

Bingo

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY 93 MAR 29 P2:14

In the Matter of Remedial Action by: )  
BURNS BROTHERS ) AGREED ORDER  
516 SE MORRISON, SUITE 1200 ) No. DE 93TC-C171  
PORTLAND, OR 97214 )

TO: L. Kirk French, President  
Trust Service Stations

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 Burns Brothers.

2.1. Burns Brothers, Incorporated (Burns Brothers) owns and operated a former combination motor fuel/deli store under the name of Bingo Fuel Stop (the site), 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 EWM in Thorp, Washington.

2.2. Washington State Department of Ecology (Ecology) personnel conducted a site visit on February 7, 1992. During this visit Ecology personnel made the following observations:

a. Petroleum product(s) floating on ground water within open excavations on-site, resulting in explosive concentrations of gasoline vapors while the facility was open for business.

2.3. It was also reported to Ecology by Burns Brothers and the contractor for the independent remedial action that a flash fire had occurred during pit excavation activities at the site the week of January 27, 1992.

2.4. An emergency interim remedial action was conducted by Burns Brothers pursuant to Enforcement Order

No. DE 92TC-C109, issued on an emergency basis February 11, 1992. A report summarizing this interim action, entitled "Emergency Remedial Action Report for Bingo Fuel Stop", was submitted June 8, 1992, and contained the following facts:

a. Laboratory analyses confirmed concentrations of petroleum product(s) in the soil and ground water at the site exceed Method A cleanup levels listed in Chapter 173-340 WAC. The lateral and vertical extent of this contamination has not been characterized.

b. Field observations confirmed a source of the release of petroleum product(s) at the site to be the underground storage tank system, including corroded piping and leaking pipe fittings both in the vicinity of the underground storage tanks (USTs) and the aboveground storage tanks (ASTs).

c. As of June 1992, approximately 770 gallons of petroleum product(s) had been recovered, approximately 350,000 gallons of petroleum contaminated ground water had been treated to lower the petroleum concentrations, and approximately 1,500 cubic yards of petroleum contaminated soils (PCS) had been excavated from the former UST locations and are temporarily stockpiled on-site awaiting remediation.

d. Laboratory analyses of ground water samples collected from domestic wells surrounding the site indicated no petroleum product(s) contamination above laboratory detection limits or Method A cleanup levels.

### III.

#### Ecology Determinations

3.1. Burns Brothers is an "owner or operator" as defined in 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, is referred to as 'the site', and is located on the south side of Interstate 90 at Exit 101 in Thorp, Washington. The facility boundaries currently extend beyond the property boundaries to include the following:

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- a. Areas potentially and actually impacted by petroleum contaminated water seepage and runoff;
- b. Areas where petroleum contaminated surface waters have been observed;
- c. Areas where petroleum contaminated surface waters, ground waters, or soils are found to be located;
- d. Areas where surface waters flow adjacent to Bingo Fuel Stop and adjacent to Thorp Highway east of Bingo Fuel Stop.

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

3.4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined in 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, Ecology 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 Agreed Order is in the public interest.

3.8. This Agreed Order is requiring that a state remedial investigation/feasibility study (RI/FS) be conducted for the site.

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IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Burns Brothers take the following 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 a state remedial investigation/feasibility study (RI/FS) and RI/FS report which fully determines the extent and magnitude of all hazardous substances released from the facility. Sufficient information shall be collected, developed, and evaluated to enable the selection of a cleanup action under WAC 173-340-360. At a minimum, the RI/FS shall be conducted in accordance with the provisions of this part:

a. Contents. The RI/FS and reports shall include the following information:

1. General facility information. General information, including: Project title; name, address, and phone number of project coordinator; legal description of the facility location; dimensions of the facility; present owner and operator; chronological listing of past owners and operators and operational history; and other pertinent information.

