

Cowlitz BP

MTCA

ENFORCEMENT ORDER

In the Matter of Remedial)	Enforcement Order
Action by:)	
Frank Vineyard)	No. DE 91-S123
1818 East Fourth Plain Blvd.)	
Vancouver, Washington 98661)	

To: Frank Vineyard
 1818 East Fourth Plain Blvd.
 Vancouver, Washington 98661

I.

Jurisdiction

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

II.

Statement of Facts

1. The establishment known as Cowlitz B.P., at 101 Mulford Road in Toledo, Washington is located on property owned by Frank Vineyard.
2. During replacement of storage tanks on the site, petroleum contaminated soil was discovered.
3. Soil samples taken from the tank excavation revealed levels as high as 6300 ppm of total petroleum hydrocarbons as gasoline. This contamination exceeds acceptable levels of petroleum product constituent(s) as described in Chapter 173-340 WAC.
4. The extent of this contamination is not known as no remedial investigation has been conducted to date.

III.

Ecology Determinations

1. Frank Vineyard 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 Cowlitz B.P. and is located at 101 Mulford Road, in Toledo, Washington.
3. The substances found at 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 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).

5. By letter dated November 16, 1990, Ecology notified Frank Vineyard of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

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 Frank Vineyard take the following remedial actions:

1. Submit a draft work plan for a remedial investigation/feasibility study (RI/FS) for Ecology review. The purpose of this RI/FS is to collect and evaluate sufficient information about the site to enable the selection of a cleanup action which is protective of human health and the environment. The RI/FS shall be conducted in accordance with WAC 173-340-350. At a minimum, the RI/FS shall include:
 - a. Facility information and site conditions map.
 - b. Sufficient information to characterize (1) ground water gradient; (2) the distribution, concentration, and extent of hazardous substances present in the soil and ground water both on and off site; (3) the properties of the subsurface soils which are likely to influence the rate of hazardous substance migration; and (4) the feasibility of cleanup options.

- c. Information on current and potential future land use (including zoning) associated with the site and adjacent areas potentially affected by the site.
- d. A description and evaluation of alternative site cleanup actions.
- e. Completion of a report which presents all of the information collected and evaluation conducted (including results of the field investigation and raw laboratory data with associated quality assurance/quality control data).

The work plan shall include a detailed description of all work to be performed with respect to the site. The work plan shall include a sampling and analysis plan which includes a quality assurance/quality control plan. A health and safety plan, issued as a separate document shall also be submitted. In addition, the work plan shall include a schedule of all work that is to be performed.

Date: Within five (5) weeks after the effective date of this Order.

- 2. Submit a final RI/FS work plan, which addresses Ecology's comments on the draft work plan, for Ecology approval.

Date: Within three (3) weeks after receiving Ecology's comments on the draft work plan.

- 3. Conduct an RI/FS in accordance with the approved RI/FS work plan.

Date: In accordance with the schedule contained in the approved RI/FS work plan.

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

Frank Vineyard 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.

Frank Vineyard shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, a general description of work performed, an identification of involved staff, and the amount of time spent by involved staff members on the project. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

4. Designated Project Coordinators

The project coordinator for Ecology is:

Tammy Hall
7272 Cleanwater Lane, Mail Stop LU-11
Olympia, Washington 98504
(206) 586-5557

Frank Vineyard shall notify Ecology of its project coordinator within ten (10) calendar days of receiving 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 Frank Vineyard, 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 Frank Vineyard change project coordinator(s), written notification shall be provided to Ecology or Frank Vineyard 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.

Frank Vineyard 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.

In addition, if during the RI/FS study it is found that contamination has migrated to the adjacent property that is also owned by Frank Vineyard, that property will also be included in the Site and all existing abandoned underground storage tanks will be properly closed.

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 Frank Vineyard. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken

by Frank Vineyard during an inspection unless doing so would interfere with Ecology's sampling. Frank Vineyard 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

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

8. Retention of Records

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

9. Dispute Resolution

Frank Vineyard 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. Frank Vineyard 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.

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

12. Compliance With Other Applicable Laws

All actions carried out by Frank Vineyard 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 Frank Vineyard's receipt of written notice from Ecology that Frank Vineyard 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 Frank Vineyard refuses, without sufficient cause, to comply with any term of this Order, Frank Vineyard 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: April 11, 1991.

Michael A. Wilson
Michael A. Wilson
Southwest Region Supervisor
Toxics Cleanup Program

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