

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
)
Robert F. Coffelt, President)
Agri-Tech, Incorporated)
P.O. Box 448)
Woodstock, Virginia 22664)
)
Merv Wark)
Yakima Steel Fabricators)
P.O. Box 1369)
Yakima, Washington 98907)

AGREED ORDER

No. DE 97TC-C154

TO: Robert F. Coffelt, Current Owner
AGRI-TECH, INC., Facility

Merv Wark, President
Yakima Steel Fabricators

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 Agri-Tech, Incorporated (ATI) or by Yakima Steel Fabricators (YSF):

- 2.1. The facility, Agri-Tech Incorporated/Yakima Steel Fabricators (ATI/YSF) is located at 6 and 8 East Washington in Yakima, Washington. Robert C Coffelt and Merv Wark are present owners of the Facility. The Facility is formerly known as Yakima Farmers Supply. The Facility is hereafter referenced as Agri-Tech/Yakima Steel Fabricators (ATI/YSF).
- 2.2. On February 26, 1993, the Department of Ecology (Ecology) sent Agri-Tech, Inc. written notice regarding its proposed status as a potentially liable person (PLP) for a release of hazardous substances at Agri-Tech, Incorporated, 8 East Washington

Avenue, Yakima, Washington. This notice was delivered to Robert F. Coffelt who was at that time president of ATI, an operator at the Facility. On February 26, 1993, the Department of Ecology (Ecology) sent Yakima Steel Fabricators written notice regarding its proposed status as a potentially liable person (PLP) for a release of hazardous substances at Yakima Steel Fabricators, 6 East Washington. This notice was delivered to Merv Wark who was and is president and CEO of YSF, an operator at the Facility. The evidence in support of these findings was as follows:

"A disposal pit has been located on both Yakima Steel Fabricators and Agri-Tech properties. Said "pit" is known to have existed from 1955 through 1968 as evidenced from aerial photographs taken at these times. Exploration of the "pit" through soil sampling taken on November 9, 1992, detected perchloroethylene (PCE) at a concentration of 8100 parts per billion (ppb) (PCE is a hazardous substance). Documentation regarding this sample is contained in the document Investigation of Potentially Liable Parties (PLPs), Soil and Ground Water Contamination, Yakima Railroad Area, Yakima, Washington prepared by the Department of Ecology, February 1993. Ground water or soil contamination for approximately 10 additional hazardous substances at the site are also reported in this document and the supporting lab results."

- 2.3 On May 4 and 5, 1993, ATI conducted sampling at the Agri-Tech/Yakima Steel Facility. Four pits were excavated to groundwater; one upgradient, one downgradient, and two within the suspected contaminated area. On May 10, 1993, ATI (and its consultant PLSA) provided Ecology with a copy of their sampling results from the May 4 and 5 event. 13 ug/kg of Tetrachloroethene was found in a soil sample from pit YSF-4 (located on Agri-Tech, Inc. property). A water sample from the same location showed 220 ug/L of Tetrachloroethene.
- 2.4 On June 24, 1993, Ecology received lab results from split samples taken during the May 4 and May 5 sampling event. Six samples were taken, all of which had a Volatile Organic scan conducted on them, one of which had a pesticide scan conducted. Results of the samples confirmed the presence of PCE in soil and groundwater. The pesticide scan showed the presence of Dodecane, Heptachlor Epoxide, Dieldrin, 4'4'-DDE, 4'4'-DDD, and 4'4' DDT.
- 2.5 Ecology informed Agri-Tech, Inc. of its status as a Potentially Liable Person for the Yakima Railroad Area under the Model Toxics Control Act on July 7, 1993. On July 7, 1993, Ecology informed Yakima Steel Fabricators of its status as a Potentially Liable Person for the ATI/YSF facility. YSF was not named as a PLP for the YRRA because PCE was not found in soil on YSF property.

III

Ecology Determinations

- 3.1 Robert F. Coffelt and YSF are each one "owner or operator(s)" 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 Agri-Tech/Yakima Steel Fabricators, and is located at 6 and 8 East Washington Avenue, Yakima, Washington 98901
- 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 ATI is one of the facilities from which there is a release or threatened release of PCE within the YRRA
- 3.6 By letter dated July 7, 1993, Ecology notified ATI of its status as a "potentially liable person" under RCW 70 105D.040 after notice and opportunity for comment. By letter dated July 7, 1993, Ecology notified YSF of its status as a "potentially liable person" under RCW 70 105D 040 after notice and opportunity for comment
- 3.7 Pursuant to RCW 70 105D.030(1) and RCW 70 105D.050, Ecology may require PLPs 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.
- 3.8 Based on the foregoing facts, Ecology believes the remedial action required by the Order is in the public interest.
- 3.9 Robert F. Coffelt and YSF are each individually responsible for completing the requirements of this Order. This agreement shall not be construed to limit or reduce any party's right to pursue contribution from any other potentially liable party

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Robert F. Coffelt and Yakima Steel Fabricators 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 Conduct a remedial investigation to characterize the nature and extent of contamination at the facility. This will include at a minimum the work described in Attachment A: "Remedial Investigation Workplan, Agri-Tech/Yakima Steel Fabricators" by Maxim Technologies, April 1997, as amended by May 9, 1997, correspondence from Kevin Roy (Attachment B), and June 19, 1997, correspondence from Kevin Roy (Attachment C).
- 4.2 The work required by the Order will be completed in such a manner to meet the schedule shown in Attachment D of this Order: Remedial Investigation Schedule.
- 4.3 Coffelt/Yakima Steel Fabricators will submit a monthly progress report documenting progress towards accomplishing the Remedial Investigation made during the given month. This shall include a brief description of work accomplished, any initial sample results received during the month, and identification of problems encountered.
- 4.4 In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Attachment E: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS. This submittal shall be included with the draft RI 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.
- 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 Coffelt/YSF 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). Coffelt/YSF 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:

Rick Roeder, Site Manager
Toxics Cleanup Program
Washington Department of Ecology
15 W. Yakima Avenue, Suite 200
Yakima, WA 98902

The project coordinator for Coffelt/YSF is:

Name: *MERV WALK*
Address: *6 E WASHINGTON AVE*
YAKIMA, WA. 98903

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Coffelt/YSF, 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 Coffelt/YSF change project coordinator(s), written notification shall be provided to Ecology or Coffelt/YSF 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. Coffelt/YSF 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. Coffelt/YSF 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, Coffelt/YSF shall not perform any remedial actions at the Coffelt/YSF facility outside that required by this Order 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 equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Coffelt/YSF. By signing this Agreed Order, Coffelt/YSF agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Coffelt/YSF during an inspection unless doing so interferes with Ecology's sampling. Coffelt/YSF shall allow split or replicate samples to be taken by Ecology and shall provide fourteen (14) days notice before any sampling activity.
- 5.7 Public Participation Coffelt/YSF shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Coffelt/YSF shall help coordinate and implement public participation for the site.
- 5.8 Retention of Records Coffelt/YSF 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 Coffelt/YSF, then Coffelt/YSF agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.
- 5.9 Dispute Resolution Coffelt/YSF may request Ecology to resolve 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), to this Order. Ecology resolution of the dispute shall be binding and final. Coffelt/YSF 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 Agreed 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 Coffelt/YSF to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Coffelt/YSF to require those remedial actions required by this Agreed Order, provided Coffelt/YSF complies with this Agreed 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 Coffelt/YSF facility.

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 Coffelt/YSF to stop further implementation of this Order for such period of time as needed to abate the danger. Coffelt reserves the right to pursue legal remedies under Yakima County Cause No. 93-2-02516-4 not in conflict with this Agreed Order.

- 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 either Robert F. Coffelt or YSF 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 either Coffelt or YSF may have in the site or any portions thereof, either Coffelt or YSF 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, either Coffelt or YSF shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

- A. All actions carried out by Coffelt/YSF pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

- B. Pursuant to RCW 70 105D 090(1), the substantive requirements of chapters 70 94, 70 95, 70 105, 75.20, 90 48, and 90 58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV, the Work to be Performed/Attachment A and are binding and enforceable requirements of the Order.

Coffelt/YSF 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 Coffelt/YSF 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 Coffelt/YSF shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Coffelt/YSF 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 Coffelt/YSF and on how Coffelt/YSF must meet those requirements. Ecology shall inform Coffelt/YSF in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Coffelt/YSF shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

- C. Pursuant to RCW 70 105D 090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70 105D 090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Coffelt/YSF shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70 105D 090(1), including any requirements to obtain permits

VI

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Coffelt/YSF's receipt of written notification from Ecology that Coffelt/YSF 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.

VII

Enforcement

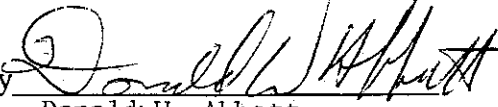
7.1 Pursuant to RCW 70 105D 050, this Order may be enforced as follows:

- 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 either Coffelt or YSF refuses, without sufficient cause, to comply with any term of this Order, either Coffelt or YSF 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: 10/6/97

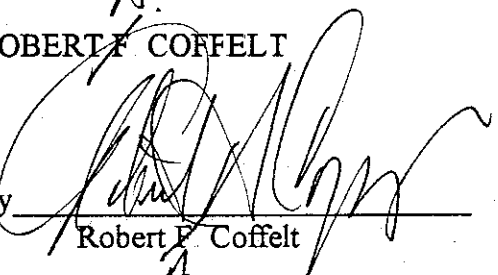
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Date: 10/6/97

By 
Donald W. Abbott

A.
ROBERT F. COFFELT *FAC*

Date: Sept. 26, 1997

By 
Robert F. Coffelt *FAC*

YAKIMA STEEL FABRICATORS

Date: _____

By _____
Merv Wark, President



READING FILE COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August 30, 2004

Roy A. Coffelt
c/o Ted Roy
480 Pomona Heights Rd
Yakima WA 98901

Merv Wark
c/o Clark Davis
Brown Davis & Roberts
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

Re: Notice of Satisfaction, Agreed Order No. DE 97TC-C154, Agri-Tech & Yakima Steel Fabricators, Yakima, Washington

Dear Sirs:

The Department of Ecology, Toxics Cleanup Program has reviewed the file for this site, which includes Revised Remedial Investigation Report and Preliminary Evaluation of Technically Feasible Remedial Alternatives to determine if the substantive requirements of Agreed Order No. DE 97TC-C154 have been met and to determine if further remedial actions are needed at this site to reach closure and eventual delisting.

Ecology has determined that the Remedial Investigation conducted by Merv Wark at this site has met the substantive requirements in Agreed Order No. DE 97TC-C154 between the Department of Ecology, Merv Wark, and Robert Coffelt.

Ecology has also determined that an Agreed Order for the development of a Feasibility Study and Cleanup Action Plan is needed for this site between the Department of Ecology, Merv Wark, and Robert Coffelt.

Please note that because the previous remedial actions were not conducted under a consent decree with Department of Ecology this letter does not constitute a settlement by the State under RCW 70.105D.040(4).

If you have any questions feel free to call me at (509)454-7836.

Sincerely,

Brian T. Deeken
Site Manager
Toxics Cleanup Program

cc: Jeff Kaspar, Farralon Consulting
Sharonne O'Shea, AAG