2. Site conditions map(s). An existing site conditions map which illustrates relevant current site features and relevant adjacent surrounding features, including: Property boundaries; proposed facility boundaries; surface topography of the site at two-foot contour intervals, with at least one contour line located just past the surface water to the south, at the eastbound I-90 off-ramp center line to the north, just past the creek to the west, and downstream of the culvert discharge point on the east side of Thorp Highway; surface and subsurface structures, including septic tanks and remaining underground piping; utility lines and any other conduits which could transport

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contaminants; monitoring well locations; domestic well locations within one quarter mile of the site; locations of any possible springs and seeps within one quarter mile of the site; locations of all surface waters (creeks, wetlands, and ponds) adjacent to the site and across Thorp Highway; location(s) of discharge point(s) for the creek that flows adjacent to the site; locations of upgradient and nearby irrigation canals which may affect site ground water regime; and other pertinent information.

3. Field investigations. Sufficient investigations to characterize the distribution of all hazardous substances present at the site, and released from the site, and threat to human health and the environment. These investigations will need to address the following:

i. Surface water and sediments. Surface water includes creeks, wetlands, and seeps in the site vicinity. Investigations of surface water and sediments to characterize significant hydrologic features including: Surface drainage patterns and quantities, areas of erosion and sediment deposition, surface waters, floodplains, and actual and potential hazardous substance migration routes towards and within these features. Sufficient surface water and sediment sampling shall be performed to adequately characterize the areal and vertical distribution and concentrations of hazardous substances. Properties of surface and subsurface sediments which are likely to influence the type and rate of hazardous substance migration, or are likely to affect the ability to implement alternative cleanup actions shall be characterized.

ii. Soils. Investigations to adequately characterize the areal and vertical distribution and concentrations of all hazardous substances in the soil

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due to the facility. Properties of surface and subsurface soils which are likely to influence the type and rate of hazardous substance migration, and which are likely to affect the ability to implement alternative cleanup actions shall be characterized.

iii. Geology and ground water system characteristics. Investigations of site geology and hydrogeology to adequately characterize the areal and vertical distribution and concentrations of hazardous substances in the ground water and those features which affect the fate and transport of these hazardous substances. This shall include the description, physical properties, and distribution of bedrock and unconsolidated materials; ground water flow rate and gradient for affected and potentially affected ground waters; ground water divides; areas of ground water recharge and discharge; geological and hydrogeological cross-sectional diagrams across the facility showing the relationship of surface waters to ground water; location of public and private production wells; location and effect of upgradient and nearby irrigation canals on ground water regime; transmissivity and conductivity of site; ground water chemistry, including major anions and cations; ground water quality data; and drilling and sampling logs for ground water monitoring wells. These investigations of site geology and hydrogeology shall determine and document whether or not the contaminated shallow ground water aquifer on-site is potentially connected to the lower aquifer(s) and surrounding surface waters, and whether or not the contaminated shallow aquifer is a current or potential future source of drinking water, as defined in WAC 173-340-720(1). Ecology assumes the lower aquifer(s) and surface waters in

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the site vicinity to be potentially affected, unless the RI adequately documents otherwise. Documentation is subject to review and approval by Ecology.

iv. Air. An evaluation of air quality impacts, including sampling, where appropriate, and information regarding local and regional climatological characteristics which are likely to affect the hazardous substance migration such as: Seasonal patterns of rainfall; the magnitude and frequency of significant storm events; temperature extremes; prevailing wind direction; and wind velocity.

v. Land use. Information characterizing human populations exposed or potentially exposed to the hazardous substance(s) released from the facility and present and proposed land uses and zoning for the site and potentially affected areas.

vi. Natural resources and ecology. Information to determine the impact or potential impact of the hazardous substance(s) from the facility on the natural resources and ecology of the area including: Sensitive environments, i.e., adjacent wetland and creek, plant and animal species, and other environmental receptors.

vii. Hazardous substance sources. A description of and sufficient sampling to identify and define the location(s), quantity, areal and vertical extent, concentration within and sources of waste disposal areas, and/or areas where hazardous substances have come to be located. For all hazardous substances released or potentially released at the site, including Burns Red fuel additive, information on the physical and chemical characteristics, and the biological

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effects of hazardous substances shall be provided.

viii. Regulatory classifications.  
Regulatory designations classifying  
affected air, surface water, and ground  
water, if any.

