

STATE OF WASHINGTON
DEPARTMENT OF WASHINGTON

In the Matter of Remedial
Action by:

Robert C. Mathias X AF
471 West Woodin Road
Sunnyside, Washington 98944

Eugene Thompson / AG
4107 Garden Parkway
Yakima, Washington 98905

R.H. Bowles, Inc. X AH
c/o David Bowles
150 Sage Hill Drive
Selah, Washington 98942

Time Oil Company W AB X
c/o Charles R. Wolfe
Schwabe, Williamson, Ferguson)
and Burdell)
Pacific First Centre)
Suites 3400 and 3500)
1420 Fifth Avenue)
Seattle, Washington 98101-0460)

ENFORCEMENT ORDER

No. DE 93TC-C466

TO: Robert C. Mathias

Eugene Thompson

R.H. Bowles, Incorporated

Time Oil, Incorporated

I.

Jurisdiction

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

II.

Findings of Facts

2.1. Petroleum releases from nearby leaking underground storage tanks, piping, fittings, overfills and spills have contaminated the soils and ground water in and around the area of Manhole 34, 6th Street and Highway 12, in Sunnyside, Washington. In March, 1989, phase separated petroleum products (free product) were discovered in Manhole 34, a component of the local storm drain system. RCW 70.105D.020(5)(d) identifies petroleum products as hazardous substances.

2.2 The facility is located within the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Section 25, Township 10 North, Range 22 East Willamette Meridian. The facility is located in and around the intersection of State Highway 12 and 6th Street in Sunnyside, Washington. The exact size and extent of the contaminated area will not be known until additional investigations required by this Order are completed.

2.3. Time Oil Company, Robert Mathias, Eugene Thompson, and R.H. Bowles, Inc., hereafter referred to as the Respondents, are past or present owners and/or operators of property or businesses at this facility and are the recipients of this Order. Atlantic Richfield Company, Tire Centers, Inc., La Von Philipp, and Texaco Marketing and Refining, Inc., have also been named as potentially liable persons (PLPs) at this facility, and have signed an Agreed Order with Ecology to conduct a Remedial Investigation/Feasibility Study (RI/FS) at this facility.

2.4. Petroleum contaminated soil and ground water have been discovered under the facility and confirmed to exist by analysis. The following reports, on file at the Department of Ecology (Ecology), document the analysis:

- a. Technical Memorandum 02, Time Oil Company, Sunnyside, Washington, Shannon and Wilson, September 1992.
- b. Preliminary Hydrogeologic Investigation, South Sixth Street and Yakima Valley Highway, Sunnyside, Washington, Delta Project No. 40-89-026, Delta Environmental, June 22, 1989.

- c. Preliminary Hydrogeologic Report, Tire Centers, Inc., 612 Yakima Valley Highway, Sunnyside, Washington, Forsgren Associates, March 27, 1990.
- d. Phase II Hydrogeologic Investigation, South Sixth Street and Highway 12, Sunnyside, Washington, Delta Project No. 40-89-026, Delta Environmental, January 2, 1990.
- e. Washington State Department of Transportation Aerial Photographs, dated 1962 and 1966, and Washington State Department of Natural Resources Aerial Photographs, dated 1972.

2.5. The facility is known as Manhole 34 and is located around the intersection of Highway 34 and 6th Street, Sunnyside, Washington, within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T. 10 N., R. 22 E., Willamette Meridian. The Respondents have owned or operated businesses or property on one or more of the following real estate parcels which are all part of the Manhole 34 facility; the parcels are numbered using the parcel numbering convention of the Yakima County Assessor's office:

22102512439
22102521425
22102521440
22102521426
22102521432
22102521454

2.6. Tire Centers, Inc., (TCI) owned a portion of the property parcel numbers 22102521440, 22102521426, and 22102521432, located within the Manhole 34 facility at the time the Department of Ecology became aware of the presence of contamination at the facility.

2.7. Texaco Refining and Marketing, Inc., (TRMI) is a past owner or operator of a portion of the property, parcel number 22102521454, located within the Manhole 34 facility. TRMI held a leasehold interest in a service station located at 601 Highway 12 in Sunnyside, Washington in 1981 when a leak in a product delivery line was reported.

2.8. Atlantic Richfield Company (ARCO) is a past owner or operator of a portion of the property, parcel numbers 22102521440, 22102521426, and 22102521432, located within the Manhole 34 facility. ARCO owned and operated a bulk

petroleum products handling business near 6th Street and Highway 12 in Sunnyside from July 1937 through December 1977.

