

5 E 11 V E  
Bingo  
- 1996  
DEPARTMENT OF ECOLOGY

FS 388

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: )  
BURNS BROTHERS ) AGREED ORDER  
516 SE MORRISON, SUITE 1200 ) No. DE 95TC-C236  
PORTLAND, OR 97214 )

TO: L. Kirk French, President  
Burns Brothers Travel Stops

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.

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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 had not been characterized during this phase of work.

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. 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.

2.5 A remedial investigation and feasibility study was conducted by Burns Brothers pursuant to Agreed Order No. DE 93TC-C171, issued on March 17, 1993. A final "Remedial Investigation Report" was submitted on April 4, 1994, and a "Draft Feasibility Study" was submitted on June 11, 1994. The remedial investigation determined the approximate extent of petroleum contamination at the site, which defines the facility which is described in provision III(3.2). The feasibility study included an evaluation of three alternatives for final cleanup of the site. After submittal of the feasibility study, Burns Brothers indicated a preference for Alternative 3, which included but was not limited to: 1) excavation and bioremediation of petroleum contaminated soils exceeding 100 parts per million (ppm) total petroleum hydrocarbons (TPH) as gas and 200 ppm TPH as diesel; 2) expansion of ground water pump and treat system with ongoing bioremediation to treat groundwater to cleanup

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levels listed in Exhibit A; 3) installation of a soil vapor extraction system along the west side of Thorp Highway if petroleum contaminated soil is found to extend under this road. The draft feasibility study was approved by Ecology. The final "Feasibility Study" was submitted on August 18, 1995 and approved by Ecology.

2.6 A final "Cleanup Action Plan" was prepared and submitted by Burns Brothers on April 7, 1995. This plan included an outline of Burns Brothers' plans to conduct a final cleanup of the Bingo Fuel Stop site as proposed in Alternative 3 contained in the final feasibility study, with the only difference being that petroleum contaminated soils below 400 ppm TPH may remain in place in those areas of the facility not in close proximity to surface waters. This final cleanup action plan was approved by Ecology.

### III.

#### Ecology Determinations

3.1. Burns Brothers is an "owner or operator" as defined in RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

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 include and extend beyond the property boundaries to include, but not be limited to the following known locations:

a. The soils, ground water, and surface water in the vicinity of the east portion of the gully located between the Bingo property and the I-90 eastbound offramp;

b. The soils, sediments, and ground water in the northwest corner of the Callahan property in the vicinity of monitoring well #8, staff gauge #1, and sediment sample #S31;

The boundaries of the facility may change in the future in the event that hazardous substances are found to be present in other locations.

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3.3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7).

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(19).

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 final cleanup action be conducted for the Bingo Fuel Stop site.

#### 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 cleanup action in accordance with Chapter 173-340 WAC, and most specifically with Parts IV and VII, Site Monitoring and Cleanup, and Cleanup Standards, respectively. At a minimum, the cleanup action shall be conducted in accordance with the provisions of this part:

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a. Report submittals. The following reports shall be submitted for approval by Ecology prior to implementation of the cleanup action. These reports shall contain the level of information necessary to ensure that the cleanup action is planned to be and has been conducted in a manner consistent with the purposes of Chapter 173-340 WAC, and that the cleanup action considers relevant information provided by the remedial investigation/feasibility study:

1. Engineering design report per WAC 173-340-400.
2. Construction plans and specifications per WAC 173-340-400.
3. Operation and maintenance plan per WAC 173-340-400, including as built diagrams.
4. Compliance monitoring plan per WAC 173-340-410 and a sampling and analysis plan per WAC 173-340-820. The Ecology guidance documents entitled "Statistical Guidance for Ecology Site Managers" (#92-54) and "Guidance on Sampling and Data Analysis" (#94-49) will be used, along with Chapter 173-340 WAC, to determine the adequacy of the compliance monitoring plan.
5. Safety and health plan per WAC 173-340-810.
6. During the cleanup action, monthly progress reports shall be submitted during and one month after the "field season" (which is April through October), with copies of all lab results for all sampling and monitoring conducted during the previous reporting period. During the winter months when limited field activities are ongoing, lab results from all sampling and monitoring activities shall be submitted as they become available; monthly progress reports will not be necessary during these periods. "Lab

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results" shall refer both to summaries compiled by Burns Brothers' consultant and to laboratory reports with chromatograms as received from the laboratory, after QA/QC by the lab.

