

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial) Enforcement Order
Action at:)
)
Soil & Crop, Inc.) No. DE 97TC-E103

101 West Fir Street
Othello, WA 99344-1060

To: Mr. Jiri Vanourek
101 West Fir Street
Othello, WA 99344-1060

I.

Jurisdiction

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

II.

Statement of Facts

1. The site, referred to as the Soil & Crop, Inc.
Site, (Site) covers approximately 11 acres at the northwest
corner of Main Street and Broadway Avenue in the city of
Othello in Adams County, Washington. A Site map is presented
as Exhibit A to this Order.

2. Mr. Jiri Vanourek owned and operated a fertilizer
and pesticide formulation, mixing and distribution facility
on the site from 1963 to 1986. An anhydrous ammonia-
refrigerant business and sales of railroad ties are currently
operated at the site.

3. The Department of Ecology (Ecology) received a report in May of 1986 that a field investigation was being conducted by the consulting firm of Hart-Crowser at the Site.

Hart-Crowser was conducting a site evaluation for the Peoples National Bank (Bank) which included soil and ground water sampling. The Bank was assessing foreclosure action on outstanding notes. The consultant report received by Ecology on July 28, 1986, and results from Ecology sampling conducted on May 12, 1986, indicated that releases of hazardous substances to soil and ground water had occurred at the site.

4. Based on these findings, Ecology issued Order No. DE 86-E116 under authority of Chapter 90.48 RCW, to Mr. Jiri Vanourek and Peoples National Bank in September 1986. The order required that all liquid materials be removed from tanks used in the mixing operation and appropriately used or disposed, and that work plans be prepared to evaluate the rate and extent of soil and ground water contamination present at the Site. Subsequently, tank contents were removed; however, investigative work plans were not completed.

5. On March 1, 1989, the Hazardous Waste Cleanup - Model Toxics Control Act, codified as Chapter 70.105D RCW, went into effect.

6. In September 1990, Ecology, the Bank and Mr. Vanourek reached an agreement whereby the Bank released all real property security interest to Mr. Vanourek and Ecology

released the Bank from any cleanup liability under Chapter 70.105D RCW for releases of hazardous substances.

7. Ecology considered it imperative to move forward quickly on remedial action and in 1991 and 1992 Ecology contractors conducted a remedial investigation and feasibility study of the site. Ground water and soil contamination with the pesticides aldrin, dieldrin and endrin were found to occur at the facility.

8. In 1992 and 1993 Ecology contractors conducted an Interim Action removal of sediments from the wet sump in the basement of the former mixing building as well as several other sumps on the facility. The materials from the sumps were incinerated as dangerous wastes under Ch. 173-303 WAC.

9. Ecology completed a Cleanup Action Plan (CAP) for the site in March 1994. The CAP identified the need to decommission the sump in the mixing building as well as place a gravel barrier over contaminated soils, excavate and dispose of petroleum contaminated soils and implement an ongoing environmental monitoring plan. The CAP also identified the need to place restrictive covenants in the

property deed to ensure the maintenance of all cleanup measures and continuation of environmental monitoring.

10. Mr. Vanourek was named as a Potentially Liable PartyTM as an owner/operator under the Hazardous Waste Cleanup-Model Toxics Control Act in June 1994. Ecology invited Mr. Vanourek to begin negotiations for a Consent Decree to implement the remedial actions identified in the CAP in January 1995.

11. In February 1996, following a series of meetings and correspondence, Mr. Vanourek provided a demonstration that he is not financially capable of completing the full site cleanup. Ecology accepted this demonstration. In September 1996, Ecology determined that state resources were unavailable to conduct final cleanup actions identified in the CAP.

12. In September 1996, Ecology sought to limit human exposure to hazardous substances at the site by requesting that Mr. Vanourek conduct the following specific limited cost tasks:

A. Decommission the sump in the basement of the former mixing building by placement of sealant materials as required under Chapter 173-340 WAC, section 710, Applicable state and federal laws, and Chapter 173-160 WAC, the Minimum Standards For Construction and Maintenance of Wells; and

B. Place restrictive covenants in the property deed to run with the land as required in Chapter 173-340 WAC, section 440, Institutional Controls. The requested restrictions were to notify current and future owners of site contamination, limit contaminated property use to commercial purposes, limit human access to contaminated soil, and prevent any use of contaminated ground water.

13. Mr. Vanourek has not completed either the decommissioning of the sump or placed restrictive covenants in the property deed.

III.

Ecology Determinations

1. Mr. Jiri Vanourek is an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined at RCW 70.105D.020(4).

2. The facility is known as Soil & Crop, Inc. and is located at 101 West Fir Street, Othello, WA 99344-1060.

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 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(19).

5. By letter dated June 13, 1994, Ecology notified Mr. Vanourek 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 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 Mr. Vanourek 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. Within thirty (30) days of receipt of this order, decommission the wet sump in the basement of the

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former mixing building by placement of sealant materials in accordance with Chapter 173-160 WAC. Provide to Ecology written notice five (5) working days in advance of the date and time that the work will be completed. This work must be conducted under the supervision of a licensed well driller in the State of Washington in accordance with Chapter 173-162 WAC, Rules and Regulations Governing the Regulation and Licensing of Well Contractors and Operators.

B. Within forty five (45) days of receipt of this Order, submit to Ecology a well abandonment report on the wet sump decommissioning describing the materials used to seal the sump, and volume of sealant materials installed.

2. A. Within thirty (30) days of receipt of this Order, review and provide all necessary and final comments on the proposed "Declaration of Restrictive Covenants" attached as Exhibit B for Ecology and Washington State Attorney General approval. Exhibits to this Order are incorporated by reference and are integral and enforceable parts of the Order.

B. Within thirty (30) days of Ecology and Attorney General approval of the "Declaration of Restrictive Covenants," provide written certification to Ecology that the approved Restrictive Covenants have been placed in the property deed to run with the land.

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

Mr. Vanourek shall pay to Ecology costs incurred by Ecology pursuant to this Order. Ecology costs incurred beginning February 11, 1997, and thereafter until the conditions of this Order are fulfilled and notice of such provided, shall be paid. 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). Mr. Vanourek shall pay the required

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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

The project coordinator for Ecology is:

Mark R. Fuchs
4601 N. Monroe, Suite 202
Spokane, WA 99205-1295

The project coordinator for Soil & Crop, Inc. is:

Mr. Jiri Vanourek
101 West Fir Street
Othello, WA 99344-1060

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Mr. Vanourek, 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 Mr. Vanourek change project coordinator(s), written notification shall be provided to Ecology or Mr. Vanourek 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. Mr. Vanourek 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. Mr. Vanourek 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, Mr. Vanourek shall not perform any remedial actions at Soil & Crop, Inc. outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

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; conducting any necessary remedial actions; 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 Mr. Vanourek. 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 Mr. Vanourek during an inspection unless doing so would interfere with Ecology's sampling. Mr. Vanourek 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

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

8. Retention of Records

Mr. Vanourek 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 his possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Mr. Vanourek, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution

Mr. Vanourek 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 his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Mr. Vanourek 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.

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 Soil & Crop, Inc.

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 Mr. Vanourek 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 Mr. Vanourek

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

12. Compliance With Other Applicable Laws

A. All actions carried out by Mr. Vanourek 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 have been included in work identified in Section IV. of this Order.

Mr. Vanourek has 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 Mr. Vanourek determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, he shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Mr. Vanourek shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Mr. Vanourek 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 Mr. Vanourek and on how Mr. Vanourek must meet those requirements. Ecology shall inform Mr. Vanourek in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Mr. Vanourek 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 Mr. Vanourek 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 Mr. Vanourek's receipt of written notification from Ecology that Mr. Vanourek 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.

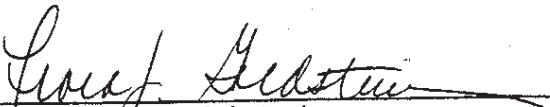
VII.

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 Mr. Vanourek refuses, without sufficient cause, to comply with any term of this Order, Mr. Vanourek will be liable for:
- (1) up to three times the amount of any costs incurred by the state of Washington as a result of his refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day he 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 3, 1997.


Flora J. Goldstein
Section Manager
Toxics Cleanup Program
State of Washington
Department of Ecology