

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)	Agreed Order
Action by:)	
)	
Burns Brothers, Inc.)	
4800 SW Meadows Rd, Ste. 475)	No DE 02TCPCR-3976
Lake Oswego, OR 97035)	
)	
)	

To: Bruce Burns
Burns Brothers, Inc.

I.

Jurisdiction

This Agreed 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 Burns Brothers.

- 1 Burns Brothers, Inc. owned 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 SE 1/4 NE 1/4 of Section 14, Township 18N, Range 17EWM in Thorp, Washington.
- 2 Washington State Department of Ecology (Ecology) received a report of a flash fire in excavation activities at the site. 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 groundwater within open excavations onsite, resulting in explosive concentrations of gasoline vapors while the facility was open for business

3. An emergency interim remedial action was conducted by Burns Brothers pursuant to Enforcement Order No. DE 92TC-C109, issued on an emergency basis on February 11, 1992. A report summarizing this interim action, entitled *Emergency Remedial Action Report for Bingo Fuel Stop*, was submitted June 8, 1992.
4. A Remedial Investigation/Feasibility Study (RI/FS) was conducted by Burns Brothers pursuant to Agreed Order NO. DE 93TC-C171, issued on March 17, 1993. A final RI/FS was submitted on August 18, 1995. The RI determined the approximate extent of petroleum contamination at the site, and evaluated three alternatives for final cleanup of the site. The final Cleanup Action Plan (CAP) dated April 7, 1995 included an outline of Burns Brothers plans to conduct a cleanup action at the site. The CAP selected 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 groundwater pump and treat system with ongoing bioremediation to treat groundwater to cleanup 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; and 4) petroleum contaminated soils below 400 ppm TPH may remain in place in those areas of the facility not in close proximity to surface waters.
5. Activities performed under the Cleanup Action included excavation and on-site treatment of 15,700 cubic yards of petroleum contaminated soil. Petroleum contaminated soil was left under the eastbound I-90 off-ramp right-of-way in the area of samples S221 and S191 above the cleanup levels in Exhibit A. Petroleum contaminated soil was also left under the Thorp Highway right-of-way in the area of samples S174, S175, and S171 above the cleanup levels in Exhibit A.
6. A Monitored Natural Attenuation study was completed on September 27, 2001. This report concluded that 1) monitored natural attenuation is remediating groundwater contamination at the site, and 2) the current groundwater and soil contamination levels do not warrant active remediation by soil vapor extraction or enhanced bioremediation.

III.

Ecology Determinations

1. Burns Brothers is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility known as the former 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 site encompasses two areas: 1) the legal description of the service station property, and 2) the adjacent areas

<u>Contaminant</u>	<u>Cleanup Levels</u>	
	<u>Soil in ppm</u>	<u>Groundwater in ppb</u>
TPH, Gas	400.0**	1000.0
TPH, 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	N/A*	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 feet 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 gasoline and 200ppm for TPH diesel.

- Points of compliance with the aforementioned cleanup levels for soil and groundwater shall be throughout each contiguous contaminated area of the facility.
 1. For groundwater it is expected that existing monitoring wells will be adequate to demonstrate compliance with cleanup levels specified in Attachment B.
 2. For petroleum contaminated soil left under the eastbound I-90 off-ramp right-of-way and the Thorp Highway right-of-way in the areas specified in Section II, paragraph 5, compliance shall be the soil horizon directly overlying the groundwater in the areas of the samples exceeding the cleanup levels set forth in this Order. The soil horizon will be considered clean if the cleanup levels are met in the soil (points of compliance) in accordance with the cleanup levels set forth in Attachment B.
- 2. Burns Brothers shall implement and finance the Operation and Maintenance Plan. The Operation and Maintenance Plan will monitor site conditions to ensure that the selected cleanup remedy is protective of human health and the environment. The Operation and Maintenance Plan will be implemented to meet the requirements of WAC 173-340-410 and WAC 173-340-420.
- 3. Deviations from the Operation and Maintenance Plan may only be made with prior Ecology verbal approval followed by written documentation of the deviation.
- 4. Within thirty (30) calendar days from the effective date of this Order, Burns Brothers shall implement institutional controls for the petroleum contaminated soil under the eastbound I-90 off-ramp in the area of samples S221 and S191 and the petroleum contaminated soil left under the Thorp Highway right-of-way in the area of samples S174, S175, and S171. The institutional controls shall be implemented in accordance with WAC 173-340-440. The

institutional controls shall include, at a minimum, the following: use restrictions requiring cleanup of contaminated soils disturbed or removed from road maintenance; maintenance of monitoring wells; inspection of highway conditions to ensure that contaminated soils are capped; and educational measures in the form of notification letters to local agencies. The notification letter shall be sent to the following agencies at a minimum: Department of Transportation, Kittitas County Department of Health, and Kittitas County Highway Department. The notification letter will be incorporated by reference as an integral and enforceable part of this Agreed Order by amendment. The institutional controls shall be removed when, after public notice and opportunity for comment, Ecology concurs that soil points of compliance have been met as listed in Attachment B.

5. In accordance with WAC 173-340-840(5) electronic sampling data will be submitted with all reports containing new data. The electronic data shall have, at a minimum, the following fields: latitude and longitude of the well or sampling location (in decimal degrees), date sample taken, sample ID, water level altitude, sample depth, ground surface altitude, chemical constituent name, concentration result, units of measurement, data qualifier, and MTCA cleanup level. The electronic data should be readily compatible with Microsoft Excel or Access programs on a CD, 3.5" diskette, or via e-mail. This electronic version of the data will allow meaningful, rapid, and accurate analysis of data provided to Ecology

V.

Terms and Conditions of Order

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.
2. Public Notice. RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.
3. Remedial Action Costs. Burns Brothers, Inc. 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, Inc. 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

(i.e., Thorp Highway right-of-way and Interstate 90 eastbound off-ramp right-of-way) The areas where contamination remains are limited to the following known locations:

- a. The soils and groundwater in the Interstate 90 eastbound off-ramp right-of-way;
 - b. The soils and groundwater in the Thorp Highway right-of-way.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
 4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a "release" or threatened "release" of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
 5. By letter dated February 11, 1992, Ecology notified Burns Brothers of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.
 6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
 7. Ecology has determined that active remediation has been completed at the property owned by Hazel Dunnington, Floyd Baird, Phyllis Baird, Alice P. Brain, Charles J. Siks, and Geraldine Siks; located on Thorp Highway, adjacent to Interstate 90 at Exit 101, Thorp, Washington. ~~The Remedial Action conducted by Burns Brothers, Inc. at this property has met the substantive requirements in Agreed Order No. DE 95 TC-C236 between the Department of Ecology and Burns Brothers, Inc.~~
 8. Ecology has also determined that the remaining soil and groundwater contaminated with petroleum chemicals in the Thorp Highway right-of-way and the Interstate 90 eastbound off-ramp right-of-way will be remediated by Burns Brothers, Inc. by monitored natural attenuation of groundwater coupled with institutional controls. This remedy fulfills the threshold requirements of WAC 173-340-360 and is protective of human health and the environment at this time.
 9. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that 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.

1. Within thirty (30) days from the effective date of this Order, Burns Brothers shall provide Ecology with an Operation and Maintenance Plan for the Bingo Fuel Stop site.

The Operation and Maintenance Plan will consist of the following at a minimum:

- A ~~Sampling & Analysis Plan~~ that discusses monitored natural attenuation and sample analysis parameters to be used to ensure that natural attenuation of contaminants continues to occur at the site as time progresses or reference the document that contains the above information.
- A schedule for groundwater monitoring events and other site work for the site.
- Criteria for maintaining the institutional control placed on the site as set forth in section IV (4). These criteria shall include but not be limited to the following:
 1. Periodic visual inspection of the site to ensure that the institutional controls have not been compromised by activities on or near the site.
 2. Periodic education/notification of local and state agencies concerning the institutional controls in affect at this site.
- ~~An outline containing review criteria for 5-year periodic review reports. These reports shall be completed to fulfill requirements set forth in WAC 173-340-420.~~
- Requirements and criteria for delistment of the site. These requirements shall be completed to fulfill requirements set forth in Attachment A, Ecology Policy 330B "Removal of Sites from the Hazardous Sites List". Attachment A is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order.
- Public notice requirements for 5-year periodic review and delistment. These public notice requirements shall be completed to fulfill requirements set forth in WAC 173-340-600 and WAC 173-340-420(5)
- Soil and groundwater 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 Attachment B, and are incorporated by reference as an integral and enforceable part of this Order.

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.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Brian T. Deeken
15 West Yakima Avenue, Suite 200
Yakima, WA 98902
(509) 454-7836

The project coordinator for Burns Brothers is:

Monica Beckman
Camp Dresser & McKee
11811 NE 1st St., Ste. 201
Bellevue, WA 98005

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, Inc. 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, Inc. change project coordinator(s), written notification shall be provided to Ecology or Burns Brothers, Inc. at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Burns Brothers, Inc. 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, Inc. 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, Burns Brothers, Inc. shall not perform any remedial actions at the Bingo Fuel Stop site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; 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, Inc. When entering the Site under ch. 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 Burns Brothers, Inc. during an inspection unless doing so would interfere with Ecology's sampling. Burns Brothers, Inc. shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.
7. Public Participation. Burns Brothers, Inc. 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, Inc. shall help coordinate and implement public participation for the Site during the five-year review periods and delistment as stated in section IV Work To Be Performed.
8. Retention of Records. Burns Brothers, Inc. 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, Inc.~~ a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.
9. Dispute Resolution. Burns Brothers, Inc. may request Ecology to resolve factual or technical disputes, which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Burns Brothers, Inc. is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.
10. Reservation of Rights. Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from 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, Inc. to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property. If transfer of any legal or equitable interest in the Site or any portions thereof is consummated, Burns Brothers, Inc. shall serve a copy of this Order upon any purchaser, lessee, transferee, assignee, or other successor in such interest. Burns Brothers, Inc. shall notify Ecology if the property is transferred.
12. Disturbance of Site Hazardous Materials. Effective immediately, except as otherwise required by this Order, neither the hazardous substance site nor any hazardous substance on or in it shall be disturbed, moved or removed by Burns Brothers without approval from Ecology. At least thirty (15) days prior to commencement of activities that disturb, move or remove hazardous substances or the hazardous substance site, Burns Brothers, Inc. shall notify Ecology of the contemplated action.
13. Compliance With Other Applicable Laws
 - a. All actions carried out by Burns Brothers, Inc. pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph b. of this section.
 - b. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order 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, Inc. 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, Inc. 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, Inc. shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Burns Brothers, Inc. 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, Inc. and on how Burns Brothers, Inc. must meet those requirements. Ecology shall inform Burns Brothers, Inc. in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Burns Brothers, Inc. shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Burns Brothers, Inc. and Ecology both believe that no permits are required to execute this Agreed Order at the time of execution of this Agreed Order.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

- c. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Burns Brothers, Inc. 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.
14. **Force Majeure Clause.** If any event occurs that is beyond Burns Brothers, Inc. 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, Inc. proposes to carry out such measures. Burns Brothers, Inc. shall confirm in writing this information within five (5) working days of the verbal notification.

If Burns Brothers, Inc. 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, Inc. 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, Inc. Control.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon and Burns Brothers, Inc. receipt of written notification from Ecology that Burns Brothers, Inc. has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

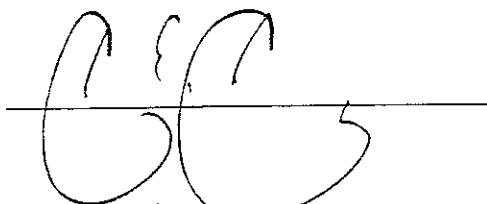
VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - a. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - b. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - c. In the event Burns Brothers, Inc. refuses, without sufficient cause, to comply with any term of this Order, Burns Brothers, Inc. will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
 - d. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: June 3, 2002

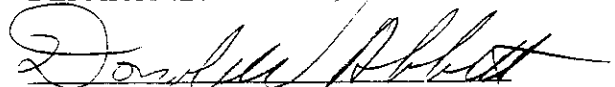
BURNS BROTHERS, INC.



Bruce E. Burns
Chairman, Pres., CEO

S-15-02

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Donald W. Abbott
Section Manager
Toxics Cleanup Program
Central Regional Office