4. Immediate control of ongoing release(s) of hazardous substance(s). Immediate actions should already have been initiated prior to issuance of this Agreed Order, to stop the off-site migration of petroleum contaminated waters. The contaminated water appears to be leaving the site from the north embankment (just north of Recovery Sump 2 ("RS-2")), migrating to a collection box and then east under Thorp Highway where it discharges from a culvert into the rerouted creek on the farm east of Bingo Fuel Stop. Control actions taken to stop the contaminant migration shall be monitored for effectiveness on a weekly basis, and additional control actions shall immediately be taken if existing actions are at any time found to be inadequate. Control actions shall be deemed inadequate if any of the following conditions are found to exist on the site boundary or off-site:

- i. Petroleum sheen on surface water, ground water, or ground;
- ii. Petroleum odor emanating from surface water, ground water, or ground;
- iii. Laboratory results indicating presence of hazardous substances at levels exceeding laboratory detection limits; or
- iv. Any other indications of hazardous substance(s) migrating off-site. Control actions and monitoring to prevent off-site contaminant migration shall remain in operation whenever such migration would otherwise potentially or actually occur, until such time that the



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entire Bingo site has adequately  
completed a final cleanup action.

5. Work plans. A sampling and analysis plan and a safety and health plan shall be prepared as part of the RI/FS activities. These plans shall conform to the requirements specified in WAC 173-340.

6. Treatment options for existing petroleum contaminated soil stockpile shall be researched and evaluated for compliance with WAC 173-340-360, and a written proposal outlining the proposed treatment method(s) shall be submitted to Ecology for approval, after which treatment shall commence. These activities shall be conducted in accordance with the schedule established in provision 4.2(d), below.

7. State Waste Discharge Permit application for on-site discharge of treated petroleum contaminated ground water shall be submitted to Ecology within one month of issuance of this Agreed Order. Contaminant concentrations in ground water discharged at the site shall not exceed those levels specified in the permit application, and the permit when approved.

8. Risk assessment. If Method A cleanup levels are used for the site, a risk assessment fully characterizing the current and potential threats to human health and the environment that may be posed by hazardous substances released or potentially released from the site. If Method B cleanup levels are used, a risk assessment as required in WAC 173-340-700 through 760, Part VII-Cleanup Standards, shall be included.

9. A list of potential contaminants of concern shall be compiled from those hazardous substances known or suspected to have been released from the facility and which pose an actual or potential threat to human health or the environment. The compilation of contaminants of concern shall

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be conducted in accordance with WAC 173-340-700 through 760 (Part VII-Cleanup Standards). The list of contaminants of concern shall be subject to revision at any time based on results of laboratory analyses or any other information which may become available. The list of contaminants of concern to be fully evaluated in the RI/FS shall be subject to review and approval by Ecology.

10. Proposed cleanup levels. Either Method A or Method B cleanup levels may be used for the site, as appropriate for the contaminants of concern and media affected. All cleanup levels shall be calculated in accordance with WAC 173-340-700 through 760 (Part VII-Cleanup Standards). Cleanup levels to be incorporated into final cleanup standards for the subsequent Cleanup Action at the site, must meet threshold requirements listed in WAC 173-340-360. All cleanup levels shall be subject to review and approval by Ecology prior to implementation. Method C cleanup levels shall not be used at the site as the site does not meet the required conditions listed under WAC 173-340-706 for use of Method C.

i. Petroleum Products, including gasoline and diesel. Either Method A or Method B cleanup levels may be used, as appropriate for gasoline and diesel products and media affected. If Method B is used, cleanup levels shall be calculated in accordance with WAC 173-340-700 through 760 (Part VII-Cleanup Standards). Resulting cleanup levels shall protect human health and the environment from the toxicity of the gasoline and diesel products as a whole, and from the toxicity resulting from synergistic effects among all of the gasoline and diesel constituents. It may be possible to utilize the toxicity data from the Environmental Protection Agency (EPA), contained in Appendix B, to calculate cleanup levels for total

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petroleum hydrocarbons (TPH) as gas, and TPH as diesel. The cleanup levels to be incorporated into final cleanup standards for the subsequent Cleanup Action at the site shall be subject to review and approval by Ecology prior to implementation.

ii. Burns Red fuel additive. Either Method A or Method B cleanup levels may be used, as appropriate for the contaminants of concern and media affected. If Method B is used, cleanup levels shall be calculated in accordance with WAC 173-340-700 through 760 (Part VII-Cleanup Standards). The cleanup levels to be incorporated into final cleanup standards for the subsequent Cleanup Action at the site shall be subject to review and approval by Ecology prior to implementation.

