

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)	AGREED ORDER
)	
Briggs Nursery, Inc. and Gary E. Briggs)	No. DE 02TCPSR-4593
4407 Henderson Boulevard SE)	
Olympia, Washington 98501)	

TO: Briggs Nursery, Inc. and Gary E. Briggs
I.

Jurisdiction

This Agreed Order ("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
Briggs Nursery, Inc. and Gary E. Briggs:

1. Briggs Nursery, Inc. is the owner and operator of an active wholesale nursery located on approximately 120 acres at 4407 Henderson Blvd. SE in Olympia, Washington. More specifically, the nursery is located at the intersection of Yelm Highway and Henderson Boulevard SE at Sections 35 and 36, Township 18 North, Range 2 West, latitude 47°00'19"N, longitude 122°53'06"W.
2. Gary E. Briggs is the owner of the land on which the nursery operates and leased the land to the nursery in the past. As of July 1, 2002 the premises

at issue will no longer be in the nursery lease and the cleanup is a part of the release of that property to the owner.

3. From approximately the 1930s through the 1960s, a natural depression located on the west side of the nursery property and east of the Central Kettle was used as a depository for solid waste generated from the nursery operations. The types of wastes placed in this depression include plastic sheeting, plastic and ceramic pots, tree stumps, scrap metal; wood debris, bottles, and other miscellaneous wastes. The disposal area was overlain by clean fill material.
4. During the fall of 2001, Briggs Nursery Inc. initiated a clean up action of solid wastes in the natural depression. The scope of work and methodology for evaluating waste materials encountered during the clean up were documented in a "Work Plan, Briggs Nursery, Inc., Farm Debris Disposal Area, Olympia, Washington" dated September 17, 2001. The Work Plan was provided to and approved by the Thurston County Health Department and the State of Washington Department of Ecology.
5. As part of its nursery operations, Briggs Nursery, Inc. historically applied pesticides in accordance with manufacturer specifications.

6. During 2001, excavated soil was screened and solid wastes were segregated and disposed off site in licensed landfills. Screened stockpiled soil was sampled and chemically tested for organic and inorganic constituents. Pesticide product containers containing solids or fluids were not found in the solid waste debris in 2001.
7. Concentrations of chlorinated pesticides were detected in stockpiled soil at concentrations below Model Toxic Control Act (MTCA) Method B residential soil clean up levels, with the exception of the northwest corner of the excavation.
8. Tests of the northwest pit showed concentrations of aldrin, DDD, DDE, DDI, and dieldrin in soil above MTCA Method B clean up levels and ranged from 0.42 mg/kg (parts per million) to 50 mg/kg. The constituents were detected between 12 and 15 feet below ground surface (bgs) but were undetected from 17 to 22 feet bgs. Any affected soils were retained in a segregated pile.
9. Seven exploratory borings were completed in April 2002 to further define the lateral and vertical extent of solid waste and the potential presence of chlorinated pesticides in soil between the west side of the excavation and the east side and top of the Central Kettle slope. Solid wastes were found at depths ranging from seven to 25 feet bgs across an area of

approximately 120 feet in length. Aldrin and dieldrin were detected above MTCA Method B soil cleanup levels between 15 and 25 feet in isolated borings. Aldrin and dieldrin concentrations ranged from 0.07 mg/kg to 9.4 mg/kg.

10. The presence of solid waste on the eastern side of the Central Kettle slope indicates that subsurface wastes may extend from the top of the slope to the bottom of the slope. The lateral and vertical extent of waste in this area has not been defined and will be the subject of the first round of tests under this Agreement.
11. Water and sediment samples collected from the Central Kettle in 1996 were analyzed for chlorinated pesticides, other organic compounds, and metals. All constituents were either reported undetected at the analytical detection limit or were present at concentrations below MTCA cleanup levels.

III.

Ecology Determinations

1. Briggs Nursery, Inc. is an "owner or operator" of a "facility" as defined in RCW 70.105D.020(4). Gary E. Briggs is an "owner or operator" of a "facility" as defined in RCW 70.105D.020(4).
2. Briggs Nursery, Inc. and Gary E. Briggs are "potentially liable persons" as defined in RCW 70.105D.020(16) and .040.

3. The "facility" at issue is a solid waste site less than five acres in size, hereinafter referred to as "the site" and is located at 4407 Henderson Boulevard SE, Olympia, Washington 98501 and further described in Exhibits A and B.
4. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
5. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there has been a release or threatened release of hazardous substances at the facility, as defined at RCW 70.105D.020(20).
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 Briggs Nursery, Inc. and Gary E. Briggs 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. A Remedial Action (RA) will be performed at the site. A Remedial Action Work Plan is provided in Exhibit 1. The RA will be performed in two phases. Phase I involves performing exploratory test pits on the eastern slope of the Central Kettle to further define the lateral and vertical extent of solid waste and the potential presence and concentrations of pesticides and other potential wastes. The results of Phase I will be used to further refine the area and extent of the remedial action.
2. After Phase I is complete, a Phase II Remedial Action Work Plan (RAP) will be submitted to Ecology for approval prior to conducting full-scale remediation. The RAP will outline the procedures and methodologies for full scale soil excavation, screening of solid waste, soil stockpile management, sampling and analysis, waste segregation, management and disposal, storm water control, erosion control; protection and stabilization of slopes and protection of wetlands; site restoration, post-excavation sampling, and closure.
3. The schedule for performance and deliverables are provided in Exhibit 1.
4. Monthly progress reports will be submitted to Ecology. The progress reports will address sampling activities, quality assurance/quality control (QA/QC) and any proposed or Ecology approved deviations from the RAP

Terms and Conditions of Order1. Definitions

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

WAC 173-340-600(11)(c) requires a 30-day public comment period before this agreed order 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. Briggs Nursery, Inc. and Gary E. Briggs 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). Briggs Nursery, Inc. and Gary E. Briggs shall pay the required amount within 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 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: Lisa Pearson

Address: P.O. Box 47775

Olympia, Washington 98504-7775

The project coordinator for Briggs Nursery, Inc. and Gary E. Briggs is:

Name: Kathy Brunson

Address: 4407 Henderson Boulevard SE, Olympia Washington 98501

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Briggs Nursery, Inc. and Gary E. Briggs, 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 Briggs Nursery, Inc. or Gary E. Briggs change project coordinator(s), written notification shall be provided to Ecology or Briggs Nursery, Inc. and Gary E. Briggs 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. Briggs Nursery, Inc. or Gary E. Briggs 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. Briggs Nursery, Inc. or Gary E. Briggs 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, Briggs Nursery, Inc. and Gary E. Briggs shall not perform any remedial actions at "the site" at Briggs Nursery, Inc. outside 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 Washington.

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 Briggs Nursery, Inc. and Gary E. Briggs. By signing this Agreed Order, Briggs Nursery, Inc. and Gary E. Briggs agree 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 Briggs Nursery, Inc. and Gary E. Briggs during an inspection unless doing so interferes with Ecology's sampling. Briggs Nursery, Inc. and Gary E.

Briggs shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation: Briggs Nursery, Inc. and Gary E. Briggs shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site.

Briggs Nursery, Inc. and Gary E. Briggs shall help coordinate and implement public participation for the site.

8. Retention of Records: Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc. and Gary E. Briggs, then Briggs Nursery, Inc. and Gary E. Briggs agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution: Briggs Nursery, Inc. or Gary E. Briggs 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 regarding the site shall be binding and final. Briggs Nursery, Inc. and Gary E. Briggs are 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 ch. 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 Briggs Nursery, Inc. or Gary E. Briggs 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 Briggs Nursery, Inc. or Gary E. Briggs to require those remedial actions required by this Agreed Order, provided Briggs Nursery, Inc. and Gary E. Briggs comply 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 Briggs Nursery, Inc. or Gary E. Briggs.

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 Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc. or Gary E. Briggs 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 Briggs Nursery, Inc. or Gary E. Briggs may have in the site or any portions thereof, Briggs Nursery, Inc. or Gary E. Briggs 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, Briggs Nursery, Inc. or Gary E. Briggs shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

A. All actions carried out by Briggs Nursery, Inc. and Gary E. Briggs 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.

Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc. or Gary E. Briggs determine 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 Briggs Nursery, Inc. or Gary E. Briggs shall be responsible to contact

the appropriate state and/or local agencies. If Ecology so requires, Briggs Nursery, Inc. or Gary E. Briggs 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 Briggs Nursery, Inc. and Gary E. Briggs and on how Briggs Nursery, Inc. and Gary E. Briggs must meet those requirements. Ecology shall inform Briggs Nursery, Inc. and Gary E. Briggs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc.'s or Gary E. Briggs' receipt of written notification from Ecology that Briggs Nursery, Inc. and Gary E. Briggs 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 Briggs Nursery, Inc. or Gary E. Briggs refuse, without sufficient cause, to comply with any term of this Order, Briggs Nursery, Inc. and Gary E. Briggs 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 Section 6 of Ch. 70.105D RCW.

Effective date of this Order: OCTOBER 11, 2002

Briggs Nursery, Inc.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By C.E.D.

By Rebecca S. Lenson

Gary E. Briggs
Gary E. Briggs

