

Town Pump  
FSN 403

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial  
Action by:

) ENFORCEMENT ORDER  
) No. DE 94TC-C161

Mr. Lyle Harp  
2675 D Highway  
Hood River, Oregon 97031

Mr. Kurt Osborne  
Post Office Box 1174  
Hood River, Oregon 97031

Mr. Randall Johnson  
1396 Methodist Road  
Hood River, Oregon 97031

To: Town Pump  
521 East Jewett Boulevard  
White Salmon, Washington 98672

I.

Jurisdiction

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

II.

Statement of Facts

Ecology makes the following Findings of Fact, without admission of such facts by Lyle Harp, Kurt Osborne, and Randall Johnson.

2.1 The Department of Ecology (Ecology), Central Regional Office, received a complaint on April 4, 1989 that gasoline was escaping from the Town Pump site in White Salmon. Fire Chief Pete Bently, White Salmon Fire Department, found the pipes at the site to be leaking gasoline. The gasoline was reported to be traveling through the ground water beneath the site and flowing into the backyard of adjacent trailer sites, owned by the same partners that own Town Pump.

2.2 In a followup site visit on April 28, 1989 Ecology personnel found evidence to confirm that a release of petroleum products had occurred.

2.3 On May 24, 1989 Ecology spoke with Mr. Randall Johnson, co-owner of the site, to recommend remedial procedures to him. Mr. Johnson never responded.

2.4 On March 19, 1991 Ecology performed a Site Hazard Assessment. Results of the Site Hazard Assessment indicated that levels of hazardous substances exceeded MTCA cleanup levels and the site was found to rank a 1 (one).

2.5 On August 21, 1991 Ecology sent an initial Potentially Liable Party (PLP) status letter to Mr. Johnson. This letter requested Mr. Johnson to provide information regarding other PLPs that might exist for this site. Mr. Johnson did not reply with any further information about PLPs.

2.6 On December 13, 1991 Ecology mailed Mr. Osborne and Mr. Harp, co-owners of the site, proposed PLP status letters.

2.7 On January 28, 1992 PLP final determination letters were sent to Messrs. Lyle Harp, Kurt Osborne, and Randall Johnson, the three partners, hereinafter known as the "Respondents", with the statement that they were all PLPS.

2.8 On March 23, 1992 Ecology received a letter from Mr. Osborne stating that he had signed a contract with North West Construction (NW Construction) to start an independent cleanup.

2.9 On March 23, 1992 Ecology called NW Construction who stated their contract was to remove one UST. NW Construction was not aware the site was contaminated and were not contracted to perform a site cleanup or an RI/FS.

2.10 On April 9 and 10, 1992 NW Construction removed one UST at the site. Ecology monitored the removal of the tank. During the removal evidence of extensive petroleum contamination at the site was identified, also evidence of possible additional USTs was found.

2.11 On May 13, 1992, Ecology issued Agreed Order No. DE 92TC-C323, requiring a remedial investigation/feasibility study (RI/FS) at the Site.

2.12 On October 19, 1992, Ecology approved the RI/FS workplan submitted by the Respondents' consultant.

2.13 The Respondents terminated their contract with the consultant who had submitted the approved workplan.

2.14 Discussions on amending Agreed Order No. DE 92TC-C323 began on November 29, 1993 and ended on March 11, 1994.

III.

Ecology Determinations

3.1 The Respondents are "owners" 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 the Town Pump site, is located at 521 East Jewett Boulevard, White Salmon, Washington, and includes the area impacted by a release(s) of a hazardous substance(s) from the underground storage tank system located there and extending to the north of the Town Pump site.

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 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 January 28, 1992 Ecology notified Messrs. Randall Johnson, Lyle Harp, and Kurt Osborne of their status as "potentially liable persons" under RCW 70.105D.040 after 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 Order is in the public interest.

3.8 This Order supersedes Agreed Order No. DE 92TC-C323, which has not been complied with.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that the Respondents take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC (Model Toxics Control Act Cleanup Regulation) and Chapter

173-360 WAC (Underground Storage Tank Regulations) unless otherwise specifically provided for herein.

4.1 The Respondents shall plan, conduct, and finance the following Interim Remedial Actions:

a. Upon issuance of this Order, as amended, the Respondents shall:

1) Within two (2) calendar weeks submit the completed workplan for removal of petroleum contaminated soils (PCS) which pose a threat to human health and the environment, from that portion of the facility located south of E. Jewett Blvd. This includes the area occupied by the former Town Pump gas station, the embankment, and the area in the trailer park where petroleum seepage has come to be located. This workplan shall include proposed plans for management and treatment or disposal of removed PCS.

2) Within two (2) calendar weeks of Ecology's written approval of the above workplan, removal of PCS from the area referred to above shall commence.

3) During removal of PCS, the Respondents shall ensure that practicable attempts are made to determine whether or not previously reported underground waste oil storage tanks are located beneath or adjacent to the former garage area of the Town Pump building. Ecology expects that PCS removal and transport activities should be completed within four (4) calendar weeks of commencement.

4) The excavated area shall be restored to grade so as to minimize potential threat to human health, no later than one (1) calendar week from the date of substantial completion of PCS excavation activities.

5) Upon receipt, copies of all laboratory analytical reports for samples collected shall be forwarded to Ecology, along with a sample location map and applicable chain of custody forms.

6) Within four (4) calendar weeks of substantial completion of PCS removal, a draft Site Characterization Report shall be submitted to Ecology. This report shall include the information listed under WAC 173-340-450(4)(b). Status Report information, listed in

450(4)(b)(i), is not required to be included in this report.