7. Discrete documentation of those locations throughout the facility where contamination exceeding applicable cleanup levels remains in place after completion of soil removal. Such documentation shall clearly delineate the vertical extent, depth, and concentrations of contaminants remaining in the soil. For groundwater contamination, analytical results of monitoring well sampling after soil removal will suffice. Documentation of remaining contamination may be incorporated into a single monthly report or other distinct format easily accessible by the general public.

b. Determination of substantive requirements for permits which would be required. Except for permits which would be granted by Ecology, Burns Brothers shall determine what permits would be needed in conducting the cleanup action, and shall obtain from the appropriate agency and submit to Ecology documentation of the substantive requirements of such permits. Such requirements shall be incorporated by amendment to this Order, will become applicable at the time of the amendment, and will be binding and enforceable requirements of the Order.

c. Cleanup levels. Soil and ground water cleanup levels proposed in the final Feasibility Study dated August 15, 1994 are approved for use in this cleanup action. These cleanup levels are listed in Exhibit A, and are incorporated by reference as an integral and enforceable part of this Order. Except for total petroleum hydrocarbons, method B cleanup levels which are protective of ground water will be used at the site. In those areas of the site located more than 20' from surface water, the soil cleanup levels for total petroleum

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hydrocarbons (TPH) as gasoline and diesel are 400 ppm. In those portions of the site less than 20' from surface water, or where saturated conditions are encountered due to proximity to surface water, soil cleanup levels for TPH as gas and diesel are 100 ppm and 200 ppm, respectively. If the regulations governing establishment of TPH cleanup levels are revised, or if Ecology changes their interpretation of the existing regulations, cleanup of TPH will be modified in accordance with the new regulations as determined by Ecology to be appropriate for site specific conditions at the Bingo facility. The cleanup level for TPH in ground water is 1 ppm. These cleanup levels are listed below:

CLEANUP LEVELS

<u>CONTAMINANT</u>	<u>SOIL in ppm</u>	<u>GROUNDWATER in ppb</u>
TPH as gas and diesel	400.0**	1000.0
Benzene	0.5	5.0
Ethylbenzene	40.0	400.0
Toluene	80.0	800.0
Total Xylenes	800.0	8000.0
Anthracene	NA*	4800.0
Fluorene	32.0	320.0
Naphthalene	32.0	320.0
Lead	250.0	3.2

\* not applicable

\*\* for those portions of the site within 20' of surface water, or where saturated conditions are encountered due to surface water influence, soil cleanup levels for TPH are method A: 100ppm for TPH as gasoline and 200ppm for TPH as diesel.

d. Points of compliance. Points of compliance with the aforementioned cleanup levels for soil and ground water shall be throughout each contiguous contaminated area of the facility.

1. For ground water, it is expected that existing monitoring wells will be adequate to demonstrate compliance with cleanup levels. However, if in the future there is reason to

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suspect that part of the plume may be migrating between monitoring wells, e.g. MWS #9 and #12, it may become necessary to establish at least one additional ground water sampling point.

2. For soil, as long as those areas of the facility where petroleum has leaked and/or migrated are addressed through excavation, bioremediation and sampling, it is expected that adequate sampling of the perimeters of such excavations would be likely to demonstrate compliance with cleanup levels. However, if any areas where petroleum has leaked and/or migrated are left unaddressed, Ecology will require verification that the areas in question do meet cleanup levels.

e. Compliance monitoring. In addition to the compliance monitoring plan to be approved by Ecology, compliance monitoring shall include:

1. Monitoring wells and domestic wells in the potentially affected vicinity shall be sampled in accordance with the schedule in provision 4.2(f), for TPH as gasoline and diesel, benzene, ethylbenzene, toluene and xylenes.