2.9. Time Oil, Inc., (Time Oil) is the current owner of a portion of the property located within the Manhole 34 facility. Time Oil owns and operates a retail gasoline station on parcel numbers 22102521439 and 221022521425.

2.10 Robert C. Mathias (Mathias) is a current owner of a portion of the property, parcel number 22102521454, located within the Manhole 34 facility. Mathias owns the property located at 601 Highway 12 in Sunnyside, Washington.

2.11 R.H. Bowles, Inc., (Bowles) is a past owner or operator of a portion of the property located within the Manhole 34 facility. Bowles operated a Texaco service station on parcel number 22102521454.

2.12 Eugene Thompson (Thompson) is a past owner or operator of a portion of the property located within the Manhole 34 facility. Thompson operated a service station on parcel number 22102521454.

2.13 LaVon Philipp (Philipp) is a current owner of a portion of the property located within the Manhole 34 facility. Philipp owns parcel numbers 22102521440, 22102521426, and 22102521432.

2.14 TCI, ARCO, Philipp, and TRMI have entered into an Agreed Order with Ecology for conducting a Remedial Investigation/Feasibility Study of the Manhole 34 facility. Those PLPs not entering into an Agreed Order (Mathias, Thompson, Philipp, and Time Oil), the Respondents, are recipients of this Enforcement Order.

2.15 The water table beneath the facility typically occurs at depths between 8 and 10 feet below the land surface. Wells which withdraw ground water for the City of Sunnyside domestic water supply system are within 1100 feet of the facility. The presence of petroleum products within the subsurface and on the ground water surface may threaten the City of Sunnyside public water supply and other ground water users, which have not been identified, and are downgradient of the contaminated area. WAC 173-200-030(2)(a) states that "existing and future beneficial uses shall be maintained and protected and the degradation of ground water quality that would interfere with or become injurious to beneficial uses shall not be allowed". Allowing free petroleum products to

continue to contaminate the ground water passing beneath this facility will degrade ground water quality in violation of this regulation.

III.

Ecology Determinations

3.1. The Respondents are or were either "owners or operators" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2. TCI was an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.3. TRMI was an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.4. ARCO was an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.5. Bowles was an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.6. Thompson was an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.7. Mathias is an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.8. Philipp is an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

3.9. Time Oil is an "owner or operator" as defined in RCW 70.105D.020(6) of a facility as defined in RCW 70.105D.020(3).

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

3.11 Based on the presence of these hazardous substances at the facility, and all factors known to Ecology, there has been a release or threatened release of hazardous substances from the facility, as defined in RCW 70.105D.020(10).

3.12 By letter dated July 23, 1992, Ecology notified TRMI of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity to comment.

3.13 By letter dated December 4, 1992, Ecology notified ARCO of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity to comment.

3.14 By letter dated May 14, 1992, Ecology notified TCI of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.15 By letter dated May 14, 1992, Ecology notified Time Oil, Inc. of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.16 By letter dated May 14, 1992, Ecology notified R.H. Bowles, Inc. of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.17 By letter dated May 14, 1992, Ecology notified Eugene Thompson of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.18 By letter dated May 14, 1992, Ecology notified Robert Mathias of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.19 By letter dated January 29, 1993, Ecology notified La Von Philipp of her status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.20 Pursuant to RCW 70.105D.030(1) and RCW 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.

3.21 Based on the foregoing facts, Ecology believes the Remedial Investigation/Feasibility Study required by this Order is in the public interest.

IV.

Work to be Performed

4.1. Based on the foregoing facts and determinations, it is hereby ordered that the Respondents take the following actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

4.2. The Respondents shall plan, conduct, and finance the cost of a Remedial Investigation/Feasibility Study for the potentially affected vicinity; the potentially affected vicinity is shown in Figure 1 of Exhibit A of this Order. The boundaries on this map are not drawn to delineate the contaminant plume but to define a general area from which the actions can begin. This Order shall be implemented according to the following schedule:

a. Within 10 days of the effective date of this Order, the Respondents shall name one project coordinator who shall represent the mutual interests of the Respondents. The project coordinator shall be the principal Ecology contact for this facility. All communication with Ecology concerning this Order will be through the Respondents' project coordinator.