- 7) Within three (3) calendar weeks of receipt of Ecology's comments on the draft Site Characterization Report, a final Site Characterization Report incorporating Ecology's comments shall be submitted to Ecology. In the event that Ecology has no comments on the draft report, then it shall be accepted as the final report.
- 8) Within eight (8) calendar weeks of Ecology's approval of the final Site Characterization Report, a workplan for the decommissioning, removal, and assessment of that portion of the underground storage tank (UST) system located on the north side of E. Jewett Blvd., shall be submitted. All UST decommissioning, removal, and assessment activities shall be conducted in accordance with the Underground Storage Tank Regulations of Washington state, Chapter 173-360 WAC, and the Ecology guidance document entitled "Guidance for Site Checks and Site Assessments for Underground Storage Tanks (revised October 1992)."
  - i. If, during UST removal and assessment activities, it is determined that a release of a hazardous substance(s) has contaminated the soil or ground water, then site assessment activities shall at that time be replaced with site characterization activities. Site assessment data collected prior to discovery of a hazardous substance release may be incorporated into the Site Characterization Report. The workplan shall allow for this contingency, along with proposed plans for management and treatment or disposal of contaminated soil, should it be encountered.
- 9) Within two (2) calendar weeks of receipt of Ecology's comments on the workplan, a revised workplan shall be submitted to Ecology.
- 10) Within two (2) calendar weeks of Ecology's approval of the workplan, UST system decommissioning, removal and assessment activities shall commence at the site. It is expected that these activities should be completed within two (2) calendar weeks.

i) If UST removal or assessment activities reveal that soil or ground water has been contaminated by a hazardous substance(s) release which poses a threat to human health and the environment, the Respondents shall remove, manage, and treat or dispose of the contaminated soil, as approved by Ecology, and complete characterization of the site. Ecology expects these activities should be completed within a total of four (4) calendar weeks from commencement of UST removal activities.

ii) The excavated area shall be restored to grade so as to minimize potential threat to human health, no later than one (1) calendar week from the date of substantial completion of contaminated soil removal activities.

11) A draft Site Assessment or Site Characterization Report, as applicable, shall be submitted to Ecology within four (4) calendar weeks of substantial completion of UST removal and assessment or characterization activities.

12) Within three (3) calendar weeks of receipt of Ecology's comments on the draft report, a final Site Assessment or Characterization Report, as applicable, shall be submitted to Ecology. In the event that Ecology has no comments on the draft report, then it shall be accepted as the final report.

4.2 After completion and final acceptance of results of the Interim Remedial Actions conducted under subsection 4.1 above, Ecology shall determine whether or not additional information regarding the extent of or threat posed by the facility is necessary. This determination will be provided to the Respondents in writing.

In the event that such information is determined to be necessary, the Respondents shall fulfill those requirements for a Remedial Investigation/Feasibility Study (RI/FS) which apply to the facility and need to be addressed, as determined by Ecology. A specific list of these requirements shall be provided to the Respondents by Ecology.

a. Upon notification from Ecology, the Respondents shall:

- 1) Within four (4) calendar weeks, a workplan addressing those RI/FS requirements listed shall be submitted to Ecology.
- 2) Within two (2) calendar weeks of receipt of Ecology's comments on the workplan, a revised workplan shall be submitted to Ecology.
- 3) Within two (2) calendar weeks of Ecology's approval of the workplan, activities necessary to complete the RI/FS shall commence, and shall be completed within eight (8) calendar weeks, at which time the draft RI/FS Report shall be submitted to Ecology.
- 4) Within three (3) calendar weeks of receipt of Ecology's comments on the draft report, a final RI/FS Report shall be submitted to Ecology. In the event that Ecology has no comments on the draft report, then it shall be accepted as the final report.

V.

Terms and Conditions of Order

5.1. 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.

5.2. Public Notices 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 The Respondents 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). The Respondents shall pay the required 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.

**5.4. Designated Project Coordinators** The project coordinator for Ecology is:

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

The project coordinator for the Respondents is:

Mr. Randall Johnson (503) 386-1227  
1396 Methodist Road  
Hood River, OR 97031

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Respondents, 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 the Respondents change project coordinator(s), written notification shall be provided to Ecology or the Respondents 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. The Respondents 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. The Respondents 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, the Respondents shall not perform any remedial actions at the



Town Pump site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) and WAC 173-340-430(7) require that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

**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 equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Respondents. 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 the Respondents during an inspection unless doing so interferes with Ecology's sampling. The Respondents 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** The Respondents shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. The Respondents shall help coordinate and implement public participation for the site.

**5.8. Retention of Records** The Respondents 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 the Respondents, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

**5.9. Dispute Resolution** The Respondents may request Ecology to resolve disputes which may arise during the implementation of this Order. Such requests shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. The Respondents 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.

**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 the Town Pump 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 the Respondents 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 the Respondents 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 the Respondents may have in the Site or any portions thereof, the Respondents 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, the Respondents shall notify Ecology of the contemplated transfer.

**5.12 Compliance with Other Applicable Laws** All actions carried out by the Respondents 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 the Respondents' receipt of written notification from Ecology that the Respondents have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Enforcement Order have been complied with.

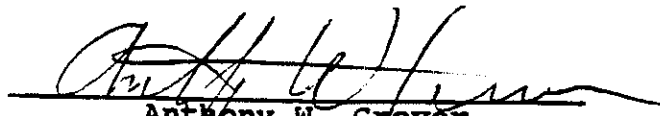
VII.

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 the Respondents refuse, without sufficient cause, to comply with any term of this Order, the Respondents 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 Chapter 70.105D.060 RCW.

Effective date of this Order: MAR 17 1994



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