2. Long-term monitoring of contaminated media at the facility shall be conducted as long as hazardous substances remain at concentrations exceeding cleanup levels specified in Exhibit A. Once cleanup levels for soil and ground water appear to have been achieved, data will be evaluated and monitoring schedules may be modified by Ecology in accordance with Chapter 173-340 WAC, and as recommended in Ecology guidance documents entitled "Statistical Guidance for Ecology Site Managers" (#92-54) and "Guidance on Sampling and Data Analysis" (#94-49).



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f. In the event that any new release(s) of hazardous substances occur or are discovered, immediate control of such release(s) shall be conducted. Control actions taken to stop the release and migration of any hazardous substance(s) shall be monitored for effectiveness as necessary to protect human health and the environment. 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 in or near the vicinity and/or migration pathway of the new release:

1. Petroleum sheen on surface water, ground water, or ground;
2. Petroleum odor emanating from surface water, ground water, or ground;
3. Laboratory results indicating presence of hazardous substances at levels exceeding laboratory detection limits; or
4. 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.

g. Other information. Other information may need to be collected and submitted to fulfill the applicable requirements of the State Environmental Policy Act, or to determine adequacy of the cleanup action.

4.2. The cleanup action and related activities shall be conducted and reports submitted for approval by Ecology in accordance with the following schedule:

- a. Within 4 calendar weeks of issuance of this Order, documentation of substantive requirements

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for non-Ecology permits which would be required for implementation of the cleanup shall be submitted to Ecology. These substantive requirements, along with any applicable requirements for releases of hazardous substances to the air, soil, ground water, or surface waters, will be incorporated into this Order by amendment.

b. The engineering design report shall be submitted within 6 calendar weeks of issuance of this Order. If Ecology determines that revisions are necessary, the revised report shall be submitted within 2 calendar weeks of such notification from Ecology.

c. The construction plans and specifications shall be submitted within 4 calendar weeks of Ecology's approval of the engineering design report. If Ecology determines that revisions are necessary, the revised report shall be submitted within 2 calendar weeks of such notification from Ecology.

d. The operation and maintenance plan, compliance monitoring plan, sampling and analysis plan, and safety and health plan shall be submitted within 4 calendar weeks of Ecology's approval of the construction plans and specifications. If Ecology determines that revisions are necessary, the revised report shall be submitted within 2 calendar weeks of such notification from Ecology.

e. Submittal of monthly progress reports shall commence in April 1996, and thereafter be submitted monthly through November 1996. This April through November submittal schedule for monthly progress reports shall be followed during the remainder of the cleanup phase for the site.

f. All monitoring wells shall be sampled on a quarterly basis commencing within 4 calendar weeks of issuance of this Order. If, after one year, contaminant concentrations show a continuing decreasing trend, semiannual sampling of selected wells will likely be adequate for the duration of the cleanup action. Any further modification of

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the well sampling schedule will be based on Ecology's review of analytical results along with any changes in site conditions. Water level measurements from all monitoring wells shall be collected on a monthly basis for one year, commencing within 4 calendar weeks of issuance of this Order.

Domestic wells in the potentially affected vicinity (numbers 1, 2, 4, 5 and 6 as indicated in the final remedial investigation report) shall be sampled on the same schedule as monitoring wells, and for the same contaminants listed in provision 4.2(e)(2) above.

g. The schedule for cleanup tasks listed in Figure 8, "Project Schedule" of the final Cleanup Action Plan, shall be adhered to. This schedule is attached as Exhibit C and is incorporated by reference and is an integral and enforceable part of this Order.

h. The cleanup action report (or equivalent document) shall be submitted within 8 calendar weeks of completion of the soil removal portion of the cleanup action. Completion of the soil removal phase shall be determined by Ecology.

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. Exhibit D: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS is attached as guidance. These submittals shall be provided to Ecology with the cleanup action report.

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.

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5.2. Public Notices. WAC 173-340-600(10)(c) requires a 30 day public comment period before this Order implementing a cleanup action 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.

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 and support costs of direct activities as defined in WAC 173-340-550(2). 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 will result in interest charges.