4.3. The work to be performed shall be as outlined in the attached Work Plan and Schedule, Final Draft Scoping Document, Interim Actions and Remedial Investigation/Feasibility Study, Manhole 34 Facility, Sunnyside, Washington, and Final Draft Sampling and Analysis Plan. The Work Plan and Schedule are attached to this Order as Exhibit A. These exhibits are incorporated by reference and the exhibits are integral and enforceable parts of this Order.

4.4. The RI/FS will collect, develop, and evaluate sufficient information regarding the site to enable the selection of a cleanup action. To collect sufficient information, the Work Plan will consist of general facility information, field investigations of surface water and sediments, soils, geology and ground water system characteristics, air, land use, natural resources and Ecology, as well as work plans. The RI/FS will be implemented to meet the requirements of WAC 173-340-350 (State Remedial Investigation and Feasibility Study).

4.5. The Respondents will develop and submit to Ecology for approval a Quality Assurance/Quality Control (QA/QC) Plan in accordance with the Ecology Guidelines and Specifications for Preparing Quality Assurance Project Plans (May 1991). No sampling may be conducted prior to Ecology approval of the QA/QC Plan. Results from sampling shall be provided to Ecology's project coordinator upon receipt from the laboratory.

4.6. Written progress reports shall be submitted to Ecology on behalf of the Respondents on a timely basis during the RI phase of the investigation. If Ecology determines that the reports are not being submitted on a timely basis, Ecology will verbally notify the Respondents' project coordinator. Thereafter, if the timeliness of subsequent reporting does not satisfy Ecology, Ecology may, in writing, direct a specific frequency for reporting. The Respondents shall immediately notify Ecology by telephone of any unexpected delays in construction.

4.7. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Exhibit B, GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology as required under the schedule established in provision 3, above.

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 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.

5.3. Remedial Action Costs

The Respondents shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities.

- 5.4. The Respondents shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

5.5. Designated Project Coordinators

The project coordinator for Ecology is:

Donald Abbott
Central Regional Office
106 South 6th Avenue
Yakima, WA 98902-3387
Phone: (509) 454-7834

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Respondents, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator. Should Ecology or the Respondents change project coordinator(s), written notification shall be provided to Ecology or the Respondents at least ten (10) calendar days prior to the change.

5.6. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup.

The Respondents shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the site. The Respondents shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors will be in compliance with this Order.

5.7. Except when necessary to abate an emergency situation, the Respondents shall not perform any remedial actions at Manhole 34 outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

5.8. 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 state.

5.9. 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 the Respondents. 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 the Respondents during

an inspection unless doing so would interfere with Ecology's sampling. The Respondents shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

For property owned and controlled by the respondents: you shall give access to any person acting pursuant to this Enforcement Order, or Agreed Order No. 93TC-C465, to implement the scope of work attached hereto as Exhibit A.

5.10 Public Participation

The Respondents shall prepare a Public Participation Plan for the site according to the schedule included in Exhibit A. The Respondents shall complete step 1 of the outline within ten (10) days of the effective date of this Order. The Public Participation Plan shall be developed consistent with the outline attached to this Order as Exhibit C. Ecology shall maintain the responsibility for public participation at the site. The Respondents shall help coordinate and implement public participation for the site.

5.11 Retention of Records

The Respondents shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Respondents, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

5.12 Dispute Resolution

The Respondents 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. The Respondents are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for

timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

5.13 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.

5.14 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 Manhole 34.

5.15 In the event Ecology determines that conditions at the site are creating or have the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may order the Respondents to stop further implementation of this Order for such period of time as needed to abate the danger.

5.16 Transference of Property

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the site shall be consummated by the Respondents without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

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

5.18 Compliance With Other Applicable Laws

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

VI.

Satisfaction of this Order

6.1. The provisions of this Order shall be deemed satisfied upon the Respondents' receipt of written notification from Ecology that Respondents have 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.

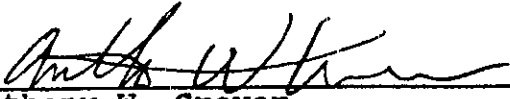
Enforcement

7.1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- a. The Attorney General may bring an action to enforce this Order in a state or federal court.
- b. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and Orders related to the site.
- c. In the event the Respondents refuse, without sufficient cause, to comply with any term of this Order, the respondents will be liable for:
 - (1) up to three (3) 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: SEP 28 1993.



Anthony W. Grover
Section Manager
Toxics Cleanup Program

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