

5-22-91

MTCA

ENFORCEMENT ORDER

In the Matter of Remedial) Enforcement Order
Action by: Arden Brazil) No. DE 91-C141
c/o Mr. Richard Price)

To: Arden Brazil
c/o Mr. Richard Price
Attorney and Counselor At Law
435 Maple Street
Omak, Washington 98841

I.
Jurisdiction

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

II.
Statement of Facts

1. Arden Brazil owns and operates a combination gasoline/food store under the name of Arden's Country Store, located on the corner lot southeast of Second Avenue and Allen Street within the SE1/4 SW1/4 of Section 9, Township 32 N, Range 25 E.W.M. in Malott, Washington.

2. On February 22, 1988 the Department of Ecology was notified regarding apparent gasoline odors in the basement of Arden's Country Store. Preliminary combustible gas meter readings showed combustible vapor concentrations above the lower explosive limits in the shaft of an old hand dug well in Arden's Country Store basement. The Department of Ecology called in Olympus Environmental to perform emergency cleanup. Two old abandoned tanks were excavated, one contained gasoline and the other an apparent solvent containing xylene, toluene, and benzene. Stained and odoriferous soil was removed from beneath the excavated tanks and the excavation filled with new pit-run fill. Three, in use, underground storage tanks containing petroleum product currently exist.

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3. Sampling results indicate that benzene, toluene, ethylbenzene, and dichlorobenzene have contaminated both soil and groundwater. To date, field work at Arden's shows **increasing** levels of benzene, toluene, ethylbenzene, and xylene from samples taken from the well in the basement of the store. There have also been fluctuating levels of benzene in a nearby residential well.

III.

Ecology Determinations

1. Arden Brazil is an "owner/operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

2. The facility is known as Arden's Country Store and is located on the corner lot southeast of Second Avenue and Allen Street within the SE1/4 SW1/4 of Section 9, Township 32 N, Range 25 E.W.M. in Malott, Washington.

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

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(10).

5. By letter dated May 15, 1991, Ecology notified Arden Brazil of his 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.

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7. 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 Arden Brazil take the following remedial actions.

1. Conduct a Remedial Investigation/Feasibility Study (RI/FS), to include:
 - o Investigate and determine the degree and extent of contamination.
 - o Investigate and properly dispose/repair all leaking and suspected leaking underground storage tanks at the site.
 - o Develop and recommend method(s) for cleanup of soil and groundwater contamination.
 - o Investigate and determine the potential for off-site environmental and human health impacts of identified contamination.
 - o Document all observations, conditions, and results in a final report with at least three copies, one for the property owner and two for the Ecology site manager.

The RI/FS shall be consistent with WAC 173-340-350.

2. Submit the work plan and schedule, for the above described RI/FS work, to this office within 20 (twenty) working days from the effective date of this Order.
3. Supply all pertinent information about this site in your possession to this office within 20 (twenty) working days from the effective date of this Order.
4. Notify this office of your intent to comply with this Order within 20 (twenty) working days from the date of this Order.

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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

Arden Brazil 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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. Arden Brazil shall pay the required amount within 90 (ninety) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, a general description of work performed, an identification of involved staff, and the amount of time spent by involved staff members on the project. Failure to pay Ecology's costs within 90 (ninety) days of receipt of the itemized statement of costs may result in interest charges.

4. Designated Project Coordinators

The project coordinator for Ecology is:

Name Susan Burgdorff
Address 106 South 6th Avenue
 Yakima, WA 98902-3387

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The project coordinator for Arden Brazil is:

Name Richard Price,
 Attorney and Counselor At Law
Address 435 Maple Street,
 Omak, WA 98841

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Arden Brazil, 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 Arden Brazil change project coordinator(s), written notification shall be provided to Ecology or Arden Brazil at least 10 (ten) 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 similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup. Arden Brazil 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. WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

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

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verifying the data submitted to Ecology by Arden Brazil. Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Arden Brazil during an inspection unless doing so would interfere with Ecology's sampling. Arden Brazil shall allow split or replicate samples to be taken by Ecology and shall provide Ecology 7 (seven) days notice before any sampling activity.

7. Public Participation

Arden Brazil shall prepare and submit for review a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Arden Brazil shall help coordinate and implement public participation for the Site.

8. Retention of Records

Arden Brazil shall preserve in a readily retrievable fashion, during the pendency of this Order and for 10 (ten) 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 Arden Brazil, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. 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.

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 Arden Brazil to stop further implementation of this Order for such period of time as needed to abate the danger.

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10. 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 Arden Brazil 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 Arden Brazil may have in the Site or any portions thereof, Arden Brazil shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least 30 (thirty) days prior to finalization of any transfer, Arden Brazil shall notify Ecology of the contemplated transfer.

11. Compliance With Other Applicable Laws

All actions carried out by Arden Brazil pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, and compliance with this Order shall in no way decrease the obligation of Arden Brazil to comply with other applicable requirements.

VI.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon Arden Brazil's receipt of written notice from Ecology that Arden Brazil has satisfactorily 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

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for investigative and remedial actions and Orders related to the Site.

- C. In the event Arden Brazil refuses, without sufficient cause, to comply with any term of this Order, Arden Brazil will be liable for:
- (1) up to three times the amount of any costs incurred by the State of Washington as a result of his refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day he 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: MAY 22 1991 .



Mike Wilson
Acting Section Head
Toxics Cleanup Program