

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)	Enforcement Order
Action by:)	
)	
BURNS BROTHERS)	
516 SE MORRISON, SUITE 1200)	No. DE 92TC-C109
PORTLAND, OR 97214)	

To: Dave Ray, President
Trust Service Stations

I.

Jurisdiction

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

II.

Statement of Facts

2.1 Burns Brothers, Incorporated (Burns Brothers) owns and operates a combination motor fuel/deli store under the name of Bingo Fuel Stop, located in Thorp, near interstate 90 about eight miles northwest of Ellensburg. The site is located within the SE1/4 NE1/4 of Section 14, Township 18N, Range 17 E.W.M. in Thorp, Washington.

2.2 Ecology personnel conducted a site visit on February 7, 1992. During this visit Ecology personnel made the following observations:

- a. Explosive concentrations of gasoline vapors in and within 50 feet of an open excavation.
- b. Motor vehicles were observed travelling near (within 10 feet) of this open pit.
- c. Evidence of extensive soil contamination caused by petroleum product(s).

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d. Petroleum product(s) floating on ground water was observed within the open excavation(s).

e. Review of facility petroleum inventory records indicate significant recent releases of petroleum product(s) to the environment.

2.3 It was also discovered that a flash fire had occurred during pit excavation activities at the site the week of January 27, 1992.

III.

Ecology Determinations

3.1 Burns Brothers is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2 The facility is known as Bingo Fuel Stop and is located at Thorp, near interstate 90 about eight miles northwest of Ellensburg.

3.3 The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

3.4 Based on the presence of these hazardous substances at 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).

3.5 By letter dated February 11, 1992, Ecology notified Burns Brothers of its status as a "potentially liable person" under RCW 70.105D.040. This letter also provided notice and opportunity for comment.

3.6 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.

3.7 Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

3.8 This Enforcement Order is being issued on an Emergency basis.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Burns Brothers take the following emergency remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

4.1 Burns Brothers will plan, conduct, and finance an emergency remedial action which delineates and contains all hazardous substances released or posing a threatened release to the environment in accordance with the provisions of this part:

- a. Remove as much of the hazardous substance from the Underground Storage Tanks (UST) as is possible and necessary to prevent further release to the environment;
- b. Eliminate or reduce any fire, explosion or vapor hazards in such a way as to minimize any release of hazardous substances to surface water and ground water;
- c. Visually inspect any aboveground releases or exposed below ground releases and prevent the hazardous substance from spreading into surrounding soils, ground water and surface water;
- d. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product;
- e. Reduce the threat to human health and the environment posed by contaminated soils that are excavated or discovered during emergency remedial activities. Treatment, storage and disposal of soils

must be carried out in compliance with all applicable federal, state and local requirements;

f. Test for hazardous substances in the environment where they are most likely to be present. Such testing shall be done in accordance with a sampling and analysis plan prepared under WAC 173-340-820. The sample types, sample locations, and measurement methods shall be based on the nature of the stored substance, type of subsurface soils, depth to ground water and other factors as appropriate for identifying the presence and source of the release. If contaminated soil is found in contact with the ground water or soil contamination appears to extend below the lowest soil sampling depth, then testing shall include the installation of ground water monitoring wells to test for the presence of possible ground water contamination. The testing performed under this subsection shall include, at a minimum, the following:

1. Benzene, toluene, ethylbenzene, xylene, lead, and total petroleum hydrocarbons where leaded gasoline may be present;
2. Benzene, toluene, ethylbenzene, xylene and total petroleum hydrocarbons where unleaded gasoline may be present;
3. Total petroleum hydrocarbons and other appropriate indicator hazardous substances where any petroleum product other than gasoline may be present;
4. The hazardous substance stored and any likely decomposition by-products where a hazardous substance other than petroleum may be present; and
5. Any other tests required by Ecology; and

g. Investigate for the presence of free product in accordance with the following provisions:

1. Free product removal. Burns Brothers shall conduct an emergency action to remove the free

product while continuing, as necessary, any other actions required under this section. To accomplish this Burns Brothers shall:

(A) Conduct free product removal to the maximum extent practicable and in a manner which minimizes the spread of hazardous substances, by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. The objective of free product removal system must be, at a minimum, to stop the free product migration;

(B) Properly treat, discharge, or dispose of recovery by-products in compliance with all applicable local, state, and federal regulations and permits; and

(C) Handle all flammable products safely to prevent fires and explosions.

h. Reporting requirements. The following reports are required to be submitted to Ecology:

1. Status reports. Within one week of commencing this emergency action, and every week thereafter, Burns Brothers shall submit a status report to Ecology. The status report shall identify and describe the emergency actions taken and information gathered since the last report. These reports must be provided in writing to Ecology.

2. Emergency Action report. Within ninety days after commencement of this emergency action Burns Brothers shall submit a report to Ecology about the nature and effectiveness of emergency actions taken at the site. This report shall be submitted to Ecology in writing. The emergency action report shall include, at a minimum, the following information:

(A) A summary of all weekly status reports;

(B) A site conditions map indicating approximate boundaries of the property, all

areas where hazardous substances are known or suspected to be located, and sampling locations;

(C) Available data regarding surrounding populations, surface and ground water quality, use and approximate location of wells potentially affected by the release, subsurface soil conditions, depth to ground water, direction of ground water flow, proximity to and potential for affecting surface water, locations of sewers and other potential conduits for vapor or free product migration, surrounding land use, and proximity to sensitive environments;

(D) Results of tests for hazardous substances performed under this section;

(E) Results of the free product investigation required under this section;

(F) A detailed description of the measures taken to contain and prevent the migration of the hazardous substances released from the facility.

i. Any other information required by Ecology.

4.2 Within 7 days of the effective date of this Emergency Order, Burns Brothers shall propose to Ecology a detailed work plan for conducting emergency remedial actions at the site. The work plan must include a proposed schedule for the emergency remedial actions.

4.3 Within 48 hours after Ecology has reviewed and returned the work plan and schedule, with any Ecology revisions, to Burns Brothers, Burns Brothers will commence emergency remedial activities at the facility in accordance with the work plan as revised by Ecology.

V.

Terms and Conditions of Order

5.1 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.

5.2 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.

5.3 Remedial Action Costs

Burns Brothers 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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. Burns Brothers 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 may result in interest charges.

5.4 Designated Project Coordinators

The project coordinator for Ecology is:

Susan Burgdorff (509) 454-7835
Department of Ecology
Central Regional Office
106 South 6th Avenue
Yakima, WA 98902-3387

The project coordinator for Burns Brothers shall be named within seven calendar days of the effective date of this Order.

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Burns Brothers, 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 Burns Brothers change project coordinator(s), written notification shall be provided to Ecology or Burns Brothers at least ten (10) calendar days prior to the change.

5.5 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. Burns Brothers 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.

Except when necessary to abate an emergency situation, Burns Brothers shall not perform any remedial actions at Bingo Fuel Stop 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 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 Burns Brothers. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Burns Brothers during an inspection unless doing so would interfere with Ecology's sampling. Burns Brothers shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

5.7 Public Participation

Burns Brothers shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Burns Brothers shall help coordinate and implement public participation for the Site.

5.8 Retention of Records

Burns Brothers 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

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

5.9 Dispute Resolution

Burns Brothers 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 of this Order. Ecology resolution of the dispute shall be binding and final.

Burns Brothers 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.

5.10 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 Bingo Fuel Stop.

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 Burns Brothers to stop further implementation of this Order for such period of time as needed to abate the danger.

5.11 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 Burns Brothers 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 Burns Brothers may have in the Site or any portions thereof, Burns Brothers 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, Burns Brothers shall notify Ecology of the contemplated transfer.

5.12 Compliance With Other Applicable Laws

All actions carried out by Burns Brothers pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Burns Brother's receipt of written notification from Ecology that Burns Brothers 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

7.1 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 Burns Brothers refuses, without sufficient cause, to comply with any term of this Order, Burns Brothers 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: FEB 11 1992.



Anthony W. Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

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Enforcement Order
Burns Brothers
No. DE 92Tc-C109
Page 13

APPENDIX I

Ground Water Data Submittals



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

106 South 6th Ave. • Yakima, Washington 98902-3387 • (509) 575-2490

FEB 11 1992

CERTIFIED MAIL

P 868 668 622

Burns Brothers
Dave Ray, President,
Trust Service Stations
516 SE Morrison, Suite 1200
Portland, OR 97214

RE: Notice of Potential Liability for the Release of
Hazardous Substances Under the Model Toxics Control
Act

Dear Mr. Ray:

Chapter 70.105D RCW, the Model Toxics Control Act (Act), requires the Department of Ecology to provide written notice to all persons it believes to be potentially liable for the release of hazardous substances.

It is Ecology's understanding that Burns Brothers owns/operates Bingo Fuel Stop located near Interstate 90 about eight miles northwest of Ellensburg in Thorp, Washington, and that credible evidence exists indicating that a release (or threatened release) of a hazardous substance has occurred at this site. The evidence supporting these findings is as follows:

Ecology personnel conducted a site visit on February 7, 1992. During this visit Ecology personnel made the following observations:

- a. Explosive concentrations of gasoline vapors in and within 50 feet of an open excavation.
- b. Evidence of extensive soil contamination caused by petroleum product(s).
- c. Petroleum product(s) floating on ground water was observed within the open excavation(s).
- d. Review of facility petroleum inventory records indicate significant recent releases of petroleum product(s) to the environment.

As a result of this evidence, you have been identified as a



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Burns Brothers
Dave Ray, President
Page 2

person potentially liable for the release of petroleum products at Bingo Fuel Stop located within the SE1/4 NE1/4 of Section 14, Township 18 N, Range 17 E.W.M. in Thorp, Washington.

Under the Act, you have 30 calendar days from the receipt of this letter to submit written comments to Ecology on your proposed status as a potentially liable person (PLP). Following a review of those comments, Ecology will make a final written determination of your status.

If you are aware of any other persons who may be potentially liable for the release at this site, Ecology encourages you to provide us with their identity and the reason you believe they are potentially liable.


Ecology intends to conduct the following actions at the site:

- o Issue an Enforcement Order for Emergency Action
- o Investigate potential violations of Underground Storage Tank Rules
- o Ensure completion of a Remedial Investigation/Feasibility Study.

Ecology's policy is to work cooperatively with PLPs. Please note that cooperating with Ecology in planning or conducting remedial actions at the site is not an admission of guilt or liability and could ultimately result in a more efficient, prompt, and effective cleanup.

Enclosed, please find a copy of Chapter 70.105D RCW and Chapter 173-340 WAC for your information. If you have questions, please feel free to contact the Ecology Site Manager, Susan Burgdorff, at (509) 454-7835.

Sincerely,


Anthony W. Grover
Section Manager
Toxics Cleanup Program
Department of Ecology
Central Regional Office

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Enc: Chapter 70.105D RCW
Chapter 173-340 WAC

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