11. Cleanup action alternatives. An evaluation of alternative cleanup actions that protect human health and the environment by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route, shall be required, in accordance with WAC 173-340-360. Ingestion of contaminated ground water shall be included in the exposure pathways, unless Burns Brothers adequately documents that the contaminated ground water is not a current or potential drinking water source as defined in WAC 173-340-720(1), and that the contaminated ground water is not actually or potentially connected to the lower aquifer(s) or surface waters. This documentation is subject to review and approval by Ecology. The number and types of alternatives to be evaluated shall take into account the characteristics and complexity of the facility. A phased approach for evaluation of alternatives may be required including an initial screening of alternatives to reduce the number of potential remedies for the final detailed evaluation. The final evaluation of cleanup action alternatives that pass the initial

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screening shall be evaluated for compliance with the requirements in WAC 173-340-360. In accordance with WAC 173-340-360(10), a draft Cleanup Action Plan shall be included with the Feasibility Study report.

12. Treatability studies. Ecology may require treatability studies as necessary to provide sufficient information to develop and evaluate cleanup action alternatives for the site.

13. Any information Ecology determines is needed to fulfill the applicable requirements of the State Environmental Policy Act.

14. Other information as required by Ecology.

b. Reporting Requirements. Monthly progress reports shall be submitted, and draft and final reports shall be submitted at the completion of the RI and at the completion of the FS. Additionally, Ecology may require reports to be submitted following discrete elements of the RI/FS. Reports shall be submitted to Ecology for review and approval in accordance with the schedule listed below.

4.2. The RI, FS, and related activities shall be conducted and reports submitted in accordance with the following schedule:

a. Immediate control of ongoing release(s) of hazardous substance(s), as required in provision 4.1(a)(4), shall have been initiated prior to issuance of this Order, and the release observed in November 1992 and January 1993 shall be under control prior to issuance of this Order.

b. A revised or amended Work Plan shall be submitted within three weeks of receipt of Ecology's comments on the September 28, 1992 Work Plan.

c. Background information investigation may have commenced prior to issuance of this Order as referred to by letter from Ecology dated December 22, 1992; if not, it shall commence within two

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weeks of issuance of this Order, and be completed within two weeks.

d. Proposal outlining proposed method(s) for treatment of existing petroleum contaminated soil (PCS) stockpile may be submitted to Ecology prior to issuance of this Order as referred to by letter from Ecology dated December 22, 1992; if not, it shall be submitted to Ecology within two weeks of issuance of this Order. Implementation of treatment of the PCS as approved by Ecology shall commence within one week of Ecology's approval (or within one week of cessation of subfreezing temperatures at the site).

e. A State Waste Discharge Permit Application for on-site discharge of treated ground water shall be submitted to Ecology within four weeks of issuance of this Order.

f. Contamination investigation field work shall commence within two weeks of issuance of this Order (or within two weeks of cessation of subfreezing temperatures at the site); unless background information investigation has not commenced, in which case contamination investigation field work shall commence within two weeks of background information investigation completion (or within two weeks of cessation of subfreezing temperatures at the site). Contamination investigation field work shall be completed within six weeks of commencement.

g. Monthly progress reports, including field notes, all laboratory generated lab results from field sampling (with associated chromatograms), shall be submitted to Ecology every 30 days after issuance of this Order.

h. The draft RI report shall be submitted to Ecology within 12 weeks of completion of contamination investigation field work. It is expected that this date will be within 24 weeks of issuance of this Order.

i. The final RI report shall be submitted to Ecology within three weeks of receipt of Ecology's comments on the draft RI report.

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j. The Feasibility Study (FS) shall commence within one week of Ecology's approval of the final RI report, and shall be completed within 12 weeks. The draft FS report shall be submitted to Ecology within 12 weeks of FS commencement.

k. The final FS report shall be submitted to Ecology within three weeks of receipt of Ecology's comments on the draft FS report.

l. Ground Water Sampling Data Submittals in accordance with provision 4.3, below, shall be submitted to Ecology within 28 weeks of issuance of this Order. Sample format shall be submitted to Ecology for approval within four weeks of issuance of this Order.

4.3. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted in a format subject to approval by Ecology, and in programs compatible with the following: Paradox 3.5® or Quattro Pro 3.0® for chemical and supporting data, and Paradox 3.5® for well completion data. Appendix A: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS is attached as guidance. These submittals shall be provided to Ecology as required under the schedule established in provision 4.2(1), above.

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 Notices. WAC 173-340-600(10)(c) requires a 30 day public comment period before this Order on a state RI/FS 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. Ecology agrees to give Burns Brothers written notice of its intent to modify or withdraw provisions of the Order 10 days in advance.

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**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 at the site under Ch. 70.105D RCW both prior to and subsequent to the issuance of this Order for investigations, remedial actions, and Order preparation, oversight and administration. All Ecology costs incurred since October 1, 1992 which have not been paid under Enforcement Order No. DE 92TC-C109, will be included as costs Burns Brothers shall pay to Ecology. 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 an itemized statement of costs will 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(s) for Burns Brothers are listed in consecutive order:

1. Mr. L. Kirk French (503) 238-7393  
Burns Brothers  
516 SE Morrison, Suite 1200  
Portland OR 97214
2. Mr. Peter J. Barry (206) 453-8383  
Applied Geotechnology Inc  
300-120th Avenue NE  
Building 4, Suite 215  
Bellevue WA 98005

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3. Mr. Pat Schauer (503) 238-7393  
Burns Brothers  
516 SE Morrison, Suite 1200  
Portland OR 97214

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. Burns Brothers 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, Burns Brothers shall not perform any remedial actions at the Bingo Fuel Stop site outside that required by this Order or as referred to previously by letter from Ecology dated December 22, 1992 unless Ecology concurs, in writing, with such additional remedial actions.

**5.6. 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



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equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Burns Brothers. Burns Brothers agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order. To the extent that it is not inconsistent with Ecology's enforcement and oversight objectives, Ecology shall provide reasonable advance notice prior to requesting access to the site.

Ecology shall allow split or replicate samples to be taken by Burns Brothers during an inspection unless doing so interferes with Ecology's sampling. Burns Brothers shall allow split or replicate samples to be taken by Ecology and shall provide 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, then Burns Brothers agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph. In complying with this provision, Burns Brothers need not keep the original materials, but, subject to prior written approval from Ecology, may utilize microform, electronic, or other methods of readily retrievable information storage.

**5.9. Dispute Resolution.** Burns Brothers may request Ecology to resolve disputes which may arise during the implementation of this Order. In the event of dispute between Burns Brothers and Ecology regarding implementation of this Order, Burns Brothers and Ecology shall first make a good faith effort to resolve the dispute between Project Coordinators, and then, if necessary, refer the dispute, in writing, for resolution by the immediate supervisors of the Project Coordinators. Should the dispute remain unresolved, the next request shall be in writing and directed to the

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signatory, or his/her successor(s), to 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/No Settlement. This 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 Burns Brothers to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Burns Brothers to require those remedial actions required by this Order, provided Burns Brothers complies with this 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 the Bingo Fuel Stop site.

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

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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.

5.13. Force Majeure Clause. If any event occurs that is beyond Burns Brothers' reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Order, Burns Brothers shall promptly notify Ecology's Project Coordinator verbally of the cause of delay or deviation and its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Burns Brothers proposes to carry out such measures. Burns Brothers shall confirm in writing this information within five (5) working days of the verbal notification.

If Burns Brothers demonstrates to Ecology's satisfaction that the delay or deviation has been or will be caused by circumstances beyond the control and despite the due diligence of Burns Brothers, Ecology shall extend times for performance of related activities under this Order as appropriate. Circumstances or events beyond Burns Brothers' control might include but are not limited to acts of God, unforeseen strikes or work stoppages, fire, explosion, riot, sabotage, or war, or weather conditions which preclude travel to the site. Increased cost of performance or changed business or economic circumstances shall be presumed not to be circumstances beyond Burns Brothers' control.

## 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.

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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 Section 6 of ch. 70.105D RCW.

Effective date of this Order: MAR 17 1993

BURNS BROTHERS  
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By Patrick L. Schauer, V.P.  
L. Kirk French, President

for L. Kirk French.  
Patrick L. Schauer

AWG:SB:vw  
g:bingo.fia

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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