The first person to comment please approach the microphone.

Good evening, my name is Larry Penberthy, my company is Penberthy Electromelt Inter. located in South Park, 631 South 96th Street, Seattle WA 98108. I am strongly concerned with the bad effects of the Model

Toxics Control Act. The Model Toxics Control Act was written by lawyers essentially in secret, in the sense that it was 80 pages long and nobody who voted for it ever read the 80 pages. Well, maybe a few did, but it was primarily written by lawyers, and it has a great deal of legal content, which is highly questionable. It is up for review now before the legislature. I have made recommendations for changes in that law to take out its real fangs. I have submitted those through one of the state senator, chairman of the Environment and Natural Resources Committee. So there is a formal attack on that Model Toxic Control Act. It is not a model at all. It is a terrible example, it follows the evils of the federal Superfund program. The federal Superfund program refers to WA state, said a federal Superfund program has 60% of all money spent is spent on litigation, 30% on investigation and 10% on remedial and the evils of that are the strict joint several liability are being addressed now by the congress and by very powerful people, including Lee Thomas, the former administrator of EPA. He is president CEO of a group which is fighting the Superfund law on the national level of high level. And so we should not assume that the Model Toxics Control Act is a good one for the state of WA. There is no free lunch, make the polluter pay. Well, the idea is there, but if Circle K were here, if it had to pay, and maybe part of this cleanup is what part of what drove them into bankruptcy, if they were still here, what would they do with the cost of that? Add it in to there product. So the consumer, the final consumer, is the only one who can pay. We pay the taxes to the state, the state pays it to whatever Ecology pays out, there is a tax on chemicals and petroleum products. The first owners of such chemicals pays into this fund. The first owner is the one who imports it to the state and buys a tanker of gasoline from out in sea somewhere, and you bring it into the state. There tax is paid, that's added right into the cost of doing business. Everybody who buys gasoline is going to pay that. So there is no free lunch. Now for that reason then I am asking, what danger is there to public health today? There may have been such a threat to public health from gasoline getting in through the traps that were not kept wet, that were not filled with water. But that has gone now, there is no indication there's any reason to go ahead with this program cleanup at the Circle K site. There has never been a definition that has been accepted anywhere for how clean is clean. That question is being debated constantly. One hundred parts per million of gasoline, if thats what I heard, is absurdly too low, thats a very small amount. To over fill your tank at the gas station and the overflow does not click off soon enough, so you splash a couple of teaspoons on there, clear up to that point into 100 to 1,000 of parts per million. Therefore 100 parts per million is way to low, remember these regulations were written by zealots, who had no concept of chemistry and no concept of realism. They simply wanted to become idealists and to generate very large legal fees. I have a letter from the attorney general, Ken Ikenberry, who said right in his letter to me (it was personal, I have known him for quite a while.) He said that this act is going to generate an of awful lot of litigation. And so it is a stimulus to litigation. The terms are so harsh. Now I am going to go on, I have made some of my main points. The terms of this agreement are too harsh. Supposing you can't pay anything, the bill gets up to \$50,000, then at 1% per month that's \$500 a month. Whose dry cleaners going to have \$500 a month extra? And he does not pay anything

on the principle so he is going to be in hawk from this forever. It s not a valid expense. He has to charge his customer the extra amount of that fee or go out of business if his prices are then too high. So the community has a reason not to spend excess money on this job. I would grant without any problem that the existing sump should be pumped and sampled on a routine basis. But that no action as far as formal as a consent decree should be entered into until there is evidence to support the need. Writing the Ecology a blank check for \$50,000 is what Mr. Chung is going to do under this decree. It is totally unwarranted. He should not be subjected to that kind of litigation. He is not a lawyer. Ecology has a whole bank of lawyers through the Attorney General and they are vicious. They are in there to win, and they are in there too, if they kill the victim, it's not their problem. I know a lot about this. You said not to talk about other sites, and so I will not, but I am very much incensed on this, and I am dealing with it on hard basis. I am in a very severe argument with the Attorney General now. Not Idkenberry, he is fortunately going to be gone. And we have to see to it that he not become governor, but he is part of the problem here in the Circle K site. He is involved in it because he helped to set the policy and how vigorous the top cop is, what he calls himself, how vigorous he will be in damaging the industries of the state. Mr. Chung is just one example. The examples go way on and on, and they influence the competitiveness of our state. People inquired of the American and the Assoc of WA Business about the regulatory climate here, and the answers they got were so bad that the people said will find another state. We do not want to start up a business here. It is that bad and we should think very carefully before we ask Mr Chung. We being, we the people, we are the ones who are going to have to pay for all of this, before we ask him to lay out money for unnecessary work. The need for doing it needs to be first demonstrated clearly. Incidentally, in background I am a physicists chemist. I have a degree in physics and chemistry magnum cum lauda, and I have since added chemical engineering, electrical mechanical, and last one is technology. I am a fully qualified person as far as the technology goes. I deal with soils and melting of things all the time.