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

Susan Burgdorff-Beery (509) 454-7835  
Department of Ecology  
Central Regional Office  
15 West Yakima Avenue, Suite 200  
Yakima WA 98902-3401

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

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2. Mr. Peter P. Barry (206) 453-8383  
AGI Technologies  
300-120th Avenue NE  
Building 4, Suite 215  
Bellevue WA 98005
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.

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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 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

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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 signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. Any final decision by Ecology regarding a disputed matter after such dialogue shall be provided Burns Brothers in writing. 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 regarding the subject facility 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

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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.

By entering into this Order, Burns Brothers agrees not to petition Ecology for reimbursement of costs incurred complying with this Order except where disputes have arisen under 5.9 as described above. This agreement does not constitute a waiver of any right of action that Burns Brothers may have against any person other than Ecology. This agreement is not intended to affect or prejudice any such right(s) of action. To the extent that a court determines that this agreement does affect or prejudice any such right(s), this agreement is null and void.

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 Restrictive Covenant. A restrictive covenant shall be recorded for the Bingo Fuel Stop site if, after completion of the soil removal phase, hazardous substances exceeding MTCA method B (method A for TPH) remain in place at the facility. Such a restrictive covenant, should one be necessary, will be incorporated by reference as an integral and enforceable part of this agreed order by amendment

5.13. Compliance with Other Applicable Laws.

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



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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 not now known will be incorporated by amendment, will become applicable at the time of the amendment, and will be binding and enforceable requirements of the Order.

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

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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 Burns Brothers 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.

5.14. 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: JAN 10 1996

BURNS BROTHERS  
516 SE MORRISON SUITE 1200  
PORTLAND, OR 97214

By L. Kirk French  
L. Kirk French, President

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

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# EXHIBIT A

**Table 1**  
**Cleanup Levels for Soil and Groundwater**  
**Burns Bros./Bingo Fuel Stop**  
**Thorp, Washington**

Chemical	Soil (mg/kg)	Basis for Selection	Groundwater (µg/L)	Basis for Selection
<b>Volatille Organic Compounds</b>				
Benzene	0.5	Cross media (groundwater ARAR)	5.0	Groundwater ARAR
Ethylbenzene	40	Cross media (groundwater risk-based)	400	Risk-based: groundwater
Toluene	80	Cross media (groundwater risk-based)	800	Risk-based: groundwater
Total Xylenes	800	Cross media (groundwater risk-based)	8,000	Risk-based: groundwater
<b>Total Petroleum Hydrocarbons</b>				
Gasoline	100	Method A	1,000	Method A
Diesel	200	Method A	1,000	Method A

**Notes:**

Cleanup levels have been rounded to two significant digits.  
ARAR – Applicable or Relevant and Appropriate Requirement.  
mg/kg – Milligrams per kilogram.  
µg/L – Micrograms per liter.



# EXHIBIT C

Task	Duration	Year 1				Year 2				Year 3				Year 4				Year 5				Year 6			
		Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4
Phase 1	260d																								
Installation of Trenches	8w																								
Treatment of Petroleum-Contaminated Soil	26w																								
Groundwater Recovery and Treatment	52w																								
Phase 2	260d																								
Backfilling Treated Soil	8w																								
Excavation of Petroleum-Contaminated Soil	8w																								
VES Installation	8w																								
VES Operation	52w																								
Treatment of Petroleum-Contaminated Soil	26w																								
Groundwater Recovery and Treatment	52w																								
Phase 3	260d																								
Backfilling Treated Soil	8w																								
Excavation of Petroleum-Contaminated Soil	7.6w																								
Treatment of Petroleum-Contaminated Soil	26w																								
Groundwater Recovery and Treatment	52w																								
Phase 4	520d																								
Backfilling Treated Soil	8w																								
Groundwater Monitoring	104w																								

## LEGEND

Task Duration

Summary

# AGI

TECHNOLOGIES

## Project Schedule

Burns Bros./Bingo Fuel Stop Cleanup Action  
Thorp, Washington

PROJ/SCH CDR

PROJECT NO.  
15,659,001

DRAWN  
DFF

DATE  
2 Aug 95

APPROVED  
*[Signature]*

REVISED  
DFF

DATE  
28 Mar 95

8

FIGURE