Mr. Gerald Pierce

2410 East Lybb next door to the cleaners. I think this is totally stupid, a waste of taxpayers money, and Mr. Chung is being sucked in. That's all I have to say.

Is there anyone else who would like to make any comments at this time?

I would like to reiterate that if you would like to send written comments to Ecology, they are due by Feb 6, 1992, and send them to the address on the agenda. All comments received at this hearing, along with the written comments received by Feb 6, 1992, will be part of the official hearing record for this proposal. On behalf of Ecology thank you for coming tonight. I appreciate your cooperation and courtesy. This hearing is adjourned at 8:35 pm.

Responses to Comments

RESPONSIVENESS SUMMARY
COMMENTS BY SITE MANAGER JOE HICKEY

Responses to Mr. Larry Penberthy:

1. Model Toxics Control Act Concerns.

The Model Toxics Control Act (MTCA) began as Initiative 97, and was passed into law by the voters of this state. Now given the statutory citation of 70.105D, the law is the Department of Ecology's (Ecology's) mandate for cleanup activity. Ecology's procedures and processes are dictated by the requirements in the MTCA and its associated regulations, Chapter 173-340 Washington Administrative Code (WAC), and these procedures, processes, and cleanup activities cannot change to any great degree until the law and/or the regulations are changed. Therefore, any quarrel one has with the MTCA is moot against the cleanup planned for this site.

2. "There is no free lunch. Make the polluter pay."

The cost recovery section of the consent decree document for this cleanup provides for the property owner to repay fifty thousand dollars of the costs of cleanup. Ecology's costs over that amount that are not recoverable from the owner may be recovered from other potentially responsible persons (PLP's), at the direction of the Office of the Attorney General. Additionally, the owner would be able to pursue damage recovery from these same PLP's, should he choose to do so.

The funding for these cleanups comes initially from a tax on hazardous substances, as provided by the MTCA. Anyone who buys these products is contributing to the cleanup fund, as they should. Users of a product, such as gasoline, bear some of the responsibility for the detrimental effects of that use.

3. "What danger is there to public health today?"

While gasoline under the ground does not readily seem a threat to human health, it may be a threat now or in the future. A spill of this magnitude must be investigated and cleaned up thoroughly to ensure the threat is mitigated. The most obvious threat would be one of fire or explosion. Gasoline vapors are extremely dangerous, and just because initially reported vapors have subsided, there is no guarantee presently they won't return. Additionally, the MTCA requires Ecology to protect groundwater, as potential drinking water. Even though no one is drinking the groundwater in the vicinity of this site, someone someday may need to do just that. Therefore, cleanup standards for soil and groundwater must be met. A hundred parts per million cleanup standard for soil may seem low, but that level has been determined

to be protective of groundwater. Finally, the MTCA requires Ecology to protect not only human health, but also the environment. The cleanup standards are protective of both.

4. The consent decree process is too formal for this cleanup. This may be true, but presently it is the only way financial assistance is accessible (see answer to number one).
5. "Writing Ecology a blank check for fifty thousand dollars is what Mr. Choung is going to do under this decree."
Mr. Choung is under no obligation to sign the consent decree. He is free to fulfill the requirements of the law on his own. Additionally, Ecology must follow the terms of the decree, and the process is clearly defined. While it's clear from an English usage standpoint that there is no such thing as a blank check with a pre-defined sum on it, I'm confident the money will be spent wisely.

Responses to Mr. Gerald Pierce:

1. It's "a waste of taxpayers' money."
Ecology, and I'm quite sure a majority of the area residents, do not feel this cleanup action is a waste of money. Adjacent property owners should be particularly concerned, because if contamination migrates to their property, they incur liability, and a reduction in the value of their property. Additionally, this may not involve a complete loss of taxpayers' money, because the first fifty thousand dollars must be payed back to Ecology.
2. "Mr. Choung is being sucked in."
See comment number five for Mr. Penberthy